

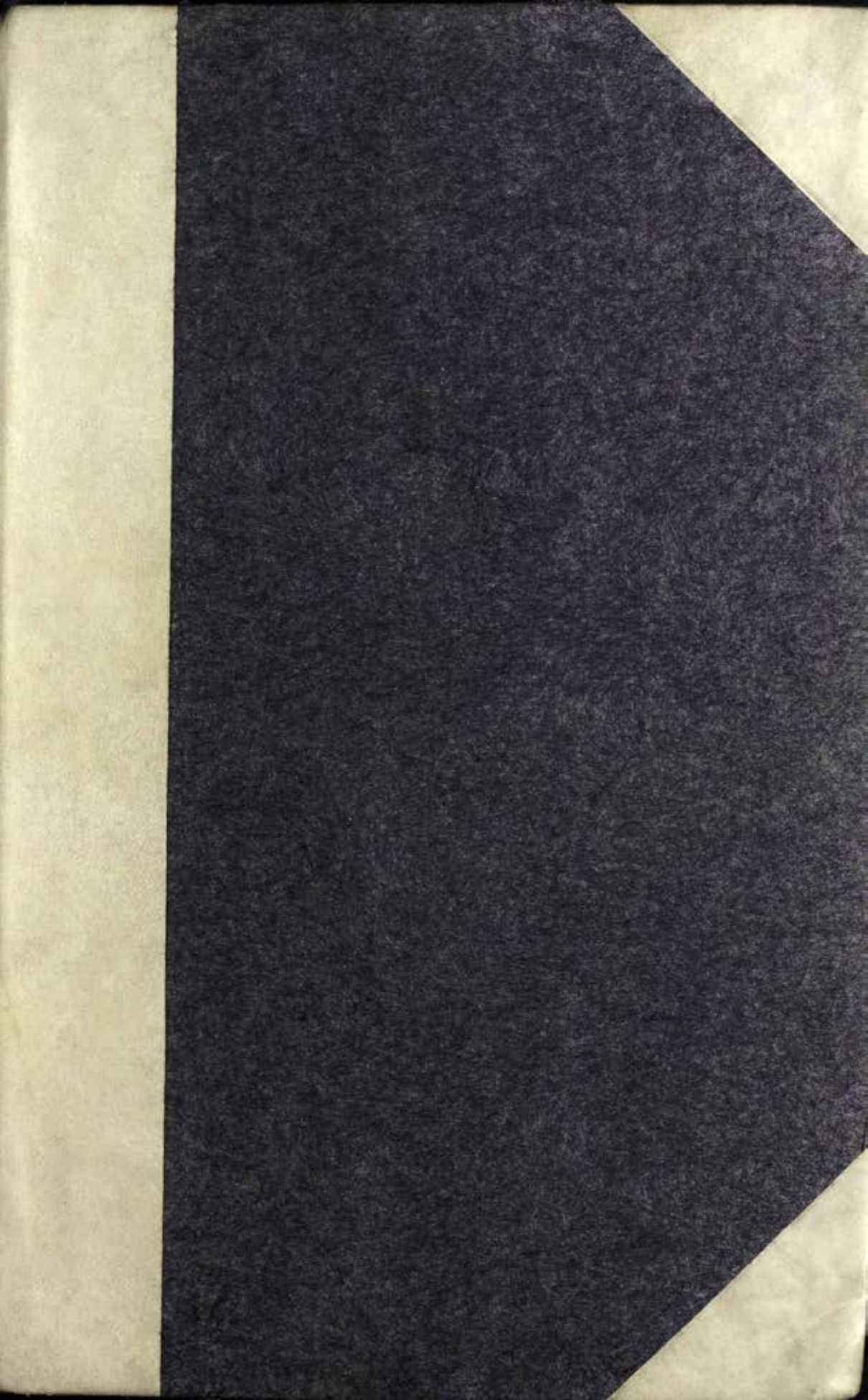


Consiglio regionale del Veneto

Questo libro proviene dalle raccolte della Biblioteca del Consiglio regionale del Veneto. Il suo utilizzo non commerciale è libero e gratuito in base alle norme sul diritto d'autore vigenti in Italia.

Per ottenerne una versione ad alta definizione a fini editoriali, rivolgersi al seguente indirizzo:

biblioteca@consiglioveneto.it





THE
CONSTITUTIONAL HISTORY
OF
ENGLAND

FROM
THE ACCESSION OF HENRY VII.
TO
THE DEATH OF GEORGE II.

BY HENRY HALLAM.

Fifth Edition.

IN TWO VOLUMES,

VOL. I.

LONDON:
JOHN MURRAY, ALBEMARLE STREET,
1846.





Inv. 7337



LONDON:
Printed by A. SPOTTISWOODE,
New-Street-Square.

TO

HENRY MARQUIS OF LANSDOWNE,

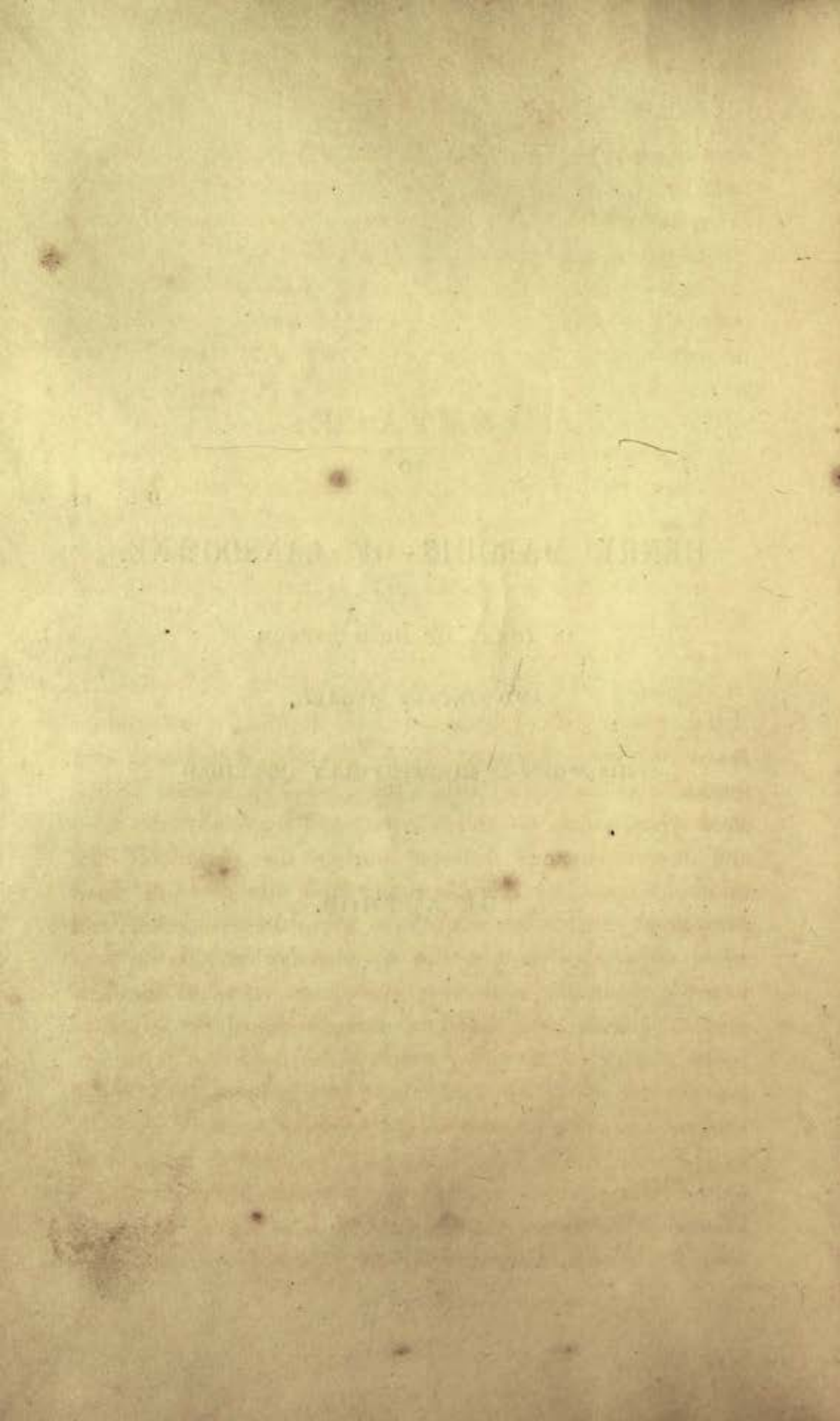
IN TOKEN OF HIGH ESTEEM

AND SINCERE REGARD,

THIS WORK IS RESPECTFULLY INSCRIBED

BY

THE AUTHOR.



P R E F A C E .

THE origin and progress of the English Constitution, down to the extinction of the house of Plantagenet, formed a considerable portion of a work published by me some years since, on the history, and especially the laws and institutions, of Europe during the period of the middle ages. It had been my first intention to have prosecuted that undertaking in a general continuation; and when experience taught me to abandon a scheme projected early in life with very inadequate views of its magnitude, I still determined to carry forward the constitutional history of my own country, as both the most important to ourselves, and, in many respects, the most congenial to my own studies and habits of mind.

The title which I have adopted appears to exclude all matter not referrible to the state of government, or what is loosely denominated the constitution. I have, therefore, generally abstained from mentioning, except cursorily, either

military or political transactions, which do not seem to bear on this primary subject. It must, however, be evident, that the constitutional and general history of England, at some periods, nearly coincide; and I presume that a few occasional deviations of this nature will not be deemed unpardonable, especially where they tend, at least indirectly, to illustrate the main topic of inquiry. Nor will the reader, perhaps, be of opinion that I have forgotten my theme in those parts of the following work which relate to the establishment of the English church, and to the proceedings of the state with respect to those who have dissented from it; facts certainly belonging to the history of our constitution, in the large sense of the word, and most important in their application to modern times, for which all knowledge of the past is principally valuable. Still less apology can be required for a slight verbal inconsistency with the title of these volumes in the addition of two supplemental chapters on Scotland and Ireland. This indeed I mention less to obviate a criticism, which possibly might not be suggested, than to express my regret that, on account of their brevity, if for no other reasons, they are both so disproportionate to the interest and importance of their subjects.

During the years that, amidst avocations of different kinds, have been occupied in the composition of this work, several others have been given to the world, and have attracted considerable attention, relating particularly to the periods of the Reformation and of the civil wars. It seems necessary to mention that I have read none of these, till after I had written such of the following pages as treat of the same subjects. The three first chapters indeed were finished in 1820, before the appearance of those publications which have led to so much controversy, as to the ecclesiastical history of the sixteenth century; and I was equally unacquainted with Mr. Brodie's "History of the British Empire from the

Accession of Charles I. to the Restoration," while engaged myself on that period. I have, however, on a revision of the present work, availed myself of the valuable labours of recent authors, especially Dr. Lingard and Mr. Brodie; and in several of my notes I have sometimes supported myself by their authority, sometimes taken the liberty to express my dissent; but I have seldom thought it necessary to make more than a few verbal modifications in my text.

It would, perhaps, not become me to offer any observations on these contemporaries; but I cannot refrain from bearing testimony to the work of a distinguished foreigner, M. Guizot, "*Histoire de la Révolution d'Angleterre, depuis l'Avènement de Charles I. jusqu'à la Chute de Jacques II.*," the first volume of which was published in 1826. The extensive knowledge of M. Guizot, and his remarkable impartiality, have already been displayed in his collection of memoirs illustrating that part of English history; and I am much disposed to believe that if the rest of his present undertaking shall be completed in as satisfactory a manner as the first volume, he will be entitled to the preference above any one, perhaps, of our native writers, as a guide through the great period of the seventeenth century.

In terminating the Constitutional History of England at the accession of George III., I have been influenced by unwillingness to excite the prejudices of modern politics, especially those connected with personal character, which extend back through at least a large portion of that reign. It is indeed vain to expect that any comprehensive account of the two preceding centuries can be given without risking the disapprobation of those parties, religious or political, which originated during that period; but as I shall hardly incur the imputation of being the blind zealot of any of these, I have little to fear, in this respect, from the dispassionate public, whose favour, both in this country and on the Conti-

ment, has been bestowed on my former work, with a liberality less due to any literary merit it may possess, than to a regard for truth, which will, I trust, be found equally characteristic of the present.

June, 1827.

ADVERTISEMENT

TO

THE THIRD EDITION.

THE present edition has been revised, and some use made of recent publications. The note on the authenticity of the Icon Basilice, at the end of the second volume of the three former editions, has been withdrawn; not from the slightest doubt in the author's mind as to the correctness of its argument; but because a discussion of a point of literary criticism, as this ought to be considered, seemed rather out of its place in the Constitutional History of England.

April, 1832.

ADVERTISEMENT
TO
THE FIFTH EDITION.

Many alterations and additions have been made in this edition, as well as some in that published in 1842. They are distinguished, when more than verbal, by brackets and by the date.

January, 1846.

The following Editions have been used for the References in these Volumes.

STATUTES at Large, by Ruffhead, except where the late edition of Statutes of the Realm is expressly quoted.

State Trials, by Howell.

Rymer's Fœdera, London, 20 vols.

The paging of this edition is preserved in the margin of the Hague edition in 10 vols.

Parliamentary History, new edition.

Burnet's History of the Reformation, 3 vols. folio, 1681.

Strype's Ecclesiastical Memorials, Annals of Reformation, and Lives of Archbishops Cranmer, Parker, Grindal, and Whitgift, folio.

The paging of these editions is preserved in those lately published in 8vo.

Hall's Chronicles of England.

Holingshed's Chronicles of England, Scotland, and Ireland. }
The edition in 4to. published in 1808.

Somers Tracts, by Sir Walter Scott, 13 vols. 4to.

Harleian Miscellany, 8 vols. 4to.

Neal's History of the Puritans, 2 vols. 4to.

Bacon's Works, by Mallet, 3 vols. folio, 1753.

Kennet's Complete History of England, 3 vols. folio, 1719.

Wood's History of University of Oxford, by Gutch, 4 vols. 4to.

Lingard's History of England, 10 vols. 8vo.

Butler's Memoirs of English Catholics, 4 vols. 1819.

Harris's Lives of James I., Charles I., Cromwell, and Charles II., 5 vols. 1814.

Clarendon's History of the Rebellion, 8 vols. 8vo. Oxf. 1826.

It is to be regretted, that the editor has not preserved the paging of the folio in his margin, which is of great convenience in a book so frequently referred to; and still more so, that he has not thought the true text worthy of a better place than the bottom of the page, leaving to the spurious readings the post of honour.

Clarendon's Life, fol.

Rushworth Abridged, 6 vols. 8vo. 1703.

This edition contains many additions from works published since the folio edition in 1680.

Whitelock's Memorials, 1732.

Memoirs of Col. Hutchinson, 4to. 1806.

May's History of the Parliament, 4to. 1812.

Baxter's Life, fol.

Rapin's History of England, 3 vols. fol. 1732.

Burnet's History of his own Times, 2 vols. fol.

The paging of this edition is preserved in the margin of that printed at Oxford, 1823, which is sometimes quoted, and the text of which has always been followed.

Life of William Lord Russell, by Lord John Russell, 4to.

Temple's Works, 2 vols. fol. 1720.

Coxe's Life of Marlborough, 3 vols. 4to.

Coxe's Memoirs of Sir Robert Walpole, 3 vols. 4to.

Robertson's History of Scotland, 2 vols. 8vo. 1794.

Laing's History of Scotland, 4 vols. 8vo.

Dalrymple's Annals of Scotland, 2 vols. 4to.

Leland's History of Ireland, 3 vols. 4to.

Spenser's Account of State of Ireland, in 8th volume of Todd's edition of Spenser's works.

These are, I believe, almost all the works quoted in the following volumes, concerning which any uncertainty could arise from the mode of reference.

CONTENTS

OF

THE FIRST VOLUME.

CHAPTER I.

ON THE ENGLISH CONSTITUTION FROM HENRY VII. TO MARY.

ANCIENT Government of England — Limitations of Royal Authority — Difference in the effective Operation of these — Sketch of the State of Society and Law — Henry VII. — Statute for the Security of the Subject under a King *de facto* — Statute of Fines — Discussion of its Effect and Motive — Exactions of Money under Henry VII. — Taxes demanded by Henry VIII. — Illegal Exactions of Wolsey in 1523 and 1525 — Acts of Parliament releasing the King from his Debts — A Benevolence again exacted — Oppressive Treatment of Reed — Severe and unjust Executions for Treason — Earl of Warwick — Earl of Suffolk — Duke of Buckingham — New Treasons created by Statute — Executions of Fisher and More — Cromwell — Duke of Norfolk — Anne Boleyn — Fresh Statutes enacting the Penalties of Treason — Act giving Proclamations the Force of Law — Government of Edward VI.'s Counsellors — Attainder of Lord Seymour and Duke of Somerset — Violence of Mary's Reign — The House of Commons recovers Part of its independent Power in these two Reigns — Attempt of the Court to strengthen itself by creating new Boroughs — Causes of the High Prerogative of the Tudors — Jurisdiction of the Council of Star-Chamber — This not the same with the Court erected by Henry VII. — Influence of the Authority of the Star-Chamber in enhancing the Royal Power — Tendency of religious Disputes to the same End - Page 1

CHAPTER II.

ON THE ENGLISH CHURCH UNDER HENRY VIII., EDWARD VI., AND MARY.

State of public Opinion as to Religion — Henry VIII.'s Controversy with Luther — His Divorce from Catherine — Separation from the Church of Rome — Dissolution of Monasteries — Progress of the Reformed Doctrine in England — Its Establishment under Edward — Sketch of the chief Points of Difference between the two Religions — Opposition made by Part of the Nation — Cranmer — His Moderation in introducing Changes not acceptable to the Zealots — Mary — Persecution under her — Its Effect rather favourable to Protestantism - - - 57

CHAPTER III.

ON THE LAWS OF ELIZABETH'S REIGN RESPECTING THE ROMAN CATHOLICS.

Change of Religion on the Queen's Accession — Acts of Supremacy and Uniformity — Restraint of Roman Catholic Worship in the first Years of Elizabeth — Statute of 1562 — Speech of Lord Montague against it — This Act not fully enforced — Application of the Emperor in behalf of the English Catholics — Persecution of this Body in the ensuing Period — Uncertain Succession of the Crown between the Families of Scotland and Suffolk — The Queen's Unwillingness to decide this, or to marry — Imprisonment of Lady Catherine Grey — Mary Queen of Scotland — Combination in her Favour — Bull of Pius V. — Statutes for the Queen's Security — Catholics more rigorously treated — Refugees in the Netherlands — Their Hostility to the Government — Fresh Laws against the Catholic Worship — Execution of Campion and others — Defence of the Queen by Burleigh — Increased Severity of the Government — Mary — Plot in her Favour — Her Execution — Remarks upon it — Continued Persecution of Roman Catholics — General Observations - - - Page 108

CHAPTER IV.

ON THE LAWS OF ELIZABETH'S REIGN RESPECTING PROTESTANT NON-CONFORMISTS.

Origin of the Differences among the English Protestants — Religious Inclinations of the Queen — Unwillingness of many to comply with the established Ceremonies — Conformity enforced by the Archbishop — Against the Disposition of others — A more determined Opposition, about 1570, led by Cartwright — Dangerous Nature of his Tenets — Puritans supported in the Commons — and in some Measure by the Council — Propheying — Archbishops Grindal and Whitgift — Conduct of the latter in enforcing Conformity — High Commission Court — Lord Burleigh averse to Severity — Puritan Libels — Attempt to set up a Presbyterian System — House of Commons averse to episcopal Authority — Independents liable to severe Laws — Hooker's Ecclesiastical Polity — Its Character — Spoliation of Church Revenues — General Remarks — Letter of Walsingham in Defence of the Queen's Government - - - - 170

CHAPTER V.

ON THE CIVIL GOVERNMENT OF ELIZABETH.

General Remarks — Defective Security of the Subject's Liberty — Trials for Treason and other political Offences unjustly conducted — Illegal Commitments — Remonstrance of Judges against them — Proclamations unwarranted by Law — Restrictions on Printing — Martial Law — Loans of Money not quite voluntary — Character of Lord Burleigh's Administration — Disposition of the House of Commons — Addresses concerning the Succession — Difference on this between the Queen and Commons in 1566 — Session of 1571 — Influence of the Puritans in Parliament — Speech of Mr. Wentworth in 1576 — The Commons continue to seek Redress of ecclesiastical Grievances — Also of Monopolies, especially in the Session

of 1601 — Influence of the Crown in Parliament — Debate on Election of non-resident Burgesses — Assertion of Privileges by Commons — Case of Ferrers, under Henry VIII. — Other Cases of Privilege — Privilege of determining contested Elections claimed by the House — The English Constitution not admitted to be an absolute Monarchy — Pretensions of the Crown	Page 229
--	----------

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 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 Comendams — 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	285
--	-----

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	374
---	-----

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 Montague 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 - - - - Page 420

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 - - - - 513

CHAPTER X.

FROM THE BREAKING OUT OF THE CIVIL WAR TO THE RESTORATION.

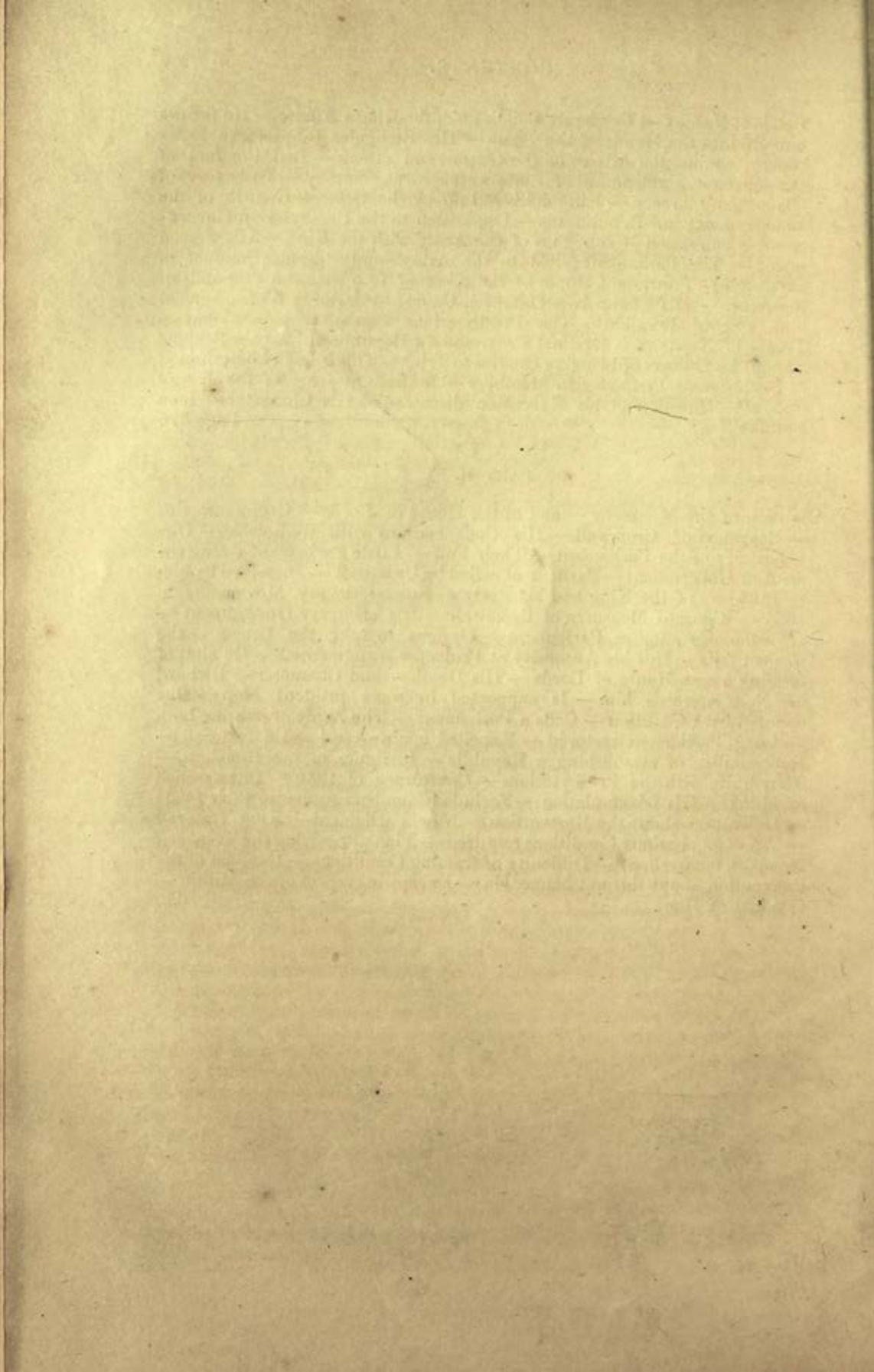
PART I.

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 Page 570

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 1665 — 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 blameable — Except in respect of the Militia — Conduct of Monk 650



THE
CONSTITUTIONAL HISTORY
OF
ENGLAND,
FROM
HENRY VII. TO GEORGE II.

CHAPTER I.

ON THE ENGLISH CONSTITUTION FROM HENRY VII.
TO MARY.

Ancient Government of England — Limitations of Royal Authority — Difference in the effective Operation of these — Sketch of the State of Society and Law — Henry VII. — Statute for the Security of the Subject under a King de facto — Statute of Fines — Discussion of its effect and Motive — Exactions of Money under Henry VII. — Taxes demanded by Henry VIII. — Illegal Exactions of Wolsey in 1523 and 1525 — Acts of Parliament releasing the King from his Debts — A Benevolence again exacted — Oppressive Treatment of Reed — Severe and unjust Executions for Treason — Earl of Warwick — Earl of Suffolk — Duke of Buckingham — New Treasons created by Statute — Executions of Fisher and More — Cromwell — Duke of Norfolk — Anne Boleyn — Fresh Statutes enacting the Penalties of Treason — Act giving Proclamations the Force of Law — Government of Edward VI.'s Counsellors — Attainder of Lord Seymour and Duke of Somerset — Violence of Mary's Reign — The House of Commons recovers Part of its independent Power in these two Reigns — Attempt of the Court to strengthen itself by creating new Boroughs — Causes of the High Prerogative of the Tudors — Jurisdiction of the Council of Star-Chamber — This not the same with the Court erected by Henry VII. — Influence of the Authority of the Star-Chamber in enhancing the Royal Power — Tendency of Religious Disputes to the same End.

THE government of England, in all times recorded by history, has been one of those mixed or limited monarchies which the

Celtic and Gothic tribes appear universally to have established, in preference to the coarse despotism of eastern nations, to the more artificial tyranny of Rome and Constantinople, or to the various models of republican polity which were tried upon the coasts of the Mediterranean Sea. It bore the same general features, it belonged, as it were, to the same family, as the governments of almost every European state, though less resembling, perhaps, that of France than any other. But, in the course of many centuries, the boundaries which determined the sovereign's prerogative and the people's liberty or power having seldom been very accurately defined by law, or at least by such law as was deemed fundamental and unchangeable, the forms and principles of political regimen in these different nations became more divergent from each other, according to their peculiar dispositions, the revolutions they underwent, or the influence of personal character. England, more fortunate than the rest, had acquired in the fifteenth century a just reputation for the goodness of her laws and the security of her citizens from oppression.

This liberty had been the slow fruit of ages, still waiting a happier season for its perfect ripeness, but already giving proof of the vigour and industry which had been employed in its culture. I have endeavoured, in a work of which this may in a certain degree be reckoned a continuation, to trace the leading events and causes of its progress. It will be sufficient in this place briefly to point out the principal circumstances in the polity of England at the accession of Henry VII.

The essential checks upon the royal authority were five in number. — 1. The king could levy no sort of new tax upon his people, except by the grant of his parliament, consisting as well of bishops and mitred abbots or lords spiritual, and of hereditary peers or temporal lords, who sat and voted promiscuously in the same chamber, as of representatives from the freeholders of each county, and from the burgesses of many towns and less considerable places, forming the lower or commons' house. 2. The previous assent and authority of the same assembly was necessary for every new law, whether of a general or temporary nature. 3. No man could be committed to prison but by a

Ancient government of England.

Limitations of royal authority.

legal warrant specifying his offence ; and by an usage nearly tantamount to constitutional right, he must be speedily brought to trial by means of regular sessions of gaol-delivery.

4. The fact of guilt or innocence on a criminal charge was determined in a public court, and in the county where the offence was alleged to have occurred, by a jury of twelve men, from whose unanimous verdict no appeal could be made. Civil rights, so far as they depended on questions of fact, were subject to the same decision. 5. The officers and servants of the crown, violating the personal liberty or other right of the subject, might be sued in an action for damages, to be assessed by a jury, or, in some cases, were liable to criminal process ; nor could they plead any warrant or command in their justification, not even the direct order of the king.

These securities, though it would be easy to prove that they were all recognised in law, differed much in the degree of their effective operation. It may be said of the first, that it was now completely established. After a long contention, the kings of England had desisted for near a hundred years from every attempt to impose taxes without consent of parliament ; and their recent device of demanding benevolences, or half-compulsory gifts, though very oppressive, and on that account just abolished by an act of the late usurper, Richard, was in effect a recognition of the general principle, which it sought to elude rather than transgress.

The necessary concurrence of the two houses of parliament in legislation, though it could not be more unequivocally established than the former, had in earlier times been more free from all attempt or pretext of encroachment. We know not of any laws that were ever enacted by our kings without the assent and advice of their great council ; though it is justly doubted whether the representatives of the ordinary freeholders, or of the boroughs, had seats and suffrages in that assembly during seven or eight reigns after the conquest. They were then, however, ingrafted upon it with plenary legislative authority ; and if the sanction of a statute were required for this fundamental axiom, we might refer to one in the 15th of Edward II. (1322), which declares that “ the

Difference
in the ef-
fective oper-
ation of
these.

matters to be established for the estate of the king and of his heirs, and for the estate of the realm and of the people, should be treated, accorded, and established in parliament, by the king, and by the assent of the prelates, earls, and barons, and the commonalty of the realm, according as had been before accustomed."*

It may not be impertinent to remark in this place, that the opinion of such as have fancied the royal prerogative under the houses of Plantagenet and Tudor to have had no effectual or unquestioned limitations is decidedly refuted by the notorious fact, that no alteration in the general laws of the realm was ever made, or attempted to be made, without the consent of parliament. It is not surprising that the council, in great exigency of money, should sometimes employ force to extort it from the merchants, or that servile lawyers should be found to vindicate these encroachments of power. Impositions, like other arbitrary measures, were particular and temporary, prompted by rapacity, and endured through compulsion. But if the kings of England had been supposed to enjoy an absolute authority, we should find some proofs of it in their exercise of the supreme function of sovereignty, the enactment of new laws. Yet there is not a single instance from the first dawn of our constitutional history, where a proclamation, or order of council, has dictated any change, however trifling, in the code of private rights, or in the penalties of criminal offences. Was it ever pretended that the king could empower his subjects to devise their freeholds, or to levy fines of their entailed lands? Has even the slightest regulation, as to judicial procedure, or any permanent prohibition, even in fiscal law, been ever enforced without statute? There was, indeed, a period, later than that of Henry VII., when a control over the subject's free right of doing all things not unlawful was usurped by means of proclamations. These, however, were always temporary, and did not affect to alter

* This statute is not even alluded to in Ruffhead's edition, and has been very little noticed by writers on our law or history. It is printed in the late edition, published by authority, and is brought forward in the First Report of the Lords' Committee, on the dignity of a Peer

(1819), p. 282. Nothing can be more evident than that it not only establishes by a legislative declaration the present constitution of parliament, but recognises it as already standing upon a custom of some length of time.

the established law. But though it would be difficult to assert that none of this kind had ever been issued in rude and irregular times, I have not observed any under the kings of the Plantagenet name which evidently transgress the boundaries of their legal prerogative.

The general privileges of the nation were far more secure than those of private men. Great violence was often used by the various officers of the crown, for which no adequate redress could be procured; the courts of justice were not strong enough, whatever might be their temper, to chastise such aggressions; juries, through intimidation or ignorance, returned such verdicts as were desired by the crown; and, in general, there was perhaps little effective restraint upon the government, except in the two articles of levying money and enacting laws.

The peers alone, a small body varying from about fifty to eighty persons, enjoyed the privileges of aristocracy; which, except that of sitting in parliament, were State of society and law. not very considerable, far less oppressive. All below them, even their children, were commoners, and in the eye of the law equal to each other. In the gradation of ranks, which, if not legally recognised, must still subsist through the necessary inequalities of birth and wealth, we find the gentry or principal landholders, many of them distinguished by knight-hood, and all by bearing coat armour, but without any exclusive privilege; the yeomanry, or small freeholders and farmers, a very numerous and respectable body, some occupying their own estates, some those of landlords; the burgesses and inferior inhabitants of trading towns; and, lastly, the peasantry and labourers. Of these, in earlier times, a considerable part, though not perhaps so very large a proportion as is usually taken for granted, had been in the ignominious state of villenage, incapable of possessing property but at the will of their lords. They had, however, gradually been raised above this servitude; many had acquired a stable possession of lands under the name of copyholders; and the condition of mere villenage was become rare.

The three courts at Westminster — the King's Bench, Common Pleas, and Exchequer — consisting each of four or

five judges, administered justice to the whole kingdom; the first having an appellat jurisdiction over the second, and the third being in a great measure confined to causes affecting the crown's property. But as all suits relating to land, as well as most others, and all criminal indictments, could only be determined, so far as they depended upon oral evidence, by a jury of the county, it was necessary that justices of assize and gaol-delivery, being in general the judges of the courts at Westminster, should travel into each county, commonly twice a year, in order to try issues of fact, so called in distinction from issues of law, where the suitors, admitting all essential facts, disputed the rule applicable to them.* By

* The pleadings, as they are called, or written allegations of both parties, which form the basis of a judicial inquiry, commence with the *declaration*, wherein the plaintiff states, either specially or in some established form, according to the nature of the case, that he has a debt to demand from, or an injury to be redressed by, the defendant. The latter, in return, puts in his *plea*; which, if it amount to a denial of the facts alleged in the declaration, must *conclude to the country*, that is, must refer the whole matter to a jury. But if it contain an admission of the fact, along with a legal justification of it, it is said to *conclude to the court*; the effect of which is to make it necessary for the plaintiff to reply; in which *replication* he may deny the facts pleaded in justification, and conclude to the country; or allege some new matter in explanation, to show that they do not meet all the circumstances, concluding to the court. Either party also may demur, that is, deny that, although true and complete as a statement of facts, the declaration or plea is sufficient according to law to found or repel the plaintiff's suit. In the last case it becomes an issue in law, and is determined by the judges, without the intervention of a jury; it being a principle, that by demurring, the party acknowledges the truth of all matters alleged on the pleadings. But in whatever stage of the proceedings either of the litigants concludes to the country, (which he is obliged to do, whenever the question can be reduced to a disputed fact,) a jury must be impanelled to decide it by their verdict. These pleadings,

together with what is called the *postea*, that is, an indorsement by the clerk of the court wherein the trial has been, reciting that *afterwards* the cause was so tried, and such a verdict returned, with the subsequent entry of the judgment itself, form the record.

This is merely intended to explain the phrase in the text, which common readers might not clearly understand. The theory of special pleading, as it is generally called, could not be further elucidated without lengthening this note beyond all bounds. But it all rests upon the ancient maxim: "De facto respondent juratores, de jure judices." Perhaps it may be well to add one observation — that in many forms of action, and those of most frequent occurrence in modern times, it is not required to state the legal justification on the pleadings, but to give it in evidence on the general issue; that is, upon a bare plea of denial. In this case the whole matter is actually in the power of the jury. But they are generally bound in conscience to defer, as to the operation of any rule of law, to what is laid down on that head by the judge; and when they disregard his directions, it is usual to annul the verdict, and grant a new trial. There seem to be some disadvantages in the annihilation, as it may be called, of written pleadings, by their reduction to an unmeaning form, which has prevailed in three such important and extensive forms of action, as *ejectment*, *general assumpsit*, and *trover*; both as it throws too much power into the hands of the jury, and as it almost nullifies the appellat jurisdiction, which can only be

this device, which is as ancient as the reign of Henry II., the fundamental privilege of trial by jury, and the convenience of private suitors, as well as accused persons, were made consistent with an uniform jurisprudence; and though the reference of every legal question, however insignificant, to the courts above must have been inconvenient and expensive in a still greater degree than at present, it had doubtless a powerful tendency to knit together the different parts of England, to check the influence of feudality and clanship, to make the inhabitants of distant counties better acquainted with the capital city and more accustomed to the course of government, and to impair the spirit of provincial patriotism and animosity. The minor tribunals of each county, hundred, and manor, respectable for their antiquity and for their effect in preserving a sense of freedom and justice, had in a great measure, though not probably so much as in modern times, gone into disuse. In a few counties there still remained a palatine jurisdiction, exclusive of the king's courts; but in these the common rules of law and the mode of trial by jury were preserved. Justices of the peace, appointed out of the gentlemen of each county, inquired into criminal charges, committed offenders to prison, and tried them at their quarterly sessions, according to the same forms as the judges of gaol-delivery. The chartered towns had their separate jurisdiction under the municipal magistracy.

The laws against theft were severe, and capital punishments unsparingly inflicted. Yet they had little effect in repressing acts of violence, to which a rude and licentious state of manners, and very imperfect dispositions for preserving the public peace, naturally gave rise. These were frequently perpetrated or instigated by men of superior wealth and power, above the control of the mere officers of justice. Meanwhile the kingdom was increasing in opulence; the English merchants possessed a large share of the trade of the north; and a woollen manufacture, established in different parts of the kingdom, had not only enabled the legis-

exercised where some error is apparent on the face of the record. But great practical convenience, and almost necessity, has generally been alleged as far more than a compensation for these evils. —

[1827.] [This note is left, but the last paragraph is no longer so near the truth as it was, in consequence of the alterations subsequently made by the judges in the rules of pleading.]

lature to restrain the import of cloths, but had begun to supply foreign nations. The population may probably be reckoned, without any material error, at about three millions, but by no means distributed in the same proportions as at present; the northern counties, especially Lancashire and Cumberland, being very ill peopled, and the inhabitants of London and Westminster not exceeding sixty or seventy thousand.*

Such was the political condition of England, when Henry Tudor, the only living representative of the house of Lancaster, though incapable, by reason of the illegitimacy of the ancestor, who connected him with it, of asserting a just right of inheritance, became master of the throne by the defeat and death of his competitor at Bosworth, and by the general submission of the kingdom. He assumed the royal title immediately after his victory, and summoned a parliament to recognise or sanction his possession. The circumstances were by no means such as to offer an auspicious presage for the future. A subdued party had risen from the ground, incensed by proscription and elated by success; the late battle had in effect been a contest between one usurper and another; and England had little better prospect than a renewal of that desperate and interminable contention, which pretences of hereditary right have so often entailed upon nations.

A parliament called by a conqueror might be presumed to be itself conquered. Yet this assembly did not display so servile a temper, or so much of the Lancastrian spirit, as might be expected. It was "ordained and enacted by the assent of the lords, and at the request of the commons, that the inheritance of the crowns of England and France, and all dominions appertaining to them, should remain in Henry VII. and the heirs of his body for ever, and in none other." †

* The population for 1485 is estimated by comparing a sort of census in 1378, when the inhabitants of the realm seem to have amounted to about 2,300,000, with one still more loose under Elizabeth, in 1588, which would give about 4,400,000; making some allowance for the more rapid increase in the latter period. Three millions at the accession of Henry VII. is probably not too low an estimate. — [I now incline

to rate the population somewhat higher, 1841.]

† Rot. Parl. vi. 270. But the pope's bull of dispensation for the king's marriage speaks of the realm of England as "jure hæreditario ad te legitimum in illo prædecessorum tuorum successorem pertinens." Rymer, xii. 294. And all Henry's own instruments claim an hereditary right, of which many proofs appear in Rymer.

Words studiously ambiguous, which, while they avoid the assertion of an hereditary right that the public voice repelled, were meant to create a parliamentary title, before which the pretensions of lineal descent were to give way. They seem to make Henry the stock of a new dynasty. But, lest the spectre of indefeasible right should stand once more in arms on the tomb of the house of York, the two houses of parliament showed an earnest desire for the king's marriage with the daughter of Edward IV., who, if she should bear only the name of royalty, might transmit an undisputed inheritance of its prerogatives to her posterity.

This marriage, and the king's great vigilance in guarding his crown, caused his reign to pass with considerable reputation, though not without disturbance. He had to learn by the extraordinary, though transient, success of two impostors, that his subjects were still strongly infected with the prejudice which had once overthrown the family he claimed to represent. Nor could those who served him be exempt from apprehensions of a change of dynasty, which might convert them into attainted rebels. The state of the nobles and gentry had been intolerable during the alternate proscriptions of Henry VI. and Edward IV. Such apprehensions led to a very important statute in the eleventh year of this king's reign, intended, as far as law could furnish a prospective security against the violence and vengeance of factions, to place the civil duty of allegiance on a just and reasonable foundation, and indirectly to cut away the distinction between governments *de jure* and *de facto*. It enacts, after reciting that subjects by reason of their allegiance are bound to serve their prince for the time being against every rebellion and power raised against him, that "no person attending upon the king and sovereign lord of this land for the time being, and doing him true and faithful service, shall be convicted of high treason, by act of parliament or other process of law, nor suffer any forfeiture or punishment; but that every act made contrary to this statute should be void and of no effect."* The endeavour to bind future parliaments was of course nugatory; but the statute remains an

Statute for the security of the subject under a king *de facto*.

* Stat. 11 H. 7. c. 1.

unquestionable authority for the constitutional maxim, that possession of the throne gives a sufficient title to the subject's allegiance, and justifies his resistance of those who may pretend to a better right. It was much resorted to in argument at the time of the revolution, and in the subsequent period.*

It has been usual to speak of this reign as if it formed a great epoch in our constitution; the king having by his politic measures broken the power of the barons who had hitherto withstood the prerogative, while the commons had not yet risen from the humble station which they were supposed to have occupied. I doubt, however, whether the change was quite so precisely referrible to the time of Henry VII., and whether his policy has not been somewhat over-rated. In certain respects, his reign is undoubtedly an era in our history. It began in revolution and a change in the line of descent. It nearly coincides, which is more material, with the commencement of what is termed modern history, as distinguished from the middle ages, and with the memorable events that have led us to make that leading distinction, especially the consolidation of the great European monarchies, among which England took a conspicuous station. But, relatively to the main subject of our inquiry, it is not evident, that Henry VII. carried the authority of the crown much beyond the point at which Edward IV. had left it. The strength of the nobility had been grievously impaired by the bloodshed of the civil wars, and the attainders that followed them. From this cause, or from the general intimidation, we find, as I have observed in another work, that no laws favourable to public liberty, or remedial with respect to the aggressions of power, were enacted, or (so far as appears) even proposed in parliament, during the reign of Edward IV.; the first, since that of John, to which such a remark can be applied. The commons, who had not always

* Blackstone (vol. iv. c. 6.) has some rather perplexed reasoning on this statute, leaning a little towards the *de jure* doctrine, and at best confounding *moral* with *legal* obligations. In the latter sense, whoever attends to the preamble of the act will see, that Hawkins, whose opinion

Blackstone calls in question, is right; and that he is himself wrong in pretending that "the statute of Henry VII. does by no means command any opposition to a king *de jure*, but excuses the obedience paid to a king *de facto*."

been so humble and abject as smatterers in history are apt to fancy, were by this time much degenerated from the spirit they had displayed under Edward III. and Richard II. Thus the founder of the line of Tudor came, not certainly to an absolute, but a vigorous prerogative, which his cautious dissembling temper and close attention to business were well calculated to extend.

The laws of Henry VII. have been highly praised by Lord Bacon as “deep and not vulgar, not made upon the spur of a particular occasion for the present, but out of providence for the future, to make the estate of his people still more and more happy, after the manner of the legislators in ancient and heroical times.” But when we consider how very few kings or statesmen have displayed this prospective wisdom and benevolence in legislation, we may hesitate a little to bestow so rare a praise upon Henry. Like the laws of all other times, his statutes seem to have had no further aim than to remove some immediate mischief, or to promote some particular end. One, however, has been much celebrated as an instance of his sagacious policy, and as the principal cause of exalting the royal authority upon the ruins of the aristocracy; I mean the statute of Fines (as one passed in the fourth year of his reign is commonly called), which is supposed to have given the power of alienating entailed lands. But both the intention and effect of this seem not to have been justly apprehended.

In the first place, it is remarkable that the statute of Henry VII. is merely a transcript, with very little variation, from one of Richard III., which is actually printed in most editions. It was re-enacted, as we must presume, in order to obviate any doubt, however ill-grounded, which might hang upon the validity of Richard’s laws. Thus vanish at once into air the deep policy of Henry VII., and his insidious schemes of leading on a prodigal aristocracy to its ruin. It is surely strange, that those who have extolled this sagacious monarch for breaking the fetters of landed property (though many of them were lawyers), should never have observed that whatever credit might be due for the innovation should redound to the honour of the unfortunate usurper. But Richard, in truth, had no leisure for such

Statute of
Fines.

Discussion of
its effect and
motive.

long-sighted projects of strengthening a throne for his posterity which he could not preserve for himself. His law, and that of his successor, had a different object in view.

It would be useless to some readers, and perhaps disgusting to others, especially in the very outset of this work, to enter upon the history of the English law as to the power of alienation. But I cannot explain the present subject without mentioning that, by a statute in the reign of Edward I., commonly called *de donis conditionalibus*, lands given to a man and the heirs of his body, with remainder to other persons, or reversion to the donor, could not be alienated by the possessor for the time being, either from his own issue or from those who were to succeed them. Such lands were also incapable of forfeiture for treason or felony; and more, perhaps, upon this account than from any more enlarged principle, these entails were not viewed with favour by the courts of justice. Several attempts were successfully made to relax their strictness; and finally, in the reign of Edward IV., it was held by the judges in the famous case of *Taltarum*, that a tenant in tail might, by what is called suffering a common recovery, that is, by means of a fictitious process of law, divest all those who were to come after him of their succession, and become owner of the fee simple. Such a decision was certainly far beyond the sphere of judicial authority. The legislature, it was probably suspected, would not have consented to infringe a statute which they reckoned the safeguard of their families. The law, however, was laid down by the judges; and in those days the appellent jurisdiction of the house of lords, by means of which the aristocracy might have indignantly reversed the insidious decision, had gone wholly into disuse. It became by degrees a fundamental principle, that an estate in tail can be barred by a common recovery; nor is it possible by any legal subtlety to deprive the tenant of this control over his estate. Schemes were, indeed, gradually devised, which to a limited extent have restrained the power of alienation; but these do not belong to our subject.

The real intention of these statutes of Richard and Henry was not to give the tenant in tail a greater power over his estate; (for it is by no means clear that the words enable

him to bar his issue by levying a fine; and when a decision to that effect took place long afterwards (19 H. 8.), it was with such difference of opinion that it was thought necessary to confirm the interpretation by a new act of parliament;) but rather, by establishing a short term of prescription, to put a check on the suits for recovery of lands, which, after times of so much violence and disturbance, were naturally springing up in the courts. It is the usual policy of governments to favour possession; and on this principle the statute enacts, that a fine levied with proclamations in a public court of justice shall after five years, except in particular circumstances, be a bar to all claims upon lands. This was its main scope; the liberty of alienation was neither necessary, nor probably intended to be given.*

The two first of the Tudors rarely experienced opposition but when they endeavoured to levy money. Taxation, in the eyes of their subjects, was so far from being no tyranny, that it seemed the only species worth a complaint. Henry VII. obtained from his first parliament a grant of tonnage and poundage during life, according to several precedents of former reigns. But when general subsidies were granted, the same people, who would have seen an innocent man led to prison or the scaffold with little attention, twice broke out into dangerous rebellions; and as these, however arising from such immediate discontent, were yet a good deal connected with the opinion of Henry's usurpation and the claims of a pretender, it was a necessary policy to avoid too frequent imposition of burdens upon the poorer classes of the community.† He had recourse accordingly to

Exactions of
Henry VII.

* For these observations on the statute of Fines, I am principally indebted to Reeves's History of the English Law (iv. 133.), a work, especially in the latter volumes, of great research and judgment; a continuation of which, in the same spirit, and with the same qualities, would be a valuable accession not only to the lawyer's, but philosopher's library. That entails had been defeated by means of a common recovery before the statute, had been remarked by former writers, and is indeed obvious; but the subject was never put in so clear a light as by Mr. Reeves.

The principle of breaking down the statute *de donis* was so little established, or consistently acted upon, in this reign, that in 11 H. VII. the judges held that the donor of an estate-tail might restrain the tenant from suffering a recovery. Id. p. 159. from the Year-book.

† It is said by the biographer of Sir Thomas More, that parliament refused the king a subsidy in 1502, which he demanded on account of the marriage of his daughter Margaret, at the advice of More, then but twenty-two years old. "Forthwith Mr. Tyler, one of the privy chamber, that was then present, resorted

[the system of benevolences, or contributions apparently voluntary, though in fact extorted from his richer subjects. These, having become an intolerable grievance under Edward IV., were abolished in the only parliament of Richard III. with strong expressions of indignation. But in the seventh year of Henry's reign, when, after having with timid and parsimonious hesitation suffered the marriage of Anne of Britany with Charles VIII., he was compelled by the national spirit to make a demonstration of war, he ventured to try this unfair and unconstitutional method of obtaining aid; which received afterwards too much of a parliamentary sanction, by an act enforcing the payment of arrears of money, which private men had thus been prevailed upon to promise.* The statute, indeed, of Richard is so expressed as not clearly to forbid the solicitation of voluntary gifts, which of course rendered it almost nugatory.

Archbishop Morton is famous for the dilemma which he proposed to merchants and others, whom he solicited to contribute. He told those who lived handsomely, that their opulence was manifest by their rate of expenditure. Those, again, whose course of living was less sumptuous, must have grown rich by their economy. Either class could well afford assistance to their sovereign. This piece of logic, unanswerable in the mouth of a privy councillor, acquired the name of Morton's fork. Henry doubtless reaped great profit from these indefinite exactions, miscalled benevolences. But, insatiate of accumulating treasure, he discovered other methods of extortion, still more odious, and possibly more lucrative. Many statutes had been enacted in preceding reigns, sometimes rashly or from temporary motives, sometimes in opposition to prevailing usages which they could not restrain, of which the pecuniary penalties, though exceedingly severe, were so little enforced as to have lost their terror. These his ministers raked out from oblivion; and,

to the king, declaring that a beardless boy, called More, had done more harm than all the rest, for by his means all the purpose is dashed." This of course displeased Henry, who would not, however, he says, "infringe the ancient liberties of that house, which would have been odiously taken." Wordsworth's *Eccles. Biography*, ii. 66. This story is also told by Roper.

* Stat. 11 H. 7. c. 10. Bacon says the benevolence was granted by act of parliament, which Hume shows to be a mistake. The preamble of 11 H. 7. recites it to have been "granted by divers of your subjects severally;" and contains a provision, that no heir shall be charged on account of his ancestor's promise.

prosecuting such as could afford to endure the law's severity, filled his treasury with the dishonourable produce of ameracements and forfeitures. The feudal rights became, as indeed they always had been, instrumental to oppression. The lands of those who died without heirs fell back to the crown by escheat. It was the duty of certain officers in every county to look after its rights. The king's title was to be found by the inquest of a jury, summoned at the instance of the escheator, and returned into the exchequer. It then became a matter of record, and could not be impeached. Hence the escheators taking hasty inquests, or sometimes falsely pretending them, defeated the right heir of his succession. Excessive fines were imposed on granting livery to the king's wards on their majority. Informations for intrusions, criminal indictments, outlawries on civil process, in short, the whole course of justice, furnished pretences for exacting money; while a host of dependants on the court, suborned to play their part as witnesses, or even as jurors, rendered it hardly possible for the most innocent to escape these penalties. Empson and Dudley are notorious as the prostitute instruments of Henry's avarice in the later and more unpopular years of his reign; but they dearly purchased a brief hour of favour by an ignominious death and perpetual infamy.* The avarice of Henry VII., as it rendered his government unpopular, which had always been penurious, must be deemed a drawback from the wisdom ascribed to him; though by his good fortune it answered the end of invigorating his power. By these fines and forfeitures he impoverished and intimidated the nobility. The earl of Oxford compounded, by the payment of 15,000 pounds, for the penalties he had incurred by keeping retainers in livery; a practice mischievous and illegal, but too customary to have been punished before this reign. Even the king's clemency seems to have been influenced by the sordid motive of selling pardons; and it has been shown, that he made a profit of every office in his court, and received money for conferring bishoprics.†

* Hall, 502.

† Turner's History of England, iii. 628., from a manuscript document. A vast number of persons paid fines for

their share in the western rebellion of 1497, from 200*l.* down to 20*s.* Hall, 486. Ellis's Letters, illustrative of English History, i. 38.

It is asserted by early writers, though perhaps only on conjecture, that he left a sum thus amassed, of no less than 1,800,000 pounds at his decease. This treasure was soon dissipated by his successor, who had recourse to the assistance of parliament in the very first year of his reign. The foreign policy of Henry VIII., far unlike that of his father, was ambitious and enterprising. No former king had involved himself so frequently in the labyrinth of continental alliances. And, if it were necessary to abandon that neutrality which is generally the most advantageous and laudable course, it is certain that his early undertakings against France were more consonant to English interests, as well as more honourable, than the opposite policy, which he pursued after the battle of Pavia. The campaigns of Henry in France and Scotland displayed the valour of our English infantry, seldom called into action for fifty years before, and contributed with other circumstances to throw a lustre over his reign, which prevented most of his contemporaries from duly appreciating his character. But they naturally drew the king into heavy expenses, and, together with his profusion and love of magnificence, rendered his government very burthensome. At his accession, however, the rapacity of his father's administration had excited such universal discontent, that it was found expedient to conciliate the nation. An act was passed in his first parliament to correct the abuses that had prevailed in finding the king's title to lands by escheat.* The same parliament repealed the law of the late reign, enabling justices of assize and of the peace to determine all offences, except treason and felony, against any statute in force, without a jury, upon information in the king's name.† This serious innovation had evidently been prompted by the spirit of rapacity, which probably some honest juries had shown courage enough to withstand. It was a much less laudable concession to the vindictive temper of an injured people, seldom unwilling to see bad methods employed in punishing bad men, that Empson and Dudley, who might perhaps by stretching the prerogative have incurred the penalties of a misdemeanor, were put to death on a frivolous charge of high treason.‡

* 1 H. 8. c. 8.

† 11 H. 7. c. 3. Rep. 1 H. 8. c. 6.

‡ They were convicted by a jury, and afterwards attainted by parliament, but

The demands made by Henry VIII. on parliament were considerable both in frequency and amount. Notwithstanding the servility of those times, they sometimes attempted to make a stand against these inroads upon the public purse. Wolsey came into the house of commons in 1523, and asked for 800,000*l.*, to be raised by a tax of one fifth upon lands and goods, in order to prosecute the war just commenced against France. Sir Thomas More, then speaker, is said to have urged the House to acquiesce.* But the sum demanded was so much beyond any precedent, that all the independent members opposed a vigorous resistance. A committee was appointed to remonstrate with the cardinal, and to set forth the impossibility of raising such a subsidy. It was alleged that it exceeded all the current coin of the kingdom. Wolsey, after giving an uncivil answer to the committee, came down again to the house, on pretence of reasoning with them, but probably with a hope of carrying his end by intimidation. They received him, at More's suggestion, with all the train of attendants that usually encircled the haughtiest subject who had ever been known in England. But they made no other answer to his harangue, than that it was their usage to debate only among themselves. These debates lasted fifteen or sixteen days. A considerable part of the commons appears to have consisted of the king's household officers, whose influence, with the utmost difficulty, obtained a grant much inferior to the cardinal's requisition, and payable by instalments in four years. But Wolsey, greatly dissatisfied

Taxes demanded by Henry VIII.

not executed for more than a year after the king's accession. If we may believe Holingshed, the council at Henry VIII.'s accession made restitution to some who had been wronged by the extortion of the late reign; — a singular contrast to their subsequent proceedings! This, indeed, had been enjoined by Henry VII.'s will. But he had excepted from this restitution "what had been done by the course and order of our laws;" which, as Mr. Astle observes, was the common mode of his oppressions.

* Lord Herbert inserts an acute speech, which he seems to ascribe to

More, arguing more acquaintance with sound principles of political economy, than was usual in the supposed speaker's age, or even in that of the writer. But it is more probable that this is of his own invention. He has taken a similar liberty on another occasion, throwing his own broad notions of religion into an imaginary speech of some unnamed member of the commons, though manifestly unsuited to the character of the times. That More gave satisfaction to Wolsey by his conduct in the chair, appears by a letter of the latter to the king, in State Papers, temp. H. VIII. p. 124.

with this imperfect obedience, compelled the people to pay up the whole subsidy at once.*

No parliament was assembled for nearly seven years after this time. Wolsey had already resorted to more arbitrary methods of raising money by loans and benevolences.† The year before this debate in the commons, he borrowed twenty thousand pounds of the city of London; yet so insufficient did that appear for the king's exi-

Illegal exactions of Wolsey in 1522 and 1525.

* Roper's *Life of More*. Hall, 656. 672. This chronicler, who wrote under Edward VI., is our best witness for the events of Henry's reign. Grafton is so literally a copyist from him, that it was a great mistake to republish this part of his chronicle in the late expensive, and therefore incomplete, collection; since he adds no one word, and omits only a few ebullitions of Protestant zeal which he seems to have considered too warm. Holingshed, though valuable, is later than Hall. Wolsey, the latter observes, gave offence to the commons, by desecrating on the wealth and luxury of the nation, "as though he had repined or disclaimed that any man should fare well, or be well clothed but himself."

But the most authentic memorial of what passed on this occasion has been preserved in a letter from a member of the commons to the earl of Surrey (soon after duke of Norfolk), at that time the king's lieutenant in the north.

"Please it your good lordships to understand, that sithence the beginning of the parliament, there hath been the greatest and sorest hold in the lower house for the payment of two shillings of the pound, that ever was seen, I think, in any parliament. This matter hath been debated and beaten, fifteen or sixteen days together. The highest necessity alleged on the king's behalf to us that ever was heard of; and, on the contrary, the highest poverty confessed, as well by knights, esquires, and gentlemen of every quarter, as by the commoners, citizens, and burghesses. There hath been such hold that the house was like to have been discovered; that is to say, the knights being of the king's council, the king's servants and gentlemen of the one party; which in so long time were spoken with, and made to see, yea, it may fortune, contrary to their heart, will, and conscience. Thus hanging this matter, yesterday the

more part being the king's servants, gentlemen, were there assembled; and so they, being the more part, willed and gave to the king two shillings of the pound of goods or lands, the best to be taken for the king. All lands to pay two shillings of the pound for the laity, to the highest. The goods to pay two shillings of the pound, for twenty pound upward; and from forty shillings of goods to twenty pound, to pay sixteen pence of the pound; and under forty shillings, every person to pay eight pence. This to be paid in two years. I have heard no man in my life that can remember that ever there was given to any one of the king's ancestors half so much at one graunt. Nor, I think, there was never such a president seen before this time. I beseeke Almighty God, it may be well and peaceably levied, and surely payd unto the king's grace, without grudge, and especially without loosing the good will and true hearts of his subjects, which I reckon a far greater treasure for the king than gold and silver. And the gentlemen that must take pains to levy this money among the king's subjects, I think, shall have no little business about the same." Strype's *Eccles. Memorials*, vol. i. p. 49. This is also printed in *Ellis's Letters illustrative of English History*, i. 220.

† I may notice here a mistake of Mr. Hume and Dr. Lingard. They assert Henry to have received tonnage and poundage several years before it was vested in him by the legislature. But it was granted by his first parliament, stat. 1 H. 8. c. 20., as will be found even in Ruffhead's table of contents, though not in the body of his volume; and the act is of course printed at length in the great edition of the statutes. That which probably by its title gave rise to the error, 6 H. 8. c. 13., has a different object.

gencies, that within two months commissioners were appointed throughout the kingdom to swear every man to the value of his possessions, requiring a rateable part according to such declaration. The clergy, it is said, were expected to contribute a fourth; but I believe that benefices above ten pounds in yearly value were taxed at one third. Such unparalleled violations of the clearest and most important privilege that belonged to Englishmen excited a general apprehension.* Fresh commissioners however were appointed in 1525, with instructions to demand the sixth part of every man's substance, payable in money, plate, or jewels, according to the last valuation.† This demand Wolsey made in person to the

* Hall, 645. This chronicler says, the laity were assessed at a tenth part. But this was only so for the smaller estates, namely, from 20*l.* to 300*l.*; for from 300*l.* to 1000*l.*, the contribution demanded was twenty marks for each 100*l.*, and for an estate of 1000*l.* two hundred marks, and so in proportion upwards. MS. Instructions to commissioners, *penes auctorem*. This was, "upon sufficient promise and assurance, to be repaid unto them upon such grants and contributions as shall be given and granted to his grace at his next parliament." *Ib.* "And they shall practise by all the means to them possible that such sums as shall be so granted by the way of loan, be forthwith levied and paid, or the most part, or at the least the moiety thereof, the same to be paid in as brief time after as they can possibly persuade and induce them unto; showing unto them that, for the sure payment thereof, they shall have writings delivered unto them under the king's privy seal by such person or persons as shall be deputed by the king to receive the said loan, after the form of a minute to be shown unto them by the said commissioners, the tenor whereof is thus: We, Henry VIII., by the grace of God, King of England and of France, Defender of Faith, and Lord of Ireland, promise by these presents truly to content and repay unto our trusty and well-beloved subject, A. B., the sum of ———, which he hath lovingly advanced unto us by way of loan, for defence of our realm, and maintenance of our wars against France and Scotland: In witness whereof we have caused our privy seal

hereunto to be set and annexed the — day of ———, the fourteenth year of our reign." *Ib.* The rate fixed on the clergy I collect by analogy, from that imposed in 1525, which I find in another manuscript letter.

† A letter in my possession from the duke of Norfolk to Wolsey, without the date of the year, relates, I believe, to this commission of 1525, rather than that of 1522; it being dated on the 10th April, which appears from the contents to have been before Easter; whereas Easter did not fall beyond that day in 1523 or 1524, but did so in 1525; and the first commission, being of the fourteenth year of the king's reign, must have sat later than Easter 1522. He informs the cardinal, that from twenty pounds upward there were not twenty in the county of Norfolk who had not consented. "So that I see great likelihood that this grant shall be much more than the loan was." It was done, however, very reluctantly, as he confesses; "assuring your grace that they have not granted the same without shedding of many salt tears, only for doubt how to find money to content the king's highness." The resistance went farther than the duke thought fit to suppose; for in a very short time the insurrection of the common people took place in Suffolk. In another letter from him and the duke of Suffolk to the cardinal they treat this rather lightly, and seem to object to the remission of the contribution.

This commission issued soon after the news of the battle of Pavia arrived. The pretext was the king's intention to lead an army into France. Warham wrote

mayor and chief citizens of London. They attempted to remonstrate, but were warned to beware, lest "it might fortune to cost some their heads." Some were sent to prison for hasty words, to which the smart of injury excited them. The clergy, from whom, according to usage, a larger measure of contribution was demanded, stood upon their privilege to grant their money only in convocation, and denied the right of a king of England to ask any man's money without autho-

more freely than the duke of Norfolk as to the popular discontent, in a letter to Wolsey, dated April 5. "It hath been showed me in a secret manner of my friends, the people sore grudgeth and murmureth, and speaketh cursedly among themselves, as far as they dare, saying that they shall never have rest of payments as long as some liveth, and that they had better die than to be thus continually handled, reckoning themselves, their children, and wives, as despoult, and not greatly caring what they do, or what becomes of them. * * * Further I am informed, that there is a grudge newly now resuscitate, and revived in the minds of the people; for the loan is not repaid to them upon the first receipt of the grant of parliament, as it was promised them by the commissioners, showing them the king's grace's instructions, containing the same, signed with his grace's own hand in summer, that they fear not to speak, that they be continually beguiled, and no promise is kept unto them; and thereupon some of them suppose that if this gift and grant be once levied, albeit the king's grace go not beyond the sea, yet nothing shall be restored again, albeit they be showed the contrary. And generally it is reported unto me, that for the most part every man saith he will be contented if the king's grace have as much as he can spare, but verily many say they be not able to do as they be required. And many denieth not but they will give the king's grace according to their power, but they will not anywise give at other men's appointments, which knoweth not their needs. * * * I have heard say, moreover, that when the people be commanded to make fires and tokens of joy for the taking of the French king, divers of them have spoken that they have more cause to weep than to rejoice thereat. And divers, as it hath been

showed me secretly, have wished openly that the French king were at his liberty again, so as there were a good peace, and the king should not attempt to win France, the winning whereof should be more chargeful to England than profitable, and the keeping thereof much more chargeful than the winning. Also it hath been told me secretly that divers have recounted and repeated what infinite sums of money the king's grace hath spent already in invading of France, once in his own royal person, and two other sundry times by his several noble captains, and little or nothing in comparison of his costs hath prevailed; insomuch that the king's grace at this hour hath not one foot of land more in France than his most noble father had, which lacked no riches or wisdom to win the kingdom of France, if he had thought it expedient." The archbishop goes on to observe, rather oddly, that "he would that the time had suffered that this practising with the people for so great sums might have been spared till the cuckow time and the hot weather (at which time mad brains be wont to be most busy) had been overpassed."

Warham dwells, in another letter, on the great difficulty the clergy had in making so large a payment as was required of them, and their unwillingness to be sworn as to the value of their goods. The archbishop seems to have thought it passing strange that people would be so wrongheaded about their money. "I have been," he says, "in this shire twenty years and above, and as yet I have not seen men but would be conformable to reason, and would be induced to good order, till this time; and what shall cause them now to fall into these wilful and indiscreet ways, I cannot tell, except poverty and decay of substance be the cause of it."

rity of parliament. The rich and poor agreed in cursing the cardinal as the subverter of their laws and liberties ; and said " if men should give their goods by a commission, then it would be worse than the taxes of France, and England should be bond, and not free."* Nor did their discontent terminate in complaints. The commissioners met with forcible opposition in several counties, and a serious insurrection broke out in Suffolk. So menacing a spirit overawed the proud tempers of Henry and his minister, who found it necessary not only to pardon all those concerned in these tumults, but to recede altogether upon some frivolous pretexts from the illegal exaction, revoking the commissions, and remitting all sums demanded under them. They now resorted to the more specious request of a voluntary benevolence. This also the citizens of London endeavoured to repel, by alleging the statute of Richard III. But it was answered, that he was an usurper, whose acts did not oblige a lawful sovereign. It does not appear whether or not Wolsey was more successful in this new scheme ; but, generally, rich individuals had no remedy but to compound with the government.

No very material attempt had been made since the reign of Edward III. to levy a general imposition without consent of parliament, and in the most remote and irregular times it would be difficult to find a precedent for so universal and enormous an exaction ; since tallages, however arbitrary, were never paid by the barons or freeholders, nor by their tenants ; and the aids to which they were liable were restricted to particular cases. If Wolsey therefore could have procured the acquiescence of the nation under this yoke, there would probably have been an end of parliaments for all ordinary purposes ; though, like the states general of France, they might still be convoked to give weight and security to great innovations. We cannot indeed doubt that the unshackled condition of his friend, though rival, Francis I., afforded a mortifying contrast to Henry. Even under his tyrannical administration there was enough to distinguish the king of a people who submitted in murmuring to violations of their

* Hall, 696. These expressions, and numberless others might be found, show the fallacy of Hume's hasty assertion, that the writers of the sixteenth century do not speak of our own government as more free than that of France.

known rights from one whose subjects had almost forgotten that they ever possessed any. But the courage and love of freedom natural to the English commons, speaking in the hoarse voice of tumult, though very ill supported by their superiors, preserved us in so great a peril.*

If we justly regard with detestation the memory of those ministers who have aimed at subverting the liberties of their country, we shall scarcely approve the partiality of some modern historians towards cardinal Wolsey; a partiality, too, that contradicts the general opinion of his contemporaries. Haughty beyond comparison, negligent of the duties and decorums of his station, profuse as well as rapacious, obnoxious alike to his own order and to the laity, his fall had long been secretly desired by the nation and contrived by his adversaries. His generosity and magnificence seem rather to have dazzled succeeding ages than his own. But, in fact, his best apology is the disposition of his master. The latter years of Henry's reign were far more tyrannical than those during which he listened to the counsels of Wolsey; and though this was principally owing to the peculiar circumstances of the latter period, it is but equitable to allow some praise to a minister for the mischief which he may be presumed to have averted. Had a nobler spirit animated the parliament which met at the era of Wolsey's fall, it might have prompted his impeachment for gross violations of liberty. But these were not the offences that had forfeited his prince's favour, or that they dared bring to justice. They were not absent perhaps from the recollection of some of those who took a part in prosecuting the fallen minister. I can discover no better apology for sir Thomas More's participation in impeaching Wolsey on articles so frivolous that they have served to redeem his fame with later times, than his knowledge of weightier offences against the common weal which could not be alleged, and especially the commissions of 1525.† But in truth this parliament showed

* Hall, 699.

† The word impeachment is not very accurately applicable to these proceedings against Wolsey; since the articles were first presented to the upper house, and sent down to the commons, where Crom-

well so ably defended his fallen master that nothing was done upon them. "Upon this honest beginning," says lord Herbert, "Cromwell obtained his first reputation." I am disposed to conjecture, from Cromwell's character and that of

little outward disposition to object any injustice of such a kind to the cardinal. They professed to take upon themselves to give a sanction to his proceedings, as if in mockery of their own and their country's liberties. They passed a statute, the most extraordinary perhaps of those strange times, wherein "they do, for themselves and all the whole body of the realm which they represent, freely, liberally, and absolutely, give and grant unto the king's highness, by authority of this present parliament, all and every sum and sums of money which to them and every of them, is, ought, or might be due, by reason of any money, or any other thing, to his grace at any time heretofore advanced or paid by way of trust or loan, either upon any letter or letters under the king's privy seal, general or particular, letter missive, promise bond, or obligation of re-payment, or by any taxation or other assessing, by virtue of any commission or commissions, or by any other mean or means, whatever it be, heretofore passed for that purpose."* This extreme servility and breach of trust naturally excited loud murmurs; for the debts thus released had been assigned over by many to their own creditors, and having all the security both of the king's honour and legal obligation, were reckoned as valid as any other property. It is said by Hall, that most of this house of commons held offices under the crown. This illaudable precedent was remembered in 1544, when a similar act passed, releasing to the king all monies borrowed by him since 1542, with the additional provision, that if he should have already discharged any of these debts, the party or his heirs should repay his majesty.†

the house of commons, as well as from some passages of Henry's subsequent behaviour towards the cardinal, that it was not the king's intention to follow up this prosecution, at least for the present. This also I find to be Dr. Lingard's opinion.

* Rot. Parl. vi., 164. Burnet, Appendix, No. 31. "When this release of the loan," says Hall, "was known to the commons of the realm, Lord! so they grudged and spake ill of the whole parliament; for almost every man counted in his debt, and reckoned surely of the payment of the same, and therefore some

made their wills of the same, and some other did set it over to other for debt; and so many men had loss by it, which caused them sore to murmur, but there was no remedy." P. 767.

† Stat. 35 H. 8. c. 12. I find in a manuscript, which seems to have been copied from an original in the exchequer, that the monies thus received by way of loan in 1543 amounted to 110,147*l.* 15*s.* 8*d.* There was also a sum called *devotion money*, amounting only to 1093*l.* 8*s.* 3*d.*, levied in 1544, "of the devotion of his highness's subjects for *Defence of Christendom against the Turk.*"

Henry had once more recourse, about 1545, to a general exaction, miscalled benevolence. The council's instructions to the commissioners employed in levying it leave no doubt as to its compulsory character. They were directed to incite all men to a loving contribution according to the rates of their substance, as they were assessed at the last subsidy, calling on no one whose lands were of less value than 40s. or whose chattels were less than 15*l*. It is intimated that the least which his majesty could reasonably accept would be twenty pence in the pound, on the yearly value of land, and half that sum on moveable goods. They are to summon but a few to attend at one time, and to commune with every one apart, "lest some one unreasonable man, amongst so many, forgetting his duty towards God, his sovereign lord, and his country, may go about by his malicious frowardness to silence all the rest, be they never so well disposed." They were to use "good words and amiable behaviour," to induce men to contribute, and to dismiss the obedient with thanks. But if any person should withstand their gentle solicitations, alleging either poverty or some other pretence which the commissioners should deem unfit to be allowed, then after failure of persuasions and reproaches for ingratitude, they were to command his attendance before the privy council, at such time as they should appoint, to whom they were to certify his behaviour, enjoining him silence in the mean time, that his evil example might not corrupt the better disposed.*

It is only through the accidental publication of some family papers, that we have become acquainted with this document, so curiously illustrative of the government of Henry VIII. From the same authority may be exhibited a particular specimen of the consequences that awaited the refusal of this benevolence. One Richard Reed, an alderman of

* Lodge's Illustrations of British History, i. 711. Strype's Eccles. Memorials, Appendix, n. 119. The sums raised from different counties for this benevolence afford a sort of criterion of their relative opulence. Somerset gave 6807*l*; Kent, 6471*l*; Suffolk, 4512*l*; Norfolk, 4046*l*; Devon, 4527*l*; Essex, 5051*l*; but Lancaster only 660*l*., and Cumberland, 574*l*.

The whole produced 119,581*l*. 7*s*. 6*d*., besides arrears. In Haynes's State Papers, p. 54., we find a curious minute of secretary Paget, containing reasons why it was better to get the money wanted by means of a benevolence, than through parliament. But he does not hint at any difficulty of obtaining a parliamentary grant.

London, had stood alone, as is said, among his fellow-citizens, in refusing to contribute. It was deemed expedient not to overlook this disobedience; and the course adopted in pursuing it is somewhat remarkable. The English army was then in the field on the Scots border. Reed was sent down to serve as a soldier at his own charge; and the general, sir Ralph Ewer, received intimations to employ him on the hardest and most perilous duty, and subject him, when in garrison, to the greatest privations, that he might feel the smart of his folly and sturdy disobedience. "Finally," the letter concludes, "you must use him in all things according to the sharpe disciplyne militar of the northern wars."* It is natural to presume that few would expose themselves to the treatment of this unfortunate citizen; and that the commissioners, whom we find appointed two years afterwards in every county, to obtain from the king's subjects as much as they would willingly give, if they did not always find perfect readiness, had not to complain of many peremptory denials.†

Oppressive
treatment
of Reed.

Such was the security that remained against arbitrary taxation under the two Henries. Were men's lives better protected from unjust measures, and less at the mercy of a jealous court? It cannot be necessary to expatiate very much on this subject in a work that supposes the reader's acquaintance with the common facts of our history; yet it would leave the picture too imperfect, were I not to recapitulate the more striking instances of sanguinary injustice, that have cast so deep a shade over the memory of these princes.

Severe and
unjust exe-
cutions for
treason.

The duke of Clarence, attainted in the reign of his brother Edward IV., left one son, whom his uncle restored to the title of earl of Warwick. This boy, at the accession of Henry VII., being then about twelve years old, was shut up in the Tower. Fifteen years of captivity had elapsed, when, if we trust to the common story, having unfortunately become acquainted with his fellow-prisoner Perkin

Earl of
Warwick.

* Lodge, p. 80. Lord Herbert mentions this story, and observes, that Reed having been taken by the Scots, was compelled to pay much more for his

ransom than the benevolence required of him.

† Rymer, xv. 84. These commissions bear date 5th Jan. 1546.

Warbeck, he listened to a scheme for their escape, and would probably not have been averse to second the ambitious views of that young man. But it was surmised, with as much likelihood as the character of both parties could give it, that the king had promised Ferdinand of Aragon to remove the earl of Warwick out of the way, as the condition of his daughter's marriage with the prince of Wales, and the best means of securing their inheritance. Warwick accordingly was brought to trial for a conspiracy to overturn the government; which he was induced to confess, in the hope, as we must conceive, and perhaps with an assurance, of pardon, and was immediately executed.

The nearest heir to the house of York, after the queen and her children, and the descendants of the duke of Clarence, was a son of Edward IV.'s sister, the earl of Suffolk, whose elder brother, the earl of Lincoln, had joined in the rebellion of Lambert Simnel, and perished at the battle of Stoke. Suffolk, having killed a man in an affray, obtained a pardon, which the king compelled him to plead in open court at his arraignment. This laudable impartiality is said to have given him offence, and provoked his flight into the Netherlands; whence, being a man of a turbulent disposition, and partaking in the hatred of his family towards the house of Lancaster, he engaged in a conspiracy with some persons at home, which caused him to be attainted of treason. Some time afterwards, the archduke Philip, having been shipwrecked on the coast of England, found himself in a sort of honourable detention at Henry's court. On consenting to his departure, the king requested him to send over the earl of Suffolk; and Philip, though not insensible to the breach of hospitality exacted from him, was content to satisfy his honour by obtaining a promise that the prisoner's life should be spared. Henry is said to have reckoned this engagement merely personal, and to have left as a last injunction to his successor, that he should carry into effect the sentence against Suffolk. Though this was an evident violation of the promise in its spirit, yet Henry VIII., after the lapse of a few years, with no new pretext, caused him to be executed.

The duke of Buckingham, representing the ancient family

of Stafford, and hereditary high constable of England, stood the first in rank and consequence, perhaps in riches, among the nobility. But being too ambitious and arrogant for the age in which he was born, he drew on himself the jealousy of the king, and the resentment of Wolsey. The evidence, on his trial for high treason, was almost entirely confined to idle and vaunting language, held with servants who betrayed his confidence, and soothsayers whom he had believed. As we find no other persons charged as parties with him, it seems manifest that Buckingham was innocent of any real conspiracy. His condemnation not only gratified the cardinal's revenge, but answered a very constant purpose of the Tudor government, that of intimidating the great families, from whom the preceding dynasty had experienced so much disquietude.*

The execution, however, of Suffolk was at least not contrary to law; and even Buckingham was attainted on evidence which, according to the tremendous latitude with which the law of treason had been construed, a court of justice could not be expected to disregard. But after the fall of Wolsey, and Henry's breach with the Roman see, his fierce temper, strengthened by habit and exasperated by resistance, demanded more constant supplies of blood; and many perished by sentences which we can hardly prevent ourselves from considering as illegal, because the statutes to which they might be conformable seem, from their temporary duration, their violence, and the passiveness of the parliaments that enacted them, rather like arbitrary invasions of the law than alterations of it. By an act of 1534, not only an oath was imposed to maintain the succession in the heirs of the king's second marriage, in exclusion of the princess Mary, but it was made high treason to deny that ecclesiastical supremacy of the crown, which, till about two years before, no one had ever ventured to assert.† Bishop Fisher, the most inflexibly honest churchman who filled a

Duke of
Buckingham.

New treason
created by
statutes.

Executions
of Fisher and
More.

* Hall, 622. Hume, who is favourable to Wolsey, says, "There is no reason to think the sentence against Buckingham unjust." But no one who reads the trial will find any evidence to satisfy a reasonable mind; and Hume himself soon

after adds, that his crime proceeded more from indiscretion than deliberate malice. In fact, the condemnation of this great noble was owing to Wolsey's resentment, acting on the savage temper of Henry.

† [25 H. 8. c. 22. This is not accu-

high station in that age, was beheaded for this denial. Sir Thomas More, whose name can ask no epithet, underwent a similar fate. He had offered to take the oath to maintain the succession, which, as he justly said, the legislature was competent to alter ; but prudently avoided to give an opinion as to the supremacy, till Rich, solicitor-general, and afterwards chancellor, elicited, in a private conversation, some expressions, which were thought sufficient to bring him within the fangs of the recent statute. A considerable number of less distinguished persons, chiefly ecclesiastical, were afterwards executed by virtue of this law.

The sudden and harsh innovations made by Henry in religion, as to which every artifice of concealment and delay is required, his destruction of venerable establishments, his tyranny over the recesses of the conscience, excited so dangerous a rebellion in the north of England, that his own general, the duke of Norfolk, thought it absolutely necessary to employ measures of conciliation.* The insurgents laid down their arms, on an unconditional promise of amnesty. But another rising having occurred in a different quarter, the

rately stated. This act does not make it treason to deny the ecclesiastical supremacy, which is not hinted in any part of it ; but makes a refusal to take the oath to maintain the succession in the issue of the king's marriage with Anne Boleyn *misprision* of treason ; and on this More and Fisher, who scrupled the preamble to the oath, denying the pope's right of dispensation, though they would have sworn to the succession itself, as a legislative enactment, were convicted and imprisoned. But a subsequent statute, 26 H. 8. c. 13., made it high treason to wish by words to deprive the king of his title, name, or dignity ; and the appellation, Supreme Head, being part of this title, not only More and Fisher, but several others suffered death on this construction. See this fully explained in the 27th volume of the *Archæologia*, by Mr. Bruce. 1845.]

* Several letters that passed between the council and duke of Norfolk (*Hardwicke State Papers*, i. 28, &c.), tend to confirm what some historians have hinted, that he was suspected of leaning too favourably towards the rebels. The king

was most unwilling to grant a free pardon. Norfolk is told, "If you could, by any good means or possible dexterity, reserve a very few persons for punishments, you should assuredly administer the greatest pleasure to his highness that could be imagined, and much in the same advance your own honour."—P. 32. He must have thought himself in danger from some of these letters, which indicate the king's distrust of him. He had recommended the employment of men of high rank as lords of the marches, instead of the rather inferior persons whom the king had lately chosen. This called down on him rather a warm reprimand (p. 39.) ; for it was the natural policy of a despotic court to restrain the ascendancy of great families ; nor were there wanting very good reasons for this, even if the public weal had been the sole object of Henry's council. See also, for the subject of this note, the *State Papers*, Hen. VIII., p. 518., et alibi. They contain a good deal of interesting matter as to the northern rebellion, which gave Henry a pretext for great severities towards the monasteries in that part of England.

king made use of this pretext to put to death some persons of superior rank, who, though they had, voluntarily or by compulsion, partaken in the first rebellion, had no concern in the second, and to let loose military law upon their followers. Nor was his vengeance confined to those who had evidently been guilty of these tumults. It is, indeed, unreasonable to deny that there might be, nay, there probably were, some real conspirators among those who suffered on the scaffolds of Henry. Yet in the proceedings against the countess of Salisbury, an aged woman, but obnoxious as the daughter of the duke of Clarence and mother of Reginald Pole, an active instrument of the pope in fomenting rebellion* against the abbots of Reading and Glastonbury, and others who were implicated in charges of treason at this period, we find so much haste, such neglect of judicial forms, and so blood-thirsty a determination to obtain convictions, that we are naturally tempted to reckon them among the victims of revenge or rapacity.

It was probably during these prosecutions that Cromwell, a man not destitute of liberal qualities, but who is Cromwell. liable to the one great reproach of having obeyed too implicitly a master whose commands were crimes, inquired of the judges whether, if parliament should condemn a man to die for treason without hearing him, the attainder could ever be disputed. They answered that it was a dangerous question, and that parliament should rather set an example to inferior courts by proceeding according to justice. But being pressed to reply by the king's express commandment, they said that an attainder in parliament, whether the party had been heard or not in his defence, could never be reversed in a court of law. No proceedings, it is said, took place against the person intended, nor is it known who he was.† But men prone to

* Pole, at his own solicitation, was appointed legate to the Low Countries in 1537, with the sole object of keeping alive the flame of the northern rebellion, and exciting foreign powers, as well as the English nation, to restore religion by force, if not to dethrone Henry. It is difficult not to suspect that he was influenced by ambitious views in a proceeding so treasonable, and so little in conformity with his polished manners

and temperate life. Phillips, his able and artful biographer, both proves and glories in the treason. *Life of Pole*, sect. 3.

† Coke's 4th Institute, 37. It is however said by lord Herbert and others, that the countess of Salisbury and the marchioness of Exeter were not heard in their defence. The acts of attainder against them were certainly hurried through parliament; but whether without hearing the parties, does not appear.

remark all that seems an appropriate retribution of Providence, took notice, that he, who had thus solicited the interpreters of the law to sanction such a violation of natural justice, was himself its earliest example. In the apparent zenith of favour, this able and faithful minister, the king's vicegerent in his ecclesiastical supremacy, and recently created earl of Essex, fell so suddenly, and so totally without offence, that it has perplexed some writers to assign the cause. But there seems little doubt that Henry's dissatisfaction with his fourth wife, Anne of Cleves, whom Cromwell had recommended, alienated his selfish temper, and inclined his ear to the whisperings of those courtiers who abhorred the favourite and his measures. An act attainting him of treason and heresy was hurried through parliament, without hearing him in his defence.* The charges, indeed, were so ungrounded, that had he been permitted to refute them, his condemnation, though not less certain, might, perhaps, have caused more shame. This precedent of sentencing men unheard, by means of an act of attainder, was followed in the case of Dr. Barnes, burned not long afterwards for heresy.

The duke of Norfolk had been, throughout Henry's reign, one of his most confidential ministers. But as the king approached his end, an inordinate jealousy of great men, rather than mere caprice, appears to have prompted the resolution of destroying the most conspicuous family in England. Norfolk's son, too, the earl of Surrey, though long a favourite with the king, possessed more talents and renown, as well as a more haughty spirit, than was

* Burnet observes, that Cranmer was absent the first day the bill was read, 17th June, 1540; and by his silence leaves the reader to infer that he was so likewise on 19th June, when it was read a second and third time. But this, I fear, cannot be asserted. He is marked in the journal as present on the latter day; and there is the following entry: "Hodie lecta est pro secundo et tertio, billa attincturæ Thomæ Comitis Essex, et communi omnium procerum tunc præsentium concessu, nemine discrepante, expedita est." And at the close of the session, we find a still more remarkable testimony to the unanimity of parliament, in the following words: "Hoc animad-

vertendum est, quod in hac sessione cum proceres darent suffragia, et dicerent sententias super actibus prædictis, ea erat concordia et sententiarum conformitas, ut singuli iis et eorum singulis assenserint, nemine discrepante. Thomas de Soulemont, Cleric. Parliamentorum." As far therefore as entries on the journals are evidence, Cranmer was placed in the painful and humiliating predicament of voting for the death of his innocent friend. He had gone as far as he dared in writing a letter to Henry, which might be construed into an apology for Cromwell, though it was full as much so for himself.

compatible with his safety. A strong party at court had always been hostile to the duke of Norfolk; and his ruin was attributed especially to the influence of the two Seymours. No accusations could be more futile than those which sufficed to take away the life of the noblest and most accomplished man in England. Surrey's treason seems to have consisted chiefly in quartering the royal arms in his escutcheon; and this false heraldry, if such it were, must have been considered as evidence of meditating the king's death. His father ignominiously confessed the charges against himself, in a vain hope of mercy from one who knew not what it meant. An act of attainder (for both houses of parliament were commonly made accessory to the legal murders of this reign) was passed with much haste, and perhaps irregularly; but Henry's demise ensuing at the instant, prevented the execution of Norfolk. Continuing in prison during Edward's reign, he just survived to be released and restored in blood under Mary.

Among the victims of this monarch's ferocity, as we bestow most of our admiration on sir Thomas More, so we reserve our greatest pity for Anne Boleyn. Few, ^{Anne} ^{Boleyn.} very few, have in any age hesitated to admit her innocence.*

* Burnet has taken much pains with the subject, and set her innocence in a very clear light: — i. 197. and iii. 114. See also Strype, i. 280. and Ellis's Letters, ii. 52. But Anne had all the failings of a vain, weak woman, raised suddenly to greatness. She behaved with unamiable vindictiveness towards Wolsey, and perhaps (but this worst charge is not fully authenticated) exasperated the king against More. A remarkable passage in Cavendish's Life of Wolsey, p. 103. edit. 1667, strongly displays her indiscretion.

A late writer, whose acuteness and industry would raise him to a very respectable place among our historians, if he could have repressed the inveterate partiality of his profession, has used every oblique artifice to lead his readers into a belief of Anne Boleyn's guilt, while he affects to hold the balance, and state both sides of the question without determining it. Thus he repeats what he must have known to be the strange and extravagant lies of Sanders about her birth;

without vouching for them indeed, but without any reprobation of their absurd malignity. Lingard's Hist. of England, vi. 153. (8vo. edit.) Thus he intimates that "the records of her trial and conviction have perished, perhaps by the hands of those who respected her memory," p. 316., though the evidence is given by Burnet; and the record (in the technical sense) of a trial contains nothing from which a party's guilt or innocence can be inferred. Thus he says that those who were executed on the same charge with the queen, neither admitted nor denied the offence for which they suffered; though the best informed writers assert that Norris constantly declared the queen's innocence and his own.

Dr. Lingard can hardly be thought serious, when he takes credit to himself, in the commencement of a note at the end of the same volume, for not "rendering his book more interesting, by representing her as an innocent and injured woman, falling a victim to the intrigues

But her discretion was by no means sufficient to preserve her steps on that dizzy height, which she had ascended with more eager ambition than feminine delicacy could approve. Henry was probably quicksighted enough to perceive that he did not possess her affections, and his own were soon transferred to another object. Nothing in this detestable reign is worse than her trial. She was indicted, partly upon the statute of Edward III., which, by a just though rather technical construction, has been held to extend the guilt of treason to an adulterous queen as well as to her paramour, and partly on the recent law for preservation of the succession, which attached the same penalties to any thing done or said in slander of the king's issue. Her levities in discourse were brought within this strange act by a still more strange interpretation. Nor was the wounded pride of the king content with her death. Under the fear, as is most likely, of a more cruel punishment, which the law affixed to her offence, Anne was induced to confess a pre-contract with lord Percy, on which her marriage with the king was annulled by an ecclesiastical sentence, without awaiting its certain dissolution by the axe.*

of a religious faction." He well knows that he could not have done so, without contradicting the tenor of his entire work, without ceasing, as it were, to be himself. All the rest of this note is a pretended balancing of evidence, in the style of a judge who can hardly bear to put for a moment the possibility of a prisoner's innocence.

I regret very much to be compelled to add the name of Mr. Sharon Turner to those who have countenanced the supposition of Anne Boleyn's guilt. But Mr. Turner, a most worthy and painstaking man, to whose earlier writings our literature is much indebted, has, in his history of Henry VIII., gone upon the strange principle of exalting that tyrant's reputation at the expense of every one of his victims, to whatever party they may have belonged. *Odit damnatos*. Perhaps he is the first, and will be the last, who has defended the attainder of sir Thomas More. A verdict of a jury, an assertion of a statesman, a recital of an act of parliament, are, with him, satisfactory proofs of the most improbable accusations against the most blameless character.

* The lords pronounced a singular sentence, that she should be burned or beheaded at the king's pleasure. Burnet says, the judges complained of this as unprecedented. Perhaps in strictness the king's right to *alter* a sentence is questionable, or rather would be so, if a few precedents were out of the way. In high treason committed by a man, the beheading was part of the sentence, and the king only remitted the more cruel preliminaries. Women, till 1791, were condemned to be burned. But the two queens of Henry, the countess of Salisbury, lady Rochford, lady Jane Grey, and, in later times, Mrs. Lisle, were beheaded. Poor Mrs. Gaunt was not thought noble enough to be rescued from the fire. In felony, where beheading is no part of the sentence, it has been substituted by the king's warrant in the cases of the duke of Somerset and lord Audley. I know not why the latter obtained this favour; for it had been refused to lord Stourton, hanged for murder under Mary, as it was afterwards to earl Ferrers.

Henry seems to have thought his honour too much sullied by the infidelity of a lawful wife. But for this destiny he was yet reserved. I shall not impute to him as an act of tyranny the execution of Catherine Howard, since it appears probable that the licentious habits of that young woman had continued after her marriage * ; and though we might not in general applaud the vengeance of a husband who should put a guilty wife to death, it could not be expected that Henry VIII. should lose so reasonable an opportunity of shedding blood. † It was after the execution of this fifth wife that the celebrated law was enacted, whereby any woman whom the king should marry as a virgin incurred the penalties of treason, if she did not previously reveal any failings that had disqualified her for the service of Diana. ‡

These parliamentary attainders, being intended rather as judicial than legislative proceedings, were violations of reason and justice in the application of law. But many general enactments of this reign bear the same character of servility. New political offences were created in every parliament, against which the severest penalties were denounced. The nation had scarcely time to rejoice in the termination of those long debates between the houses of York and Lancaster, when the king's divorce, and the consequent illegitimacy of his eldest daughter, laid open the succession

Fresh statutes enacting the penalties of treason.

* [The letters published in State Papers, temp. Hen. VIII. vol. i. p. 689. et post, by no means increase this probability; Catherine Howard's post-nuptial guilt must remain very questionable, which makes her execution, and that of others who suffered with her, another of Henry's murders. There is too much appearance that Cranmer, by the king's order, promised that her life should be spared, with a view of obtaining a confession of a pre-contract with Derham, 1845.]

† It is often difficult to understand the grounds of a parliamentary attainder, for which any kind of evidence was thought sufficient; and the strongest proofs against Catherine Howard undoubtedly related to her behaviour before marriage, which could be no legal crime. But some of the depositions extend farther.

Dr. Lingard has made a curious observation on this case. "A plot was

woven by the industry of the reformers, which brought the young queen to the scaffold, and weakened the ascendancy of the reigning party." p. 407. This is a very strange assertion; for he proceeds to admit her ante-nuptial guilt, which indeed she is well known to have confessed, and does not give the slightest proof of any plot. Yet, he adds, speaking of the queen and lady Rochford, "I fear [i. e. wish to insinuate] both were sacrificed to the manes of Anne Boleyn."

‡ Stat. 26 H. 8. c. 13.

It may be here observed, that the act attainting Catherine Howard of treason proceeds to declare that the king's assent to bills by commission under the great seal is as valid as if he were personally present, any custom or use to the contrary notwithstanding. 33 H. 8. c. 21. This may be presumed, therefore, to be the earliest instance of the king's passing bills in this manner.

to fresh questions. It was needlessly unnatural and unjust to bastardize the princess Mary, whose title ought rather to have had the confirmation of parliament. But Henry, who would have deemed so moderate a proceeding injurious to his cause in the eyes of Europe, and a sort of concession to the adversaries of the divorce, procured an act settling the crown on his children by Anne or any subsequent wife. Any person disputing the lawfulness of the king's second marriage might, by the sort of construction that would be put on this act, become liable to the penalties of treason. In two years more this very marriage was annulled by sentence; and it would, perhaps, have been treasonable to assert the princess Elizabeth's legitimacy. The same punishment was enacted against such as should marry without licence under the great seal, or have a criminal intercourse with, any of the king's children "lawfully born, or otherwise commonly reputed to be his children, or his sister, aunt, or niece."*

Henry's two divorces had created an uncertainty as to the line of succession, which parliament endeavoured to remove, not by such constitutional provisions in concurrence with the crown as might define the course of inheritance, but by enabling the king, on failure of issue by Jane Seymour, or any other lawful wife, to make over and bequeath the kingdom to any persons at his pleasure, not even reserving a preference to the descendants of former sovereigns.† By a subsequent statute, the princesses Mary and Elizabeth were nominated in the entail, after the king's male issue, subject, however, to such conditions as he should declare, by non-compliance with which their right was to cease.‡ This act still left it in his power to limit the remainder at his discretion. In execution of this authority, he devised the crown, upon failure of issue from his three children, to the heirs of the body of Mary duchess of Suffolk, the younger of his two sisters; postponing at least, if not excluding, the royal family of Scotland, descended from his elder sister Margaret. In surrendering the regular laws of the monarchy to one man's caprice, this parliament became accessory, so far as in it lay, to dispositions which might

Act giving
proclama-
tions the
force of law.

* 28 H. 8. c. 18.

† 28 H. 8. c. 7.

‡ 35 H. 8. c. 1.

eventually have kindled the flames of civil war. But it seemed to aim at inflicting a still deeper injury on future generations, in enacting that a king, after he should have attained the age of twenty-four years, might repeal any statutes made since his accession.* Such a provision not only tended to annihilate the authority of a regency, and to expose the kingdom to a sort of anarchical confusion during its continuance, but seemed to prepare the way for a more absolute power of abrogating all acts of the legislature. Three years afterwards it was enacted that proclamations made by the king and council, under penalty of fine and imprisonment, should have the force of statutes, so that they should not be prejudicial to any person's inheritance, offices, liberties, goods, and chattels, or infringe the established laws. This has been often noticed as an instance of servile compliance. It is, however, a striking testimony to the free constitution it infringed, and demonstrates that the prerogative could not soar to the heights it aimed at, till thus impeded by the perfidious hand of parliament. It is also to be observed, that the power given to the king's proclamations is considerably limited. †

A government administered with so frequent violations not only of the chartered privileges of Englishmen, but of those still more sacred rights which natural law has established, must have been regarded, one would imagine, with just abhorrence, and earnest longings for a change. Yet contemporary authorities by no means answer to this expectation. Some mention Henry after his death in language of eulogy ;

* 28 H. 8. c. 17.

† 31 H. 8. c. 8. Burnet, i. 263. explains the origin of this act. Great exceptions had been taken to some of the king's ecclesiastical proclamations, which altered laws, and laid taxes on spiritual persons. He justly observes that the restrictions contained in it gave great power to the judges, who had the power of expounding in their hands. The preamble is full as offensive as the body of the act; reciting the contempt and disobedience of the king's proclamations by some "who did not consider *what a king by his royal power might do*," which, if it continued, would tend to the disobedience of the laws of God, and the dis-

honour of the king's majesty, "who might full ill bear it," &c. See this act at length in the great edition of the statutes. There was one singular provision: the clause protecting all persons, as mentioned, in their inheritance or other property, proceeds, "nor shall by virtue of the said act suffer any pains of death." But an exception is afterwards made for "such persons which shall offend against any proclamation to be made by the king's highness, his heirs or successors, for or concerning any kind of heresies against Christian doctrine." Thus it seems that the king claimed a power to declare heresy by proclamation, under penalty of death.

and, if we except those whom attachment to the ancient religion had inspired with hatred towards his memory, very few appear to have been aware that his name would descend to posterity among those of the many tyrants and oppressors of innocence, whom the wrath of Heaven has raised up, and the servility of men has endured. I do not indeed believe that he had really conciliated his people's affection. That perfect fear which attended him must have cast out love. But he had a few qualities that deserve esteem, and several which a nation is pleased to behold in a sovereign. He wanted, or at least did not manifest in any eminent degree, one usual vice of tyrants, dissimulation; his manners were affable, and his temper generous. Though his schemes of foreign policy were not very sagacious, and his wars, either with France or Scotland, productive of no material advantage, they were uniformly successful, and retrieved the honour of the English name. But the main cause of the reverence with which our forefathers cherished this king's memory, was the share he had taken in the Reformation. They saw in him not indeed the proselyte of their faith, but the subverter of their enemies' power, the avenging minister of Heaven, by whose giant arm the chain of superstition had been broken, and the prison gates burst asunder.*

The ill-assorted body of counsellors who exercised the functions of regency by Henry's testament, were sensible that they had not sinews to wield his iron sceptre, and that some sacrifice must be made to a nation exasperated as well as overawed by the violent measures of his reign. In the first session accordingly of Edward's parliament, the new treasons and felonies which had been created to please his father's sanguinary disposition, were at once abrogated. †

Government
of Edward
VI.'s coun-
sellors.

* Gray has finely glanced at this bright point of Henry's character, in that beautiful stanza where he has made the founders of Cambridge pass before our eyes, like shadows over a magic glass:

— the majestic lord,
Who broke the bonds of Rome.

In a poet, this was a fair employment of his art; but the partiality of Burnet towards Henry VIII. is less warrantable; and he should have blushed to excuse, by absurd and unworthy sophistry,

the punishment of those who refused to swear to the king's supremacy, p. 351.

After all, Henry was every whit as good a king and man as Francis I., whom there are still some, on the other side of the channel, servile enough to extol; not in the least more tyrannical and sanguinary, and of better faith towards his neighbours.

† 1 Edw. 6. c. 12. By this act it is provided that a lord of parliament shall have the benefit of clergy though he can-

The statute of Edward III. became again the standard of high treason, except that the denial of the king's supremacy was still liable to its penalties. The same act, which relieves the subject from these terrors, contains also a repeal of that which had given legislative validity to the king's proclamations. These provisions appear like an elastic recoil of the constitution after the extraordinary pressure of that despotic reign. But, however they may indicate the temper of parliament, we must consider them but as an unwilling and insincere compliance on the part of the government. Henry, too arrogant to dissemble with his subjects, had stamped the law itself with the print of his despotism. The more wily courtiers of Edward's council deemed it less obnoxious to violate than to new-mould the constitution. For, although proclamations had no longer the legal character of statutes, we find several during Edward's reign enforced by penalty of fine and imprisonment. Many of the ecclesiastical changes were first established by no other authority, though afterwards sanctioned by parliament. Rates were thus fixed for the price of provisions; bad money was cried down, with penalties on those who should buy it under a certain value, and the melting of the current coin prohibited on pain of forfeiture.* Some of these might possibly have a sanction from precedent, and from the acknowledged prerogative of the crown in regulating the coin. But no legal apology can be made for a proclamation in April, 1549, addressed to all justices of the peace, enjoining them to arrest sowers and tellers abroad of vain and forged tales and lies, and to commit them to the galleys, there to row in chains as slaves during the king's pleasure. † One would imagine that the late statute had been

not read. Sect. 14. Yet one can hardly believe, that this provision was necessary at so late an era.

* 2 Strype, 147. 341. 491.

† Id. 149. Dr. Lingard has remarked an important change in the coronation ceremony of Edward VI. Formerly, the king had taken an oath to preserve the liberties of the realm, and especially those granted by Edward the Confessor, &c., before the people were asked whether they would consent to have him as their king. See the form observed at Richard the Second's coronation in Ry-

mer, vii. 158. But at Edward's coronation, the archbishop presented the king to the people, as rightful and undoubted inheritor by the laws of God and man to the royal dignity and crown imperial of this realm, &c., and asked if they would serve him and assent to his coronation, as by their duty of allegiance they were bound to do. All this was before the oath. 2 Burnet, Appendix, p. 93.

Few will pretend that the coronation, or the coronation oath, was essential to the legal succession of the crown, or the exercise of its prerogatives. But this

repealed, as too far restraining the royal power, rather than as giving it an unconstitutional extension.

It soon became evident that, if the new administration had not fully imbibed the sanguinary spirit of their late master, they were as little scrupulous in bending the rules of law and justice to their purpose in cases of treason. The duke of Somerset, nominated by Henry only as one of his sixteen executors, obtained almost immediately afterwards a patent from the young king, constituting him sole regent under the name of protector, with the assistance indeed of the rest as his counsellors, but with the power of adding any others to their number. Conscious of his own usurpation, it was natural for Somerset to dread the aspiring views of others; nor was it long before he discovered a rival in his brother, lord Seymour of Sudeley, whom, according to the policy of that age, he thought it necessary to destroy by a bill of attainder. Seymour was apparently a dangerous and unprincipled man; he had courted the favour of the young king by small presents of money, and appears beyond question to have entertained a hope of marrying the princess Elizabeth, who had lived much in his house during his short union with the queen dowager. It was surmised that this lady had been poisoned to make room for a still nobler consort.* But in this there could be no treason; and it is not likely that any evidence was given which could have brought him within the statute of Edward III. In this prosecution against lord Seymour, it was thought expedient to follow the very worst of Henry's precedents, by not hearing the accused in his defence. The bill passed through the upper house, the natural guardian of a peer's life and honour, with-

alteration in the form is a curious proof of the solicitude displayed by the Tudors, as it was much more by the next family, to suppress every recollection that could make their sovereignty appear to be of popular origin.

* Haynes's State Papers contain many curious proofs of the incipient amour between lord Seymour and Elizabeth, and show much indecent familiarity on one side, with a little childish coquetry on the other. These documents also rather tend to confirm the story of our elder historians, which I have found

attested by foreign writers of that age (though Burnet has thrown doubts upon it), that some differences between the queen-dowager and the duchess of Somerset aggravated at least those of their husbands. P. 61. 69. It is alleged with absurd exaggeration, in the articles against lord Seymour, that, had the former proved immediately with child after her marriage with him, it might have passed for the king's. This marriage, however, did not take place before June, Henry having died in January. Ellis's Letters, ii. 150.

out one dissenting voice. The commons addressed the king that they might hear the witnesses, and also the accused. It was answered, that the king did not think it necessary for them to hear the latter, but that those who had given their depositions before the lords might repeat their evidence before the lower house. It rather appears that the commons did not insist on this any farther; but the bill of attainder was carried with a few negative voices.* How striking a picture it affords of the sixteenth century, to behold the popular and well-natured duke of Somerset, more estimable at least than any other statesman employed under Edward, not only promoting this unjust condemnation of his brother, but signing the warrant under which he was beheaded!

But it was more easy to crush a single competitor, than to keep in subjection the subtle and daring spirits trained in Henry's councils, and jealous of the usurpation of an equal. The protector, attributing his success, as is usual with men in power, rather to skill than fortune, and confident in the two frailest supports that a minister can have, the favour of a child and of the lower people, was stripped of his authority within a few months after the execution of lord Seymour, by a confederacy which he had neither the discretion to prevent, nor the firmness to resist. Though from this time but a secondary character upon the public stage, he was so near the throne as to keep alive the suspicions of the duke of Northumberland, who, with no ostensible title, had become not less absolute than himself. It is not improbable that Somerset was innocent of the charge imputed to him, namely, a conspiracy to murder some of the privy-councillors, which had been erected into felony by a recent statute; but the evidence, though it may have been false, does not seem legally insufficient. He demanded on his trial to be confronted with the witnesses; a favour rarely granted in that age to state criminals, and which he could not very decently solicit after causing his brother to be condemned unheard. Three lords, against whom he was charged to have conspired, sat upon his trial; and it was thought a

Attainder of
duke of So-
merset.

* Journals, Feb. 27. March 4. 1548-9. against Seymour, which Burnet and Strype have taken for granted. From these I am led to doubt whether the commons actually heard witnesses

sufficient reply to his complaints of this breach of a known principle, that no challenge could be allowed in the case of a peer.

From this designing and unscrupulous oligarchy no measure conducive to liberty and justice could be expected to spring. But among the commons there must have been men, although their names have not descended to us, who, animated by a purer zeal for these objects, perceived on how precarious a thread the life of every man was suspended, when the private disposition of one suborned witness, unopposed with the prisoner, could suffice to obtain a conviction in cases of treason. In the worst period of Edward's reign, we find inserted in a bill creating some new treasons one of the most important constitutional provisions which the annals of the Tudor family afford. It is enacted, that "no person shall be indicted for any manner of treason, except on the testimony of two lawful witnesses, who shall be brought in person before the accused at the time of his trial, to avow and maintain what they have to say against him, unless he shall willingly confess the charges."* This salutary provision was strengthened, not taken away, as some later judges ventured to assert, by an act in the reign of Mary. In a subsequent part of this work, I shall find an opportunity for discussing this important branch of constitutional law.

It seems hardly necessary to mention the momentary usurpation of lady Jane Grey, founded on no pretext of title which could be sustained by any argument. She certainly did not obtain that degree of actual possession which might have sheltered her adherents under the statute of Henry VII. ; nor did the duke of Northumberland allege this excuse on his trial, though he set up one of a more technical nature, that the great seal was a sufficient protection for acts done by its authority.† The reign that imme-

* Stat. 5 & 6 Edw. 6. c. 11. s. 12.

† Burnet, ii. 243. An act was made to confirm deeds of private persons, dated during Jane's ten days, concerning which some doubt had arisen. 1 Mary, sess. 2. c. 4. It is said in this statute, "her highness's most lawful possession was

for a time disturbed and disquieted by traitorous rebellion and usurpation."

It appears that the young king's original intention was to establish a modified Salic law, excluding females from the crown, but not their male heirs. In a writing drawn by himself, and entitled

diately followed is chiefly remembered as a period of sanguinary persecution; but though I reserve for the next chapter all mention of ecclesiastical disputes, some of Mary's proceedings in re-establishing popery belong to the civil history of our constitution. Impatient, under the existence, for a moment, of rites and usages which she abhorred, this bigoted woman anticipated the legal authority which her parliament was ready to interpose for their abrogation; the Latin liturgy was restored, the married clergy expelled from their livings, and even many protestant ministers thrown into prison for no other crime than their religion, before any change had been made in the established laws.* The queen, in fact, and those around her, acted and felt as a legitimate government restored after an usurpation, and treated the recent statutes as null and invalid. But even in matters of temporal government, the stretches of prerogative were more violent and alarming than during her brother's reign. It is due indeed to the memory of one who has left so odious a name, to remark that Mary was conscientiously averse to encroach upon what she understood to be the privileges of her people. A wretched book having been written to exalt her prerogative, on the ridiculous pretence that, as a queen, she was not bound by the laws of former kings, she showed it to Gardiner, and on his expressing indignation at the sophism, threw it herself into the fire. An act passed, however, to settle such questions, which declares the queen to

"My Device for the Succession," it is entailed on the heirs male of the lady queen, if she have any before his death; then to the *lady Jane and her heirs male*; then to the heirs male of lady Katharine; and in every instance, except Jane, excluding the female herself. Strype's Cranmer, Append. 164. A late author, on consulting the original MS., in the king's handwriting, found that it had been at first written, "the lady Jane's heirs male," but that the words "and her" had been interlined. Nares's Memoirs of Lord Burghley, i. 451. Mr. Nares does not seem to doubt but that this was done by Edward himself: the change, however, is remarkable, and

should probably be ascribed to Northumberland's influence.

* Burnet, Strype, iii. 50. 53. Carte, 290. I doubt whether we have any thing in our history more like conquest than the administration of 1553. The queen, in the month only of October, presented to 256 livings, restoring all those turned out under the acts of uniformity. Yet the deprivation of the bishops might be justified probably by the terms of the commission they had taken out in Edward's reign, to hold their sees during the king's pleasure, for which was afterwards substituted "during good behaviour." Burnet, App. 257. Collier, 218.

have all the lawful prerogatives of the crown.* But she was surrounded by wicked counsellors, renegades of every faith, and ministers of every tyranny. We must, in candour, attribute to their advice her arbitrary measures, though not her persecution of heresy, which she counted for virtue. She is said to have extorted loans from the citizens of London, and others of her subjects.† This, indeed, was not more than had been usual with her predecessors. But we find one clear instance, during her reign, of a duty upon foreign cloth, imposed without assent of parliament; an encroachment unprecedented since the reign of Richard II. Several proofs might be adduced from records of arbitrary inquests for offences, and illegal modes of punishment. The torture is, perhaps, more frequently mentioned in her short reign than in all former ages of our history put together; and probably from that imitation of foreign governments, which contributed not a little to deface our constitution in the sixteenth century, seems deliberately to have been introduced as part of the process in those dark and uncontrolled tribunals which investigated offences against the state.‡ A commission issued in 1557, authorising the persons named in it to enquire, by any means they could devise, into charges of heresy or other religious offences, and in some instances to punish the guilty, in others of a graver nature to remit them to their ordinaries, seems (as Burnet has well observed) to have been meant as a preliminary step to bringing in the inquisition. It was at least the germ of the high-commission court in the next reign.§ One proclamation, in the last year of her inauspicious administration, may be deemed a flight of tyranny beyond her father's example; which, after denouncing the importation of books filled with heresy and treason from beyond sea, proceeds to declare that whoever should be found to have such books in his possession should be reputed and

* Burnet, ii. 278. Stat. 1 Mary, sess. 3. c. 1. Dr. Lingard rather strangely tells this story on the authority of father Persons, whom his readers probably do not esteem quite as much as he does. If he had attended to Burnet, he would have found a more sufficient voucher.

† Carte, 330.

‡ Haynes, 195. Burnet, ii. Appendix, 256. iii. 243.

§ Burnet, ii. 347. Collier, ii. 404. and Lingard, vii. 266. (who, by the way, confounds this commission with something different two years earlier) will not hear of this allusion to the inquisition. But Burnet has said nothing that is not perfectly just.

taken for a rebel, and executed according to martial law.* This had been provoked as well by a violent libel written at Geneva by Goodman, a refugee, exciting the people to dethrone the queen, as by the recent attempt of one Stafford, a descendant of the house of Buckingham, who, having landed with a small force at Scarborough, had vainly hoped that the general disaffection would enable him to overthrow her government.†

Notwithstanding, however, this apparently uncontrolled career of power, it is certain that the children of Henry VIII. did not preserve his almost absolute dominion over parliament. I have only met with one instance in his reign where the commons refused to pass a bill recommended by the crown. This was in 1532; but so unquestionable were the legislative rights of parliament, that, although much displeased, even Henry was forced to yield.‡ We find several instances during the reign of Edward, and still more in that of Mary, where the commons rejected bills sent down from the upper house; and though there was always a majority of peers for the government, yet the dissent of no small number is frequently recorded in the former reign. Thus the commons not only threw out a bill

The house of commons recovers part of its independent power in these two reigns.

* Strype, iii. 459.

† See Stafford's proclamation from Scarborough castle, Strype, iii. Appendix, No. 71. It contains no allusion to religion, both parties being weary of Mary's Spanish counsels. The important letters of Noailles, the French ambassador, to which Carte had access, and which have since been printed, have afforded information to Dr. Lingard, and, with those of the imperial ambassador, Renard, which I have not had an opportunity of seeing, throw much light on this reign. They certainly appear to justify the restraint put on Elizabeth, who, if not herself privy to the conspiracies planned in her behalf (which is, however, very probable), was at least too dangerous to be left at liberty. Noailles intrigued with the malecontents, and instigated the rebellion of Wyatt, of which Dr. Lingard gives a very interesting account. Carte, indeed, differs from him in many of these circumstances, though writing from the same source, and particularly denies that

Noailles gave any encouragement to Wyatt. It is, however, evident from the tenor of his despatches that he had gone great lengths in fomenting the discontent, and was evidently desirous of the success of the insurrection, iii. 36. 43. &c. This critical state of the government may furnish the usual excuse for its rigour. But its unpopularity was brought on by Mary's breach of her word as to religion, and still more by her obstinacy in forming her union with Philip against the general voice of the nation, and the opposition of Gardiner; who, however, after her resolution was taken, became its strenuous supporter in public. For the detestation in which the queen was held, see the letters of Noailles, *passim*; but with some degree of allowance for his own antipathy to her.

‡ Burnet, i. 117. The king refused his assent to a bill which had passed both houses, but apparently not of a political nature. *Lords' Journals*, p. 162.

creating several new treasons, and substituted one of a more moderate nature, with that memorable clause for two witnesses to be produced in open court, which I have already mentioned*; but rejected one attainting Tunstal bishop of Durham for misprision of treason, and were hardly brought to grant a subsidy.† Their conduct in the two former instances, and probably in the third, must be attributed to the indignation that was generally felt at the usurped power of Northumberland, and the untimely fate of Somerset. Several cases of similar unwillingness to go along with court measures occurred under Mary. She dissolved, in fact, her two first parliaments on this account. But the third was far from obsequious, and rejected several of her favourite bills.‡ Two reasons principally contributed to this opposition; the one, a fear of entailing upon the country those numerous exactions of which so many generations had complained, by reviving the papal supremacy, and more especially of a restoration of abbey lands; the other, an extreme repugnance to the queen's Spanish connection.§ If Mary could have obtained the consent of parliament, she would have settled the crown on her husband, and sent her sister, perhaps, to the scaffold.||

There cannot be a stronger proof of the increased weight of the commons during these reigns, than the anxiety of the court to obtain favourable elections. Many ancient boroughs undoubtedly have at no period possessed sufficient importance to deserve

Attempt of the court to strengthen itself by creating new boroughs.

* Burnet, 190.

† Id. 195. 215. This was the parliament, in order to secure favourable elections for which the council had written letters to the sheriffs. These do not appear to have availed so much as they might hope.

‡ Carte, 311. 322. Noailles, v. 252. He says that she committed some knights to the Tower for their language in the house. Id. 247. Burnet, p. 324. mentions the same.

§ Burnet, 322. Carte, 296. Noailles says, that a third part of the commons in Mary's first parliament was hostile to the repeal of Edward's laws about religion, and that the debates lasted a week, ii. 247. The Journals do not mention any

division; though it is said in Strype, iii. 204., that one member, sir Ralph Bagnal, refused to concur in the act abolishing the supremacy. The queen, however, in her letter to cardinal Pole, says of this repeal: "quod non sine contentione, disputatione acri, et summo labore fidelium factum est." Lingard, Carte, Philips's Life of Pole. Noailles speaks repeatedly of the strength of the protestant party, and of the enmity which the English nation, as he expressed it, bore to the pope. But the aversion to the marriage with Philip, and dread of falling under the yoke of Spain, were common to both religions, with the exception of a few, mere bigots to the church of Rome.

|| Noailles, vol. v. passim.

the elective franchise on the score of their riches or population; and it is most likely that some temporary interest or partiality, which cannot now be traced, first caused a writ to be addressed to them. But there is much reason to conclude that the counsellors of Edward VI., in erecting new boroughs, acted upon a deliberate plan of strengthening their influence among the commons. Twenty-two boroughs were created or restored in this short reign; some of them, indeed, places of much consideration, but not less than seven in Cornwall, and several others that appear to have been insignificant. Mary added fourteen to the number; and as the same course was pursued under Elizabeth, we in fact owe a great part of that irregularity in our popular representation, the advantages or evils of which we need not here discuss, less to changes wrought by time, than to deliberate and not very constitutional policy. Nor did the government scruple a direct and avowed interference with elections. A circular letter of Edward to all the sheriffs commands them to give notice to the freeholders, citizens, and burgesses, within their respective counties, "that our pleasure and commandment is, that they shall choose and appoint, as nigh as they possibly may, men of knowledge and experience within the counties, cities, and boroughs;" but nevertheless, that where the privy council should "recommend men of learning and wisdom, in such case their directions be regarded and followed." Several persons accordingly were recommended by letters to the sheriffs, and elected as knights for different shires; all of whom belonged to the court, or were in places of trust about the king.* It appears probable that persons in office formed at all times a very considerable portion of the house of commons. Another circular of Mary before the parliament of 1554, directing the sheriffs to admonish the electors to choose good catholics and "inhabitants, as the old laws require," is much less unconstitutional; but the earl of Sussex, one of her most active counsellors, wrote to the gentlemen of Norfolk, and to the burgesses of Yarmouth, requesting them to reserve their voices for the person he should name.† There is reason to believe that the court, or rather the imperial am-

* Strype, ii. 394.

† Id. iii. 155. Burnet, ii. 228.

bassador, did homage to the power of the commons, by presents of money, in order to procure their support of the unpopular marriage with Philip *; and if Noailles, the ambassador of Henry II., did not make use of the same means to thwart the grants of subsidy and other measures of the administration, he was at least very active in promising the succour of France, and animating the patriotism of those unknown leaders of that assembly, who withstood the design of a besotted woman and her unprincipled counsellors to transfer this kingdom under the yoke of Spain.†

It appears to be a very natural enquiry, after beholding the course of administration under the Tudor line, by what means a government so violent in itself, and so plainly inconsistent with the acknowledged laws, could be maintained; and what had become of that English spirit which had not only controlled such injudicious princes as John and Richard II., but withstood the first and third Edward, in the fulness of their pride and glory. Not, indeed, that the excesses of prerogative had ever been thoroughly restrained, or that, if the memorials of earlier ages had been as carefully preserved as those of the sixteenth century, we might not possibly find in them equally flagrant instances of oppression; but still the petitions of parliament and frequent statutes remain on record, bearing witness to our constitutional law and to the energy that gave it birth. There had evidently been a retrograde tendency towards absolute monarchy between the reigns of Henry VI. and Henry VIII. Nor could this be attributed to the common engine of despotism, a military force. For, except the yeomen of the guard, fifty in number, and the common servants of the king's household, there was not, in time of peace, an armed man receiving pay throughout England.‡

* Burnet, ii. 262. 277.

† Noailles, v. 190. Of the truth of this plot there can be no rational ground to doubt; even Dr. Lingard has nothing to advance against it but the assertion of Mary's counsellors, the Pagets and Arundels, the most worthless of mankind. We are, in fact, greatly indebted to Noailles for his spirited activity, which contributed, in a high degree, to secure both

the protestant religion and the national independence of our ancestors.

‡ Henry VII. first established a band of fifty archers to wait on him. Henry VIII. had fifty horse-guards, each with an archer, demilance, and couteiller, like the gendarmerie of France; but on account, probably, of the expense it occasioned, their equipment being too magnificent, this soon was given up.

A government that ruled by intimidation was absolutely destitute of force to intimidate. Hence risings of the mere commonalty were sometimes highly dangerous, and lasted much longer than ordinary. A rabble of Cornishmen, in the reign of Henry VII., headed by a blacksmith, marched up from their own county to the suburbs of London without resistance. The insurrections of 1525 in consequence of Wolsey's illegal taxation, those of the north ten years afterwards, wherein, indeed, some men of higher quality were engaged, and those which broke out simultaneously in several counties under Edward VI., excited a well-grounded alarm in the country; and in the two latter instances were not quelled without much time and exertion. The reproach of servility and patient acquiescence under usurped power falls not on the English people, but on its natural leaders. We have seen, indeed, that the house of commons now and then gave signs of an independent spirit, and occasioned more trouble, even to Henry VIII., than his compliant nobility. They yielded to every mandate of his imperious will; they bent with every breath of his capricious humour; they are responsible for the illegal trial, for the iniquitous attainder, for the sanguinary statute, for the tyranny which they sanctioned by law, and for that which they permitted to subsist without law. Nor was this selfish and pusillanimous subserviency more characteristic of the minions of Henry's favour, the Cromwells, the Riches, the Pagets, the Russells, and the Powletts, than of the representatives of ancient and honourable houses, the Howards, the Fitz-Alans, and the Talbots. We trace the noble statesmen of those reigns concurring in all the inconsistencies of their revolutions, supporting all the religions of Henry, Edward, Mary, and Elizabeth; adjudging the death of Somerset to gratify Northumberland, and of Northumberland to redeem their participation in his fault, setting up the usurpation of lady Jane, and abandoning her on the first doubt of success, constant only in the rapacious acquisition of estates and honours, from whatever source, and in adherence to the present power.

I have noticed in a former work that illegal and arbitrary jurisdiction exercised by the council, which, in despite of

several positive statutes, continued in a greater or less degree, through all the period of the Plantagenet family, to deprive the subject, in many criminal charges, of that sacred privilege, trial by his peers.*

Jurisdiction of the council of star-chamber. This usurped jurisdiction, carried much farther and exercised more vigorously, was the principal grievance under the Tudors; and the forced submission of our forefathers was chiefly owing to the terrors of a tribunal, which left them secure from no infliction but public execution, or actual dispossession of their freeholds. And, though it was beyond its direct province to pass sentence on capital charges, yet, by intimidating jurors, it procured convictions which it was not authorised to pronounce. We are naturally astonished at the easiness with which verdicts were sometimes given against persons accused of treason on evidence insufficient to support the charge in point of law, or in its nature not competent to be received, or unworthy of belief. But this is explained by the peril that hung over the jury in case of acquittal. "If," says sir Thomas Smith, in his *Treatise on the Commonwealth of England*, "they do pronounce not guilty upon the prisoner, against whom manifest witness is brought in, the prisoner escapeth, but the twelve are not only rebuked by the judges, but also threatened of punishment, and many times commanded to appear in the star-chamber, or before the privy council, for the matter. But this threatening chanceth oftener than the execution thereof; and the twelve answer with most gentle words, they did it according to their consciences, and pray the judges to be good unto them; they did as they thought right, and as they accorded all; and so it passeth away for the most part. Yet I have seen in my time, but not in the reign of the king now, [Elizabeth,] that an inquest for pronouncing one not guilty of treason contrary to such evidence as was brought in, were not only imprisoned for a space, but a large fine set upon their heads, which they were fain to pay; another inquest, for acquitting another, beside paying a fine, were put to open

* View of Middle Ages, ch. 8. I must here acknowledge, that I did not make the requisite distinction between the concilium secretum, or privy council of state,

and the concilium ordinarium, as lord Hale calls it, which alone exercised jurisdiction.

ignominy and shame. But these doings were even then accounted of many for violent, tyrannical, and contrary to the liberty and custom of the realm of England.* One of the instances to which he alludes was probably that of the jury who acquitted sir Nicholas Throckmorton in the second year of Mary. He had conducted his own defence with singular boldness and dexterity. On delivering their verdict, the court committed them to prison. Four, having acknowledged their offence, were soon released; but the rest, attempting to justify themselves before the council, were sentenced to pay, some a fine of two thousand pounds, some of one thousand marks; a part of which seems ultimately to have been remitted.†

It is here to be observed that the council of which we have just heard, or, as lord Hale denominates it (though rather, I believe, for the sake of distinction than upon any ancient authority), the king's ordinary council, was something different from the privy council, with which several modern writers are apt to confound it; that is, the court of jurisdiction is to be distinguished from the deliberative body, the advisers of the crown. Every privy councillor belonged to the concilium ordinarium; but the chief justices, and perhaps several others who sat in the latter (not to mention all temporal and spiritual peers, who, in the opinion at least of some, had a right of suffrage therein), were not necessarily of the former body.‡ This

This not the same with the court erected by Henry VII.

* Commonwealth of England, book 3. c. 1. The statute 26 H. 8. c. 4. enacts, that if a jury in Wales acquit a felon, contrary to good and pregnant evidence, or otherwise misbehave themselves, the judge may bind them to appear before the president and council of the Welsh marches. The partiality of Welsh jurors was notorious in that age; and the reproach has not quite ceased.

† State Trials, i. 901. Strype, ii. 120. In a letter to the duke of Norfolk (Hardwicke Papers, i. 46.) at the time of the Yorkshire rebellion in 1536, he is directed to question the jury who had acquitted a particular person, in order to discover their motive. Norfolk seems to have objected to this for a good reason, "least the fear thereof might trouble

others in the like case." But it may not be uncaudid to ascribe this rather to a leaning towards the insurgents than a constitutional principle.

‡ Hale's Jurisdiction of the Lords' House, p. 5. Coke, 4th Inst. 65., where we have the following passage:—"So this court, [the court of star-chamber, as the concilium was then called,] being holden coram rege et concilio, it is, or may be, compounded of three several councils; that is to say, of the lords and others of his majesty's privy council, always judges without appointment, as before it appeareth. 2. The judges of either bench and barons of the exchequer are of the king's council, for matters of law, &c.; and the two chief justices, or in their absence other two justices, are

cannot be called in question, without either charging lord Coke, lord Hale, and other writers on the subject, with ignorance of what existed in their own age, or gratuitously supposing that an entirely novel tribunal sprang up in the sixteenth century under the name of the star-chamber. It has indeed been often assumed, that a statute enacted early in the reign of Henry VII. gave the first legal authority to the criminal jurisdiction exercised by that famous court, which in reality was nothing else but another name for the ancient *concilium regis*, of which our records are full, and whose encroachments so many statutes had endeavoured to repress; a name derived from the chamber wherein it sat, and which is found in many precedents before the time of Henry VII., though not so specially applied to the council of judicature as afterwards.* The statute of this reign has a much more limited operation. I have observed in another work, that the coercive jurisdiction of the council had great convenience, in cases where the ordinary course of justice was so much obstructed by one party, through writs, combinations of maintenance, or overawing influence, that no inferior court would find its process obeyed; and that such seem to have been reckoned necessary exceptions from the statutes which restrain its interference. The act of 3 H. 7. c. 1. appears

standing judges of this court. 3. The lords of parliament are properly *de magno concilio regis*; but neither those, not being of the king's privy council, nor any of the rest of the judges or barons of the exchequer, are standing judges of the court." But Hudson, in his *Treatise of the Court of Star-chamber*, written about the end of James's reign, inclines to think that all peers had a right of sitting in the court of star-chamber; there being several instances where some who were not of the council of state were present and gave judgment, as in the case of Mr. Davison, "and how they were complete judges unsworn, if not by their native right, I cannot comprehend; for surely the calling of them in that case was not made legitimate by any act of parliament; neither without their right were they more apt to be judges than any other inferior persons in the kingdom; and yet I doubt not but it resteth in the king's pleasure to restrain any man from that

table, as well as he may any of his council from the board." *Collectanea Juridica*, ii. p. 24. He says also, that it was demurrable for a bill to pray process against the defendant, to appear before the king and his privy council. *Ibid.*

* The privy council sometimes met in the star-chamber, and made orders. See one in 18 H. 6. *Harl. MSS. Catalogue*, N. 1878. fol. 20. So the statute, 21 H. 8. c. 16., recites a decree *by the king's council in his star-chamber*, that no alien artificer shall keep more than two alien servants, and other matters of the same kind. This could no way belong to the court of star-chamber, which was a judicial tribunal.

It should be remarked, though not to our immediate purpose, that this decree was supposed to require an act of parliament for its confirmation; so far was the government of Henry VIII. from arrogating a legislative power in matters of private right.

intended to place on a lawful and permanent basis the jurisdiction of the council, or rather a part of the council, over this peculiar class of offences; and after reciting the combinations supported by giving liveries, and by indentures or promises, the partiality of sheriffs in making panels, and in untrue returns, the taking of money by juries, the great riots and unlawful assemblies, which almost annihilated the fair administration of justice, empowers the chancellor, treasurer, and keeper of the privy seal, or any two of them, with a bishop and temporal lord of the council, and the chief justices of king's bench and common pleas, or two other justices in their absence, to call before them such as offended in the before-mentioned respects, and to punish them after examination in such manner as if they had been convicted by course of law. But this statute, if it renders legal a jurisdiction which had long been exercised with much advantage, must be allowed to limit the persons in whom it should reside, and certainly does not convey by any implication more extensive functions over a different description of misdemeanors. By a later act, 21 H. 8. c. 20., the president of the council is added to the judges of this court; a decisive proof that it still existed as a tribunal perfectly distinct from the council itself. But it is not styled by the name of star-chamber in this, any more than in the preceding statute. It is very difficult, I believe, to determine at what time the jurisdiction legally vested in this new court, and still exercised by it forty years afterwards, fell silently into the hands of the body of the council, and was extended by them so far beyond the boundaries assigned by law, under the appellation of the court of star-chamber. Sir Thomas Smith, writing in the early part of Elizabeth's reign, while he does not advert to the former court, speaks of the jurisdiction of the latter as fully established, and ascribes the whole praise (and to a certain degree it was matter of praise) to cardinal Wolsey.

The celebrated statute of 31 H. 8. c. 8., which gives the king's proclamations, to a certain extent, the force of acts of parliament, enacts that offenders convicted of breaking such proclamations before certain persons enumerated therein (being apparently the usual officers of the privy council, together with some bishops and judges), "in the star-chamber

or elsewhere," shall suffer such penalties of fine and imprisonment as they shall adjudge. "It is the effect of this court," Smith says, "to bridle such stout noblemen or gentlemen which would offer wrong by force to any manner of men, and cannot be content to demand or defend the right by order of the law. It began long before, but took augmentation and authority at that time that cardinal Wolsey, archbishop of York, was chancellor of England, who of some was thought to have first devised that court, because that he, after some intermission, by negligence of time, augmented the authority of it*, which was at that time marvellous necessary to do to repress the insolency of the noblemen and gentlemen in the north parts of England, who being far from the king and the seat of justice, made almost, as it were, an

* Lord Hale thinks that the jurisdiction of the council was gradually "brought into great disuse, though there remain some straggling footsteps of their proceedings till near 3 H. 7." p. 38. "The continual complaints of the commons against the proceedings before the council in causes civil or criminal, although they did not always attain their concession, yet brought a disreputation upon the proceedings of the council, as contrary to Magna Charta and the known laws." p. 39. He seems to admit afterwards, however, that many instances of proceedings before them in criminal causes might be added to those mentioned by lord Coke, p. 43.

The paucity of records about the time of Edward IV. renders the negative argument rather weak; but, from the expression of sir Thomas Smith in the text, it may perhaps be inferred that the council had intermitted in a considerable degree, though not absolutely disused, their exercise of jurisdiction for some time before the accession of the house of Tudor.

Mr. Brodie, in his *History of the British Empire under Charles I.*, i. 158., has treated at considerable length, and with much acuteness, this subject of the antiquity of the star-chamber. I do not coincide in all his positions; but the only one very important is that wherein we fully agree, that its jurisdiction was chiefly usurped, as well as tyrannical.

I will here observe that this part of our ancient constitutional history is likely

to be elucidated by a friend of my own, who has already given evidence to the world of his singular competence for such an undertaking, and who unites, with all the learning and diligence of Spelman, Prynne, and Madox, an acuteness and vivacity of intellect which none of those writers possessed. [1827.] [This has since been done in "An Essay upon the Original Authority of the King's Council, by sir Francis Palgrave, K.H.," 1834. The "Proceedings and Ordinances of the Privy Council of England," published by sir Harris Nicolas, contain the transactions of that body from 10 Ric. II. (1387) to 13 Hen. VI. (1435), with some scattered entries for the rest of the latter reign. They recommence in 1540. And a material change appears to have occurred, doubtless through Wolsey, in the latter years of the interval; the privy council exercising the same arbitrary and penal jurisdiction, or nearly such, as the concilium ordinarium had done with so much odium under Edw. III. and Ric. II. There may possibly be a very few instances of this before, to be traced in the early volumes of the *Proceedings*; but from 1540 to 1547 the course of the privy council is just like that of the star-chamber, as sir Thomas Smith intimates in the passage above quoted (p. 48.); and in fact considerably more unconstitutional and dangerous, from there being no admixture of the judges to keep up some regard to law. 1845.]

ordinary war among themselves, and made their force their law, binding themselves, with their tenants and servants, to do or revenge an injury one against another as they listed. This thing seemed not supportable to the noble prince Henry VIII. ; and sending for them one after another to his court, to answer before the persons before named, after they had remonstrance showed them of their evil demeanour, and been well disciplined, as well by words as by *flecting* [confinement in the Fleet prison] a while, and thereby their pride and courage somewhat assuaged, they began to range themselves in order, and to understand that they had a prince who would rule his subjects by his law and obedience. Since that time, this court has been in more estimation, and is continued to this day in manner as I have said before.* But as the court erected by the statute of Henry VII. appears to have been in activity as late as the fall of cardinal Wolsey, and exercised its jurisdiction over precisely that class of offences which Smith here describes, it may perhaps be more likely that it did not wholly merge in the general body of the council till the minority of Edward, when that oligarchy became almost independent and supreme. It is obvious that most, if not all, of the judges in the court held under that statute were members of the council ; so that it might in a certain sense be considered as a committee from that body, who had long before been wont to interfere with the punishment of similar misdemeanors. And the distinction was so soon forgotten, that the judges of the king's bench in the 13th of Elizabeth cite a case from the year-book of 8 H. 7. as "concerning the star-chamber," which related to the limited court erected by the statute.†

In this half-barbarous state of manners we certainly discover an apology, as well as motive, for the council's inter-

* Commonwealth of England, book 3. c. 4. We find sir Robert Sheffield in 1517 "put into the Tower again for the complaint he made to the king of my lord cardinal." Lodge's Illustrations, i. p. 27. See also Hall, p. 585., for Wolsey's strictness in punishing the "lords, knights, and men of all sorts, for riots, bearing, and maintenance."

† Plowden's Commentaries, 393. In

the year-book itself, 8 H. 7. pl. ult., the word star-chamber is not used. It is held in this case, that the chancellor, treasurer, and privy-seal were the only judges, and the rest but assistants. Coke, 4 Inst. 62., denies this to be law ; but on no better grounds than that the practice of the star-chamber, that is, of a different tribunal, was not such.

ference; for it is rather a servile worshipping of names than a rational love of liberty, to prefer the forms of trial to the attainment of justice, or to fancy that verdicts obtained by violence or corruption are at all less iniquitous than the violent or corrupt sentences of a court. But there were many cases wherein neither the necessity of circumstances, nor the legal sanction of any statute, could excuse the jurisdiction habitually exercised by the court of star-chamber. Lord Bacon takes occasion from the act of Henry VII. to descant on the sage and noble institution, as he terms it, of that court, whose walls had been so often witnesses to the degradation of his own mind. It took cognizance principally, he tells us, of four kinds of causes, "forces, frauds, crimes various of stellionate, and the inchoations or middle acts towards crimes capital or heinous, not actually committed or perpetrated."* Sir Thomas Smith uses expressions less indefinite than these last; and specifies scandalous reports of persons in power, and seditious news, as offences which they were accustomed to punish. We shall find abundant proofs of this department of their functions in the succeeding reigns. But this was in violation of many ancient laws, and not in the least supported by that of Henry VII.†

A tribunal so vigilant and severe as that of the star-chamber, proceeding by modes of interrogatory unknown to the common law, and possessing a discretionary power of fine and imprisonment, was easily able to quell any private opposition or contumacy. We have seen how the council dealt with those who refused to lend money by way of benevolence, and with the juries who found verdicts that they disapproved. Those that did not yield obedience to their proclamations were not likely to fare better. I know not whether menaces were used towards members of the commons who took part against

Influence of the authority of the star-chamber in enhancing the royal power.

* Hist. of Henry VII. in Bacon's Works, ii. p. 290.

† The result of what has been said in the last pages may be summed up in a few propositions. 1. The court erected by the statute of 3 Henry VII. was not the court of star-chamber. 2. This court by the statute subsisted in full force till beyond the middle of Henry VIII.'s

reign, but not long afterwards went into disuse. 3. The court of star-chamber was the old concilium ordinarium, against whose jurisdiction many statutes had been enacted from the time of Edward III. 4. No part of the jurisdiction exercised by the star-chamber could be maintained on the authority of the statute of Henry VII.

the crown ; but it would not be unreasonable to believe it, or at least that a man of moderate courage would scarcely care to expose himself to the resentment which the council might indulge after a dissolution. A knight was sent to the Tower by Mary, for his conduct in parliament * ; and Henry VIII. is reported, not perhaps on very certain authority, to have talked of cutting off the heads of refractory commoners.

In the persevering struggles of earlier parliaments against Edward III., Richard II., and Henry IV., it is a very probable conjecture, that many considerable peers acted in union with, and encouraged the efforts of, the commons. But in the period now before us, the nobility were precisely the class most deficient in that constitutional spirit, which was far from being extinct in those below them. They knew what havoc had been made among their fathers, by multiplied attainders during the rivalry of the two roses. They had seen terrible examples of the danger of giving umbrage to a jealous court, in the fate of lord Stanley and the duke of Buckingham, both condemned on slight evidence of treacherous friends and servants, from whom no man could be secure. Though rigour and cruelty tend frequently to overturn the government of feeble princes, it is unfortunately too true that, steadily employed and combined with vigilance and courage, they are often the safest policy of despotism. A single suspicion in the dark bosom of Henry VII., a single cloud of wayward humour in his son, would have been sufficient to send the proudest peer of England to the dungeon and the scaffold. Thus a life of eminent services in the field, and of unceasing compliance in council, could not rescue the duke of Norfolk from the effects of a dislike which we cannot even explain. Nor were the nobles of this age more held in subjection by terror than by the still baser influence of gain. Our law of forfeiture was well devised to stimulate, as well as to deter ; and Henry VIII., better pleased to slaughter the prey than to gorge himself with the carcass, distributed the spoils it brought him among those who had helped in the chase. The dissolution of monasteries opened a more abundant source of munificence ; every courtier, every peer, looked for an increase of wealth from grants of eccle-

* Burnet, ii. 324.

siastical estates, and naturally thought that the king's favour would most readily be gained by an implicit conformity to his will. Nothing, however, seems more to have sustained the arbitrary rule of Henry VIII. than the jealousy of the two religious parties formed in his time, and who, for all the latter years of his life, were maintaining a doubtful and emulous contest for his favour. But this religious contest, and the ultimate establishment of the Reformation, are events far too important, even in a constitutional history, to be treated in a cursory manner; and as, in order to avoid transitions, I have purposely kept them out of sight in the present chapter, they will form the proper subject of the next.

Tendency of
 religious dis-
 putes to the
 same end.

CHAPTER II.

ON THE ENGLISH CHURCH UNDER HENRY VIII.,
EDWARD VI., AND MARY.

State of Public Opinion as to Religion — Henry VIII.'s Controversy with Luther — His Divorce from Catherine — Separation from the Church of Rome — Dissolution of Monasteries — Progress of the Reformed Doctrine in England — Its Establishment under Edward — Sketch of the chief Points of Difference between the two Religions — Opposition made by Part of the Nation — Cranmer — His Moderation in introducing Changes not acceptable to the Zealots — Mary — Persecution under her — Its Effect rather favourable to Protestantism.

No revolution has ever been more gradually prepared than that which separated almost one half of Europe from the communion of the Roman see; nor were Luther and Zuingle any more than occasional instruments of that change, which, had they never existed, would at no great distance of time have been effected under the names of some other reformers. At the beginning of the sixteenth century, the learned doubtfully and with caution, the ignorant with zeal and eagerness, were tending to depart from the faith and rites which authority prescribed. But probably not even Germany was so far advanced on this course as England. Almost a hundred and fifty years before Luther, nearly the same doctrines as he taught had been maintained by Wickliffe, whose disciples, usually called Lollards, lasted as a numerous, though obscure and proscribed sect, till, aided by the confluence of foreign streams, they swelled into the Protestant church of England. We hear indeed little of them during some part of the fifteenth century; for they generally shunned persecution; and it is chiefly through records of persecution that we learn the existence of heretics. But immediately before the name of Luther was known, they seem to have become more numerous, or to have attracted more attention; since several persons were burned for

State of public opinion as to religion.

heresy, and others abjured their errors, in the first years of Henry VIII.'s reign. Some of these (as usual among ignorant men engaging in religious speculations) are charged with very absurd notions ; but it is not so material to observe their particular tenets as the general fact, that an inquisitive and sectarian spirit had begun to prevail.

Those who took little interest in theological questions, or who retained an attachment to the faith in which they had been educated, were in general not less offended than the Lollards themselves with the inordinate opulence and encroaching temper of the clergy. It had been for two or three centuries the policy of our lawyers to restrain these within some bounds. No ecclesiastical privilege had occasioned such dispute, or proved so mischievous, as the immunity of all tonsured persons from civil punishment for crimes. It was a material improvement in the law under Henry VI. that, instead of being instantly claimed by the bishop on their arrest for any criminal charge, they were compelled to plead their privilege at their arraignment, or after conviction. Henry VII. carried this much farther, by enacting that clerks convicted of felony should be burned in the hand. And in 1513 (4 H. 8.), the benefit of clergy was entirely taken away from murderers and highway robbers. An exemption was still preserved for priests, deacons, and subdeacons. But this was not sufficient to satisfy the church, who had been accustomed to shield under the mantle of her immunity a vast number of persons in the lower degrees of orders, or without any orders at all ; and had owed no small part of her influence to those who derived so important a benefit from her protection. Hence, besides violent language in preaching against this statute, the convocation attacked one Dr. Standish, who had denied the divine right of clerks to their exemption from temporal jurisdiction. The temporal courts naturally defended Standish ; and the parliament addressed the king to support him against the malice of his persecutors. Henry, after a full debate between the opposite parties in his presence, thought his prerogative concerned in taking the same side ; and the clergy sustained a mortifying defeat. About the same time, a citizen of London named Hun, having been confined on a charge of heresy in the

bishop's prison, was found hanged in his chamber; and though this was asserted to be his own act, yet the bishop's chancellor was indicted for the murder on such vehement presumptions, that he would infallibly have been convicted, had the attorney-general thought fit to proceed in the trial. This occurring at the same time with the affair of Standish, furnished each party with an argument; for the clergy maintained that they should have no chance of justice in a temporal court; one of the bishops declaring, that the London juries were so prejudiced against the church, that they would find Abel guilty of the murder of Cain. Such an admission is of more consequence than whether Hun died by his own hands, or those of a clergyman; and the story is chiefly worth remembering, as it illustrates the popular disposition towards those who had once been the objects of reverence.*

Such was the temper of England when Martin Luther threw down his gauntlet of defiance against the ancient hierarchy of the Catholic church. But, ripe as a great portion of the people might be to applaud the efforts of this reformer, they were viewed with no approbation by their sovereign. Henry had acquired a fair portion of theological learning, and on reading one of Luther's treatises, was not only shocked at its tenets, but undertook to refute them in a formal answer. † Kings who divest themselves of their robes to mingle among polemical writers, have not perhaps a claim to much deference from strangers; and Luther, intoxicated with arrogance, and deeming himself a more prominent individual among the human species than any monarch, treated Henry, in replying

Henry VIII.'s controversy with Luther.

* Burnet. Reeves's History of the Law, iv. p. 308. The contemporary authority is Keilwey's Reports. Collier disbelieves the murder of Hun on the authority of sir Thomas More; but he was surely a prejudiced apologist of the clergy, and this historian is hardly less so. An entry on the journals, 7 H. 8., drawn of course by some ecclesiastic, particularly complains of Standish as the author of *periculosissimæ seditioes inter clericam et secularem potestatem*.

† Burnet is confident that the answer to Luther was not written by Henry

(vol. iii. 171.), and others have been of the same opinion. The king, however, in his answer to Luther's apologetical letter, where this was insinuated, declares it to be his own. From Henry's general character and proneness to theological disputation, it may be inferred that he had at least a considerable share in the work, though probably with the assistance of some who had more command of the Latin language. Burnet mentions in another place, that he had seen a copy of the Necessary Erudition of a Christian Man, full of interlineations by the king.

to his book, with the rudeness that characterized his temper. A few years afterwards, indeed, he thought proper to write a letter of apology for the language he had held towards the king; but this letter, a strange medley of abjectness and impertinence, excited only contempt in Henry, and was published by him with a severe commentary.* Whatever apprehension, therefore, for the future might be grounded on the humour of the nation, no king in Europe appeared so steadfast in his allegiance to Rome as Henry VIII. at the moment when a storm sprang up that broke the chain for ever.

It is certain that Henry's marriage with his brother's widow was unsupported by any precedent, and that, although the pope's dispensation might pass for a cure of all defects, it had been originally considered by many persons in a very different light from those unions which are merely prohibited by the canons. He himself, on coming to the age of fourteen, entered a protest against the marriage which had been celebrated more than two years before, and declared his intention not to confirm it; an act which must naturally be ascribed to his father.† It is true

* Epist. Lutheri ad Henricum regem missa, &c. Lond. 1526. The letter bears date at Wittenberg, Sept. 1. 1525. It had no relation, therefore, to Henry's quarrel with the pope, though probably Luther imagined that the king was becoming more favourably disposed. After saying that he had written against the king, "stultus ac præceps," which was true, he adds, "invitantibus iis qui majestati tuæ parum favebant," which was surely a pretence; since who, at Wittenberg, in 1521, could have any motive to wish that Henry should be so scurrilously treated? He then bursts out into the most absurd attack on Wolsey; "illud monstrum et publicum odium Dei et hominum, Cardinalis Eboracensis, pestis illa regni tui." This was a singular style to adopt in writing to a king, whom he affected to propitiate; Wolsey being nearer than any man to Henry's heart. Thence, relapsing into his tone of abasement, he says, "ita ut vehementer nunc pudefactus, metuam oculos coram majestate tuâ levare, qui passus sim levitate istâ me moveri in talem tantumque regem per malignos istos opera-

rios; præsertim cum sim fax et vermis, quem solo contemptu oportuit victum aut neglectum esse," &c. Among the many strange things which Luther said and wrote, I know not one more extravagant than this letter, which almost justifies the supposition that there was a vein of insanity in his very remarkable character.

† Collier, vol. ii. Appendix, No. 2. In the Hardwicke Papers, i. 13., we have an account of the ceremonial of the first marriage of Henry with Catherine in 1503. It is remarkable that a person was appointed to object publicly in Latin to the marriage, as unlawful, for reasons he should there exhibit; "whereunto Mr. Doctor Barnes shall reply, and declare solemnly, also in Latin, the said marriage to be good and effectual in the law of Christ's church, by virtue of a dispensation, which he shall have then to be openly read." There seems to be something in this of the tortuous policy of Henry VII.; but it shows that the marriage had given offence to scrupulous minds.

His divorce
from Catherine.

that in this very instrument we find no mention of the impediment on the score of affinity; yet it is hard to suggest any other objection, and possibly a common form had been adopted in drawing up the protest. He did not cohabit with Catherine during his father's lifetime. Upon his own accession, he was remarried to her; and it does not appear manifest at what time his scruples began, nor whether they preceded his passion for Anne Boleyn.* This, however, seems the more probable supposition; yet there can be little doubt, that weariness of Catherine's person, a woman considerably older than himself and unlikely to bear more children, had a far greater effect on his conscience than the study of Thomas Aquinas or any other theologian. It by no means follows from hence that, according to the casuistry of the Catholic church and the principles of the canon law, the merits of that famous process were so much against Henry, as, out of dislike to him and pity for his queen, we are apt to imagine, and as the writers of that persuasion have subsequently assumed.

It would be unnecessary to repeat what is told by so many historians, the vacillating and evasive behaviour of Clement VII., the assurances he gave the king, and the arts with which he receded from them, the unfinished trial in England before his delegates, Campeggio and Wolsey, the opinions obtained from foreign universities in the king's favour, not always without a little bribery †, and those of the same import at home, not given without a little intimidation, or the tedious continuance of the process after its adjournment to Rome. More than five years had elapsed from the first application to the pope, before Henry, though by nature the most uncontrollable of mankind, though irritated by perpe-

* See Burnet, Lingard, Turner, and the letters lately printed in State Papers, temp. Henry VIII. pp. 194. 196.

† Burnet wishes to disprove the bribery of these foreign doctors. But there are strong presumptions that some opinions were got by money (Collier, ii, 58.); and the greatest difficulty was found, where corruption perhaps had least influence, in the Sorbonne. Burnet himself proves that some of the cardinals were bribed by the king's ambassador,

both in 1528 and 1532. Vol. i. Append. pp. 30. 110. See, too, Strype, i. Append, No. 40.

The same writer will not allow that Henry menaced the university of Oxford in case of non-compliance; yet there are three letters of his to them, a tenth part of which, considering the nature of the writer, was enough to terrify his readers. Vol. iii. Append. p. 25. These probably Burnet did not know when he published his first volume.

tual chicanery and breach of promise, though stimulated by impatient love, presumed to set at nought the jurisdiction to which he had submitted, by a marriage with Anne. Even this was a furtive step; and it was not till compelled by the consequences that he avowed her as his wife, and was finally divorced from Catherine by a sentence of nullity, which would more decently, no doubt, have preceded his second marriage.* But, determined as his mind had become, it was plainly impossible for Clement to have conciliated him by any thing short of a decision, which he could not utter without the loss of the emperor's favour, and the ruin of his own family's interests in Italy. And even for less selfish reasons, it was an extremely embarrassing measure for the pope, in the critical circumstances of that age, to set aside a dispensation granted by his predecessor; knowing that, however some erroneous allegations of fact contained therein might serve for an outward pretext, yet the principle on which the divorce was commonly supported in Europe went generally to restrain the dispensing power of the holy see. Hence it may seem very doubtful whether the treaty which was afterwards partially renewed through the mediation of Francis I., during his interview with the pope at Nice about the end of 1533, could have led to a restoration of amity through the only possible means; when we consider the weight of the imperial party in the conclave, the dis-

* The king's marriage is related by the earlier historians to have taken place Nov. 14. 1532. Burnet, however, is convinced by a letter of Cranmer, who, he says, could not be mistaken, though he was not apprised of the fact till some time afterwards, that it was not solemnised till about the 25th of January (vol. iii. p. 70.). This letter has since been published in the *Archæologia*, vol. xviii., and in *Ellis's Letters*, ii. 34. Elizabeth was born September 7. 1533; for though Burnet, on the authority, he says, of Cranmer, places her birth on Sept. 14., the former date is decisively confirmed by letters in *Harl. MSS.* vol. cclxxxiii. 22., and vol. declxxvii. 1. (both set down incorrectly in the catalogue). If a late historian therefore had contented himself with commenting on these dates and the clandestine nature

of the marriage, he would not have gone beyond the limits of that character of an advocate for one party which he has chosen to assume. It may not be unlikely, though by no means evident, that Anne's prudence, though, as Fuller says of her, "she was cunning in her chastity," was surprised at the end of this long courtship. I think a prurient curiosity about such obsolete scandal very unworthy of history. But when this author asserts Henry to have cohabited with her for three years, and repeatedly calls her his mistress, when he attributes Henry's patience with the pope's chicanery to "the infecundity of Anne," and all this on no other authority than a letter of the French ambassador, which amounts hardly to evidence of a transient rumour, we cannot but complain of a great deficiency in historical candour.

credit that so notorious a submission would have thrown on the church, and, above all, the precarious condition of the Medici at Florence in case of a rupture with Charles V. It was more probably the aim of Clement to delude Henry once more by his promises; but this was prevented by the more violent measure into which the cardinals forced him, of a definitive sentence in favour of Catherine, whom the king was required under pain of excommunication to take back as his wife. This sentence of the 23rd of March, 1534, proved a declaration of interminable war; and the king, who, in consequence of the hopes held out to him by Francis, had already despatched an envoy to Rome with his submission to what the pope should decide, now resolved to break off all intercourse for ever, and trust to his own prerogative and power over his subjects for securing the succession to the crown in the line which he designed. It was doubtless a regard to this consideration that put him upon his last overtures for an amicable settlement with the court of Rome.*

* The principal authority on the story of Henry's divorce from Catherine is Burnet, in the first and third volumes of his *History of the Reformation*; the latter correcting the former from additional documents. Strype, in his *Ecclesiastical Memorials*, adds some particulars not contained in Burnet, especially as to the negotiations with the pope in 1528; and a very little may be gleaned from Collier, Carte, and other writers. There are few parts of history, on the whole, that have been better elucidated. One exception perhaps may yet be made. The beautiful and affecting story of Catherine's behaviour before the legates at Dunstable, is told by Cavendish and Hall, from whom later historians have copied it. Burnet, however, in his third volume, p. 46., disputes its truth, and on what should seem conclusive authority, that of the original register, from which it appears that the queen never came into court but once, June 18. 1529, to read a paper protesting against the jurisdiction, and that the king never entered it. Carte accordingly treated the story as a fabrication. Hume of course did not choose to omit so interesting a circumstance; but Dr. Lingard has pointed out

a letter of the king, which Burnet himself had printed, vol. i. Append. 78., mentioning the queen's presence as well as his own, on June 21., and greatly corroborating the popular account. To say the truth, there is no small difficulty in choosing between two authorities so considerable, if they cannot be reconciled, which seems impossible; but, upon the whole, the preference is due to Henry's letter, dated June 23., as he could not be mistaken, and had no motive to misstate.

This is not altogether immaterial; for Catherine's appeal to Henry, *de integritate corporis usque ad secundas nuptias servatâ*, without reply on his part, is an important circumstance as to that part of the question. It is, however, certain, that, whether on this occasion or not, she did constantly declare this; and the evidence adduced to prove the contrary is very defective, especially as opposed to the assertion of so virtuous a woman. Dr. Lingard says that all the favourable answers which the king obtained from foreign universities went upon the supposition that the former marriage had been consummated, and were of no avail unless that could be proved. See a letter of Wolsey to the king, July 1.

But long before this final cessation of intercourse with that court, Henry had entered upon a course of measures which would have opposed fresh obstacles to a renewal of the connection. He had found a great part of his subjects in a disposition to go beyond all he could wish in sustaining his quarrel, not, in this instance, from mere terror, but because a jealousy of ecclesiastical power and of the Roman court had long been a sort of national sentiment in England. The pope's avocation of the process to Rome, by which his duplicity and alienation from the king's side were made evident, and the disgrace of Wolsey, took place in the summer of 1529. The parliament which met soon afterwards was continued through several sessions (an unusual circumstance), till it completed the separation of this kingdom from the supremacy of Rome. In the progress of ecclesiastical usurpation, the papal and episcopal powers had lent mutual support to each other; both consequently were involved in the same odium, and had become the object of restrictions in a similar spirit. Warm attacks were made on the clergy by speeches in the commons, which bishop Fisher severely reprehended in the upper house. This provoked the commons to send a complaint to the king by their speaker, demanding reparation; and Fisher explained away the words that had given offence. An act passed to limit the fees on probates of wills, a mode of ecclesiastical extortion much complained of, and upon mortuaries.* The next proceeding was of a far more serious nature. It was pretended, that Wolsey's exercise of authority as papal legate contravened a statute of Richard II., and that both himself and the whole body of the clergy, by their submission to him, had incurred the penalties of a *præmunire*, that is, the forfeiture of their moveable estate, besides imprisonment at discretion. These old statutes in restraint of the papal jurisdiction had been so little regarded, and so many legates had acted in England without objection, that Henry's prosecution

1527, printed in State Papers, temp. Henry VIII. p. 194.; whence it appears that the queen had been consistent in her denial.

* Stat. 21 Hen. 8. cc. 5, 6. Strype, i. 73. Burnet, 83. It cost a thousand

marks to prove sir William Compton's will in 1528. These exactions had been much augmented by Wolsey, who interfered, as legate, with the prerogative court.

of the church on this occasion was extremely harsh and unfair. The clergy, however, now felt themselves to be the weaker party. In convocation they implored the king's clemency, and obtained it by paying a large sum of money. In their petition he was styled the protector and supreme head of the church and clergy of England. Many of that body were staggered at the unexpected introduction of a title, that seemed to strike at the supremacy they had always acknowledged in the Roman see. And in the end it passed only with a very suspicious qualification, "so far as is permitted by the law of Christ." Henry had previously given the pope several intimations that he could proceed in his divorce without him. For, besides a strong remonstrance by letter from the temporal peers as well as bishops against the procrastination of sentence in so just a suit, the opinions of English and foreign universities had been laid before both houses of parliament and of convocation, and the divorce approved without difficulty in the former, and by a great majority in the latter. These proceedings took place in the first months of 1531, while the king's ambassadors at Rome were still pressing for a favourable sentence, though with diminished hopes. Next year the annates, or first fruits of benefices, a constant source of discord between the nations of Europe and their spiritual chief, were taken away by act of parliament; but with a remarkable condition, that if the pope would either abolish the payment of annates, or reduce them to a moderate burthen, the king might declare before the next session, by letters patent, whether this act, or any part of it, should be observed. It was accordingly confirmed by letters patent more than a year after it received the royal assent.

It is difficult for us to determine whether the pope, by conceding to Henry the great object of his solicitude, could in this stage have not only arrested the progress of the schism, but recovered his former ascendancy over the English church and kingdom. But probably he could not have done so in its full extent. Sir Thomas More, who had rather complied than concurred with the proceedings for a divorce, though his acceptance of the great seal on Wolsey's disgrace would have been inconsistent with his character, had he been

altogether opposed in conscience to the king's measures, now thought it necessary to resign, when the papal authority was steadily, though gradually, assailed.* In the next session an act was passed to take away all appeals to Rome from ecclesiastical courts; which annihilated, at one stroke, the jurisdiction built on long usage and on the authority of the false decretals. This law rendered the king's second marriage, which had preceded it, secure from being annulled by the papal court. Henry, however, still advanced very cautiously, and on the death of Warham, archbishop of Canterbury, not long before this time, applied to Rome for the usual bulls in behalf of Cranmer, whom he nominated to the vacant see. These were the last bulls obtained, and probably the last instance of any exercise of the papal supremacy in this reign. An act followed in the next session, that bishops elected by their chapter on a royal recommendation should be consecrated, and archbishops receive the pall, without suing for the pope's bulls. All dispensations and licenses hitherto granted by that court were set aside by another statute, and the power of issuing them in lawful cases transferred to the archbishop of Canterbury. The king is in this act recited to be the supreme head of the church of England, as the clergy had two years before acknowledged in convocation. But this title was not formally declared by parliament to appertain to the crown till the ensuing session of parliament.†

* It is hard to say what were More's original sentiments about the divorce. In a letter to Cromwell (Strype, i. 183. and App. No. 48. Burnet, App. p. 280.) he speaks of himself as always doubtful. But, if his disposition had not been rather favourable to the king, would he have been offered, or have accepted, the great seal? We do not indeed find his name in the letter of remonstrance to the pope, signed by the nobility and chief commoners in 1530, which Wolsey, though then in disgrace, very willingly subscribed. But in March, 1531, he went down to the house of commons, attended by several lords, to declare the king's scruples about his marriage, and to lay before them the opinions of universities. In this he perhaps thought himself acting ministerially. But there can be no doubt that he always con-

sidered the divorce as a matter wholly of the pope's competence, and which no other party could take out of his hands, though he had gone along cheerfully, as Burnet says, with the prosecution against the clergy, and wished to cut off the illegal jurisdiction of the Roman see. The king did not look upon him as hostile; for even so late as 1532, Dr. Bennet, the envoy at Rome, proposed to the pope that the cause should be tried by four commissioners, of whom the king should name one, either sir Thomas More, or Stokesly, bishop of London. Burnet, i. 126.

† Dr. Lingard has pointed out, as Burnet had done less distinctly, that the bill abrogating the papal supremacy was brought into the commons in the beginning of March, and received the royal assent on the 30th; whereas the

By these means was the church of England altogether emancipated from the superiority of that of Rome. For as to the pope's merely spiritual primacy and authority in matters of faith, which are, or at least were, defended by catholics of the Gallican or Cisalpine school on quite different grounds from his jurisdiction or his legislative power in points of discipline, they seem to have attracted little peculiar attention at the time, and to have dropped off as a dead branch, when the axe had lopped the fibres that gave it nourishment. Like other momentous revolutions, this divided the judgment and feelings of the nation. In the previous affair of Catherine's divorce, generous minds were more influenced by the rigour and indignity of her treatment than by the king's inclinations, or the venal opinions of foreign doctors in law. Bellay, bishop of Bayonne, the French ambassador at London, wrote home in 1528, that a revolt was apprehended from the general unpopularity of the divorce.* Much difficulty was found in procuring the judgments of Oxford and Cambridge against the marriage; which was effected in the former case, as is said, by excluding the masters of arts, the younger and less worldly part of the university, from their right of suffrage. Even so late as 1532, in the pliant house of commons, a member had the boldness to move an address to the king, that he would take back his wife. And this temper of the people seems to have been the great inducement with Henry to postpone any sentence by a domestic jurisdiction, so long as a chance of the pope's sanction remained.

Separation
from the
church of
Rome.

The aversion entertained by a large part of the community, and especially of the clerical order, towards the divorce, was not perhaps so generally founded upon motives of justice and compassion, as on the obvious tendency which its prosecution latterly manifested to bring about a separation from Rome. Though the principal Lutherans of Germany were far less

determination of the conclave at Rome against the divorce, was on the 23d; so that the latter could not have been the cause of this final rupture. Clement VII. might have been outwitted in his turn by the king, if, after pronouncing a decree in favour of the divorce, he had found it too late to regain his juris-

diction in England. On the other hand, so flexible were the parliaments of this reign, that, if Henry had made terms with the pope, the supremacy might have revived again as easily as it had been extinguished.

* Burnet, iii. 44. ; and App. 24.

favourably disposed to the king in their opinions on this subject than the catholic theologians, holding that the prohibition of marrying a brother's widow in the Levitical law was not binding on Christians, or at least that the marriage ought not to be annulled after so many years' continuance*, yet in England the interests of Anne Boleyn and of the Reformation were considered as the same. She was herself strongly suspected of an inclination to the new tenets; and her friend Cranmer had been the most active person both in promoting the divorce, and the recognition of the king's supremacy. The latter was, as I imagine, by no means unacceptable to the nobility and gentry, who saw in it the only effectual method of cutting off the papal exactions that had so long impoverished the realm; nor yet to the citizens of London and other large towns; who, with the same dislike of the Roman court, had begun to acquire some taste for the protestant doctrine. But the common people, especially in remote counties, had been used to an implicit reverence for the holy see, and had suffered comparatively little by its impositions. They looked up also to their own teachers as guides in faith; and the main body of the clergy

* Conf. Burnet, i. 94. and App. No. 35. Strype, i. 230. Sleidan, Hist. de la Réformation, par Courayer, l. 10. The notions of these divines, as here stated, are not very consistent or intelligible. The Swiss reformers were in favour of the divorce, though they advised that the princess Mary should not be declared illegitimate. Luther seems to have inclined towards compromising the difference by the marriage of a secondary wife. Lingard, p. 172. Melancthon, this writer says, was of the same opinion. Burnet indeed denies this; but it is rendered not improbable by the well-authenticated fact that these divines, together with Bucer, signed a permission to the landgrave of Hesse to take a wife or concubine, on account of the drunkenness and disagreeable person of his landgravine. Bossuet, Hist. des Var. des Egl. Protest. vol. i., where the instrument is published. [Cranmer, it is just to say, remonstrated with Osiander on this permission, and on the general laxity of the Lutherans in matrimonial

questions. Jenkins's edition, i. 303.] Clement VII., however, recommended the king to marry immediately, and then prosecute his suit for a divorce, which it would be easier for him to obtain in such circumstances. This was as early as January, 1528. (Burnet, i. App. p. 27.) But at a much later period, September, 1530, he expressly suggested the expedient of allowing the king to retain two wives. Though the letter of Cassali, the king's ambassador at Rome, containing this proposition, was not found by Burnet, it is quoted at length by an author of unquestionable veracity, lord Herbert. Henry had himself, at one time, favoured this scheme, according to Burnet, who does not, however, produce any authority for the instructions to that effect said to have been given to Brian and Vannes, despatched to Rome at the end of 1528. But at the time when the pope made this proposal, the king had become exasperated against Catherine, and little inclined to treat either her or the holy see with any respect.

were certainly very reluctant to tear themselves, at the pleasure of a disappointed monarch, in the most dangerous crisis of religion, from the bosom of catholic unity.* They complied indeed with all the measures of government far more than men of rigid conscience could have endured to do ; but many, who wanted the courage of More and Fisher, were not far removed from their way of thinking.† This repugnance to so great an alteration showed itself, above all, in the monastic orders, some of whom by wealth, hospitality, and long-established dignity, others by activity in preaching and confessing, enjoyed a very considerable influence over the poorer class. But they had to deal with a sovereign, whose policy as well as temper dictated that he had no safety but in advancing ; and their disaffection to his government, while it overwhelmed them in ruin, produced a second grand innovation in the ecclesiastical polity of England.

The enormous, and in a great measure ill-gotten, opulence of the regular clergy had long since excited jealousy in every part of Europe. Though the statutes of mortmain under Edward I. and Edward III. had put some obstacle to its increase, yet as these were eluded by licenses of alienation, a larger proportion of landed wealth was constantly accumulating in hands which lost nothing that they had grasped.‡ A writer much inclined to partiality towards the monasteries says that they held not one fifth part of the kingdom ; no insignificant patrimony ! He adds, what may probably be true, that through granting easy leases, they did not enjoy more than one tenth in value.§ These vast possessions were very unequally distributed among four or five hundred monasteries. Some abbots, as those of Reading,

* Strype, i. 151. et alibi.

† Strype, *passim*. Tunstal, Gardiner, and Bonner wrote in favour of the royal supremacy ; all of them, no doubt, insincerely. The first of these has escaped severe censure by the mildness of his general character, but was full as much a temporiser as Cranmer. But the history of this period has been written with such undisguised partiality by Burnet and Strype on the one hand, and lately by Dr. Lingard on the other, that it is almost amusing to find the most opposite

conclusions and general results from nearly the same premises. Collier, though with many prejudices of his own, is, all things considered, the fairest of our ecclesiastical writers as to this reign.

‡ Burnet, 188. For the methods by which the regulars acquired wealth, fair and unfair, I may be allowed to refer to the *View of the Middle Ages*, ch. 7., or rather to the sources from which the sketch there given was derived.

§ Harmer's *Specimens of Errors in Burnet*.

Glastonbury, and Battle, lived in princely splendour, and were in every sense the spiritual peers and magnats of the realm. In other foundations, the revenues did little more than afford a subsistence for the monks, and defray the needful expenses. As they were in general exempted from episcopal visitation, and entrusted with the care of their own discipline, such abuses had gradually prevailed and gained strength by connivance, as we may naturally expect in corporate bodies of men, leading almost of necessity useless and indolent lives, and in whom very indistinct views of moral obligations were combined with a great facility of violating them. The vices that for many ages had been supposed to haunt the monasteries, had certainly not left their precincts in that of Henry VIII. Wolsey, as papal legate, at the instigation of Fox, bishop of Hereford, a favourer of the Reformation, commenced a visitation of the professed as well as secular clergy in 1523, in consequence of the general complaint against their manners.* This great minister, though not perhaps very rigid as to the morality of the church, was the first who set an example of reforming monastic foundations in the most efficacious manner, by converting their revenues to different purposes. Full of anxious zeal for promoting education, the noblest part of his character, he obtained bulls from Rome suppressing many convents (among which was that of St. Frideswide at Oxford), in order to erect and endow a new college in that university, his favourite work, which after his fall was more completely established by the name of Christ Church.† A few more were afterwards extinguished through his instigation; and thus the prejudice against interference with this species of property was somewhat worn off, and men's minds gradually prepared for the sweeping confiscations of Cromwell. The king indeed was abundantly willing to replenish his exchequer by violent means, and to avenge himself on those who gainsayed his supremacy; but it was this able statesman who, prompted both by the natural appetite of ministers for the subject's money, and, as has been generally surmised, by a secret par-

* Strype, i. Append. 19.

† Burnet. Strype. Wolsey alleged as the ground for this suppression, the great

wickedness that prevailed therein. Strype says the number was twenty; but Collier, ii. 19., reckons them at forty.

tiality towards the Reformation, devised and carried on with complete success, if not with the utmost prudence, a measure of no inconsiderable hazard and difficulty. For such it surely was, under a system of government which rested so much on antiquity, and in spite of the peculiar sacredness which the English attach to all freehold property, to annihilate so many prescriptive baronial tenures, the possessors whereof composed more than a third part of the house of lords, and to subject so many estates which the law had rendered inalienable, to maxims of escheat and forfeiture that had never been held applicable to their tenure. But for this purpose it was necessary, by exposing the gross corruptions of monasteries, both to intimidate the regular clergy, and to excite popular indignation against them. It is not to be doubted that in the visitation of these foundations under the direction of Cromwell, as lord vicegerent of the king's ecclesiastical supremacy, many things were done in an arbitrary manner, and much was unfairly represented.* Yet the reports of these visitors are so minute and specific, that it is rather a preposterous degree of incredulity to reject their testimony, whenever it bears hard on the regulars. It is always to be remembered that the vices to which they bear witness, are not only probable from the nature of such foundations, but are imputed to them by the most respectable writers of preceding ages. Nor do I find that the reports of this visitation were impeached for general falsehood in that age, whatever exaggeration there might be in particular cases. And surely the commendation bestowed on some religious houses as pure and unexceptionable, may afford a presumption that the censure of others was not an indiscriminate prejudging of their merits.†

* Collier, though not implicitly to be trusted, tells some hard truths, and charges Cromwell with receiving bribes from several abbeyes, in order to spare them, p. 159. This is repeated by Lingard, on the authority of some Cottonian manuscripts. Even Burnet speaks of the violent proceedings of a doctor Loudon towards the monasteries. This man was of infamous character, and became afterwards a conspirator against Cranmer, and a persecutor of protestants.

† Burnet, 190. Strype, i. ch. 35.; see especially p. 257. Ellis's Letters, ii. 71. We should be on our guard against the Romanising high-church men, such as Collier, and the whole class of antiquaries, Wood, Hearne, Drake, Browne Willis, &c. &c., who are, with hardly an exception, partial to the monastic orders, and sometimes scarce keep on the mask of protestantism. No one fact can be better supported by current opinion, and that general testimony which

The dread of these visitors soon induced a number of abbots to make surrenders to the king; a step of very questionable legality. But in the next session the smaller convents, whose revenues were less than 200*l.* a year, were suppressed by act of parliament, to the number of three hundred and seventy-six, and their estates vested in the crown. This summary spoliation led to the great northern rebellion soon afterwards. It was, in fact, not merely to wound the people's strongest impressions of religion, and especially those connected with their departed friends, for whose souls prayers were offered in the monasteries, but to deprive the indigent, in many places, of succour, and the better rank of hospitable reception. This of course was experienced in a far greater degree at the dissolution of the larger monasteries, which took place in 1540. But, Henry having entirely subdued the rebellion, and being now exceedingly dreaded by both the religious parties, this measure produced no open resistance; though there seems to have been less pretext for it on the score of immorality and neglect of discipline than was found for abolishing the smaller convents.* These great foundations were all surrendered; a few excepted, which, against every principle of received law, were held to fall by the attainder of their abbots for high treason. Par-

carries conviction, than the relaxed and vicious state of those foundations for many ages before their fall. Ecclesiastical writers had not then learned, as they have since, the trick of suppressing what might excite odium against their church, but speak out boldly and bitterly. Thus we find in Wilkins, iii. 630., a bull of Innocent VIII. for the reform of monasteries in England, charging many of them with dissoluteness of life. And this is followed by a severe monition from archbishop Morton to the abbot of St. Alban's, imputing all kinds of scandalous vices to him and his monks. Those who reject at once the reports of Henry's visitors, will do well to consider this. See also Fosbrook's *British Monachism*, passim. [The "Letters relating to the Suppression of Monasteries," published by the Camden Society, and edited by Mr. Thomas Wright, 1843, contain a part only of extant documents illustrative of this great transaction. There

seems no reason for setting aside their evidence as wholly false, though some lovers of monachism raised a loud clamour at their publication. 1845.]

* The preamble of 27 H. 8. c. 28., which gives the smaller monasteries to the king, after reciting that "manifest sin, vicious, carnal, and abominable living, is daily used and committed commonly in such little and small abbeys, priories, and other religious houses of monks, canons, and nuns, where the congregation of such religious persons is under the number of twelve persons," bestows praise on many of the greater foundations, and certainly does not intimate that their fate was so near at hand. Nor is any misconduct alleged or insinuated against the greater monasteries in the act 31 H. 8. c. 13. that abolishes them; which is rather more remarkable, as in some instances the religious had been induced to confess their evil lives and ill deserts. Burnet, 236.

liament had only to confirm the king's title arising out of these surrenders and forfeitures. Some historians assert the monks to have been turned adrift with a small sum of money. But it rather appears that they generally received pensions not inadequate, and which are said to have been pretty faithfully paid.* These however were voluntary gifts on the part of the crown. For the parliament which dissolved the monastic foundations, while it took abundant care to preserve any rights of property which private persons might enjoy over the estates thus escheated to the crown, vouchsafed not a word towards securing the slightest compensation to the dispossessed owners.

The fall of the mitred abbots changed the proportions of the two estates which constitute the upper house of parliament. Though the number of abbots and priors to whom writs of summons were directed varied considerably in different parliaments, they always, joined to the twenty-one bishops, preponderated over the temporal peers.† It was no longer possible for the prelacy to offer an efficacious opposition to the reformation they abhorred. Their own baronial tenure, their high dignity as legislative counsellors of the land, remained; but, one branch as ancient and venerable as their

* *Id. ibid.* and *Append.* p. 151. Collier, 167. The pensions to the superiors of the dissolved greater monasteries, says a writer not likely to spare Henry's government, appear to have varied from 266*l.* to 6*l.* per annum. The priors of cells received generally 13*l.* A few, whose services had merited the distinction, obtained 20*l.* To the other monks were allotted pensions of six, four, or two pounds, with a small sum to each at his departure, to provide for his immediate wants. The pensions to nuns averaged about 4*l.* *Lingard*, vi. 341. He admits that these were ten times their present value in money; and surely they were not unreasonably small. Compare them with those, generally and justly thought munificent, which this country bestows on her veterans of Chelsea and Greenwich. The monks had no right to expect more than the means of that hard fare to which they ought by their rules to have been confined in the convents. The whole revenues were not to be shared among

them as private property. It cannot of course be denied, that the compulsory change of life was to many a severe and an unmerited hardship; but no great revolution, and the Reformation as little as any, could be achieved without much private suffering.

† The abbots sat till the end of the first session of Henry's sixth parliament, the act extinguishing them not having passed till the last day. In the next session they do not appear, the writ of summons not being supposed to give them personal seats. There are indeed so many parallel instances among spiritual lords, and the principle is so obvious, that it would not be worth noticing, but for a strange doubt said to be thrown out by some legal authorities, near the beginning of George III.'s reign, in the case of Pearce, bishop of Rochester, whether, after resigning his see, he would not retain his seat as a lord of parliament; in consequence of which his resignation was not accepted.

own thus lopped off, the spiritual aristocracy was reduced to play a very secondary part in the councils of the nation. Nor could the protestant religion have easily been established by legal methods under Edward and Elizabeth without this previous destruction of the monasteries. Those who, professing an attachment to that religion, have swollen the clamour of its adversaries against the dissolution of foundations that existed only for the sake of a different faith and worship, seem to me not very consistent or enlightened reasoners. In some, the love of antiquity produces a sort of fanciful illusion; and the very sight of those buildings, so magnificent in their prosperous hour, so beautiful even in their present ruin, begets a sympathy for those who founded and inhabited them. In many, the violent courses of confiscation and attainder which accompanied this great revolution excite so just an indignation, that they either forget to ask whether the end might not have been reached by more laudable means, or condemn that end itself either as sacrilege, or at least as an atrocious violation of the rights of property. Others again, who acknowledge that the monastic discipline cannot be reconciled with the modern system of religion, or with public utility, lament only that these ample endowments were not bestowed upon ecclesiastical corporations, freed from the monkish cowl, but still belonging to that spiritual profession to whose use they were originally consecrated. And it was a very natural theme of complaint at the time, that such abundant revenues as might have sustained the dignity of the crown and supplied the means of public defence without burdening the subject, had served little other purpose than that of swelling the fortunes of rapacious courtiers, and had left the king as necessitous and craving as before.

Notwithstanding these various censures, I must own myself of opinion, both that the abolition of monastic institutions might have been conducted in a manner consonant to justice as well as policy, and that Henry's profuse alienation of the abbey lands, however illaudable in its motive, has proved upon the whole more beneficial to England than any other disposition would have turned out. I cannot, until some broad principle is made more obvious than it ever has yet been, do such violence to all common notions on the subject, as to

attach an equal inviolability to private and corporate property. The law of hereditary succession, as ancient and universal as that of property itself, the law of testamentary disposition, the complement of the former, so long established in most countries as to seem a natural right, have invested the individual possessor of the soil with such a fictitious immortality, such anticipated enjoyment, as it were, of futurity, that his perpetual ownership could not be limited to the term of his own existence, without what he would justly feel as a real deprivation of property. Nor are the expectancies of children, or other probable heirs, less real possessions, which it is a hardship, if not an absolute injury, to defeat. Yet even this hereditary claim is set aside by the laws of forfeiture, which have almost every where prevailed. But in estates held, as we call it, in mortmain, there is no intercommunity, no natural privity of interest, between the present possessor and those who may succeed him; and as the former cannot have any pretext for complaint, if, his own rights being preserved, the legislature should alter the course of transmission after his decease, so neither is any hardship sustained by others, unless their succession has been already designated or rendered probable. Corporate property therefore appears to stand on a very different footing from that of private individuals; and while all infringements of the established privileges of the latter are to be sedulously avoided, and held justifiable only by the strongest motives of public expediency, we cannot but admit the full right of the legislature to new mould and regulate the former, in all that does not involve existing interests, upon far slighter reasons of convenience. If Henry had been content with prohibiting the profession of religious persons for the future, and had gradually diverted their revenues instead of violently confiscating them, no protestant could have found it easy to censure his policy.

It is indeed impossible to feel too much indignation at the spirit in which these proceedings were conducted. Besides the hardship sustained by so many persons turned loose upon society for whose occupations they were unfit, the indiscriminate destruction of convents produced several public mischiefs. The visitors themselves strongly interceded for

the nunnery of Godstow, as irreproachably managed, and an excellent place of education; and no doubt some other foundations should have been preserved for the same reason. Latimer, who could not have a prejudice on that side, begged earnestly that the priory of Malvern might be spared, for the maintenance of preaching and hospitality. It was urged for Hexham abbey that, there not being a house for many miles in that part of England, the country would be in danger of going to waste.* And the total want of inns in many parts of the kingdom must have rendered the loss of these hospitable places of reception a serious grievance. These, and probably other reasons, ought to have checked the destroying spirit of reform in its career, and suggested to Henry's counsellors, that a few years would not be ill consumed in contriving new methods of attaining the beneficial effects which monastic institutions had not failed to produce, and in preparing the people's minds for so important an innovation.

The suppression of monasteries poured in an instant such a torrent of wealth upon the crown, as has seldom been equalled in any country by the confiscations following a subdued rebellion. The clear yearly value was rated at 131,607*l.*; but was in reality, if we believe Burnet, ten times as great; the courtiers undervaluing those estates, in order to obtain grants or sales of them more easily. It is certain, however, that Burnet's supposition errs extravagantly on the other side.† The moveables of the smaller monasteries alone were reckoned at 100,000*l.*; and, as the rents of these were less than a fourth of the whole, we may calculate the aggregate value of moveable wealth in the same proportion. All this was enough to dazzle a more prudent mind than that of

* Burnet, i. Append. 96.

† P. 268. Dr. Lingard, on the authority of Nasmith's edition of Tanner's *Notitia Monastica*, puts the annual revenue of all the monastic houses at 142,914*l.* This would only be one-twentieth part of the rental of the kingdom, if Hume were right in estimating that at three millions. But this is certainly by much too high. The author of Harmer's *Observations on Burnet*, as I have mentioned above, says the monks will be found not to have possessed above

one fifth of the kingdom, and in value, by reason of their long leases, not one tenth. But, on this supposition, the crown's gain was enormous.

According to a valuation in Speed's *Catalogue of Religious Houses*, apud Collier, Append. p. 34., sixteen mitred abbots had revenues above 1000*l.* per annum. St. Peter's, Westminster, was the richest, and valued at 3977*l.*, Glastonbury at 3508*l.*, St. Alban's at 2510*l.*, &c.

Henry, and to inspire those sanguine dreams of inexhaustible affluence with which private men are so often filled by sudden prosperity.

The monastic rule of life being thus abrogated, as neither conformable to pure religion nor to policy, it is to be considered, to what uses these immense endowments ought to have been applied. There are some, perhaps, who may be of opinion that the original founders of monasteries, or those who had afterwards bestowed lands on them, having annexed to their grants an implied condition of the continuance of certain devotional services, and especially of prayers for the repose of their souls, it were but equitable that, if the legislature rendered the performance of this condition impossible, their heirs should re-enter upon the lands that would not have been alienated from them on any other account. But, without adverting to the difficulty in many cases of ascertaining the lawful heir, it might be answered, that the donors had absolutely divested themselves of all interest in their grants, and that it was more consonant to the analogy of law to treat these estates as escheats or vacant possessions, devolving to the sovereign, than to imagine a right of reversion that no party had ever contemplated. There was indeed a class of persons, very different from the founders of monasteries, to whom restitution was due. A large proportion of conventual revenues arose out of parochial tithes, diverted from the legitimate object of maintaining the incumbent to swell the pomp of some remote abbot. These impropriations were in no one instance, I believe, restored to the parochial clergy, and have passed either into the hands of laymen, or of bishops and other ecclesiastical persons, who were frequently compelled by the Tudor princes to take them in exchange for lands.* It was not in the spirit of Henry's policy, or in that of the times, to preserve much of these revenues to the church, though he had designed to allot 18,000*l.* a year for

* An act entitling the queen to take into her hands, on the avoidance of any bishopric, so much of the lands belonging to it as should be equal in value to the impropriate rectories, &c. within the same, belonging to the crown, and to give the latter in exchange, was made

(1 Eliz. c. 19.). This bill passed on a division in the commons by 104 to 90, and was ill taken by some of the bishops, who saw themselves reduced to live on the lawful subsistence of the parochial clergy. Strype's Annals, i. 68. 97.

eighteen new sees, of which he only erected six with far inferior endowments. Nor was he much better inclined to husband them for public exigencies, although more than sufficient to make the crown independent of parliamentary aid. It may perhaps be reckoned a providential circumstance, that his thoughtless humour should have rejected the obvious means of establishing an uncontrollable despotism, by rendering unnecessary the only exertion of power which his subjects were likely to withstand. Henry VII. would probably have followed a very different course. Large sums, however, are said to have been expended in the repair of highways, and in fortifying ports in the channel.* But the greater part was dissipated in profuse grants to the courtiers, who frequently contrived to veil their acquisitions under cover of a purchase from the crown. It has been surmised that Cromwell, in his desire to promote the Reformation, advised the king to make this partition of abbey lands among the nobles and gentry, either by grant, or by sale on easy terms, that, being thus bound by the sure ties of private interest, they might always oppose any return towards the dominion of Rome.† In Mary's reign accordingly her parliament, so obsequious in all matters of religion, adhered with a firm grasp to the possession of church lands; nor could the papal supremacy be re-established until a sanction was given to their enjoyment. And we may ascribe part of the zeal of the same class in bringing back and preserving the reformed church under Elizabeth to a similar motive; not that these gentlemen were hypocritical pretenders to a belief they did not entertain, but that, according to the general laws of human nature, they gave a readier reception to truths which made their estates more secure.

But, if the participation of so many persons in the spoils

* Burnet, 268. 339. In Strype, i. 211., we have a paper drawn up by Cromwell for the king's inspection, setting forth what might be done with the revenues of the lesser monasteries. Among a few other particulars are the following:—“His grace may furnish 200 gentlemen to attend on his person, every one of them to have 100 marks yearly—20,000 marks. His highness

may assign to the yearly reparation of highways in sundry parts, or the doing of other good deeds for the commonwealth, 5000 marks.” In such scant proportion did the claims of public utility come after those of selfish pomp, or rather perhaps, looking more attentively, of cunning corruption.

† Burnet, i. 223.

of ecclesiastical property gave stability to the new religion, by pledging them to its support, it was also of no slight advantage to our civil constitution, strengthening, and as it were infusing new blood into the territorial aristocracy, who were to withstand the enormous prerogative of the crown. For if it be true, as surely it is, that wealth is power, the distribution of so large a portion of the kingdom among the nobles and gentry, the elevation of so many new families, and the increased opulence of the more ancient, must have sensibly affected their weight in the balance. Those families indeed, within or without the bounds of the peerage, which are now deemed the most considerable, will be found, with no great number of exceptions, to have first become conspicuous under the Tudor line of kings; and, if we could trace the titles of their estates, to have acquired no small portion of them, mediately or immediately, from monastic or other ecclesiastical foundations. And better it has been that these revenues should thus from age to age have been expended in liberal hospitality, in discerning charity, in the promotion of industry and cultivation, in the active duties or even generous amusements of life, than in maintaining a host of ignorant and inactive monks, in deceiving the populace by superstitious pageantry, or in the encouragement of idleness and mendicity.*

* It is a favourite theory with many who regret the absolute secularisation of conventual estates, that they might have been rendered useful to learning and religion, by being bestowed on chapters and colleges. Thomas Whitaker has sketched a pretty scheme for the abbey of Whalley, wherein, besides certain opulent prebendaries, he would provide for schoolmasters and physicians. I suppose this is considered an adherence to the donor's intention, and no sort of violation of property; somewhat on the principle called *cy près*, adopted by the court of chancery in cases of charitable bequests; according to which, that tribunal, if it holds the testator's intention unfit to be executed, carries the bequest into effect by doing what it presumes to come next in his wishes, though some times very far from them. It might be difficult indeed to prove that a Norman

baron, who, not quite easy about his future prospects, took comfort in his last hours from the anticipation of daily masses for his soul, would have been better satisfied that his lands should maintain a grammar-school than that they should escheat to the crown. But to wave this, and to revert to the principle of public utility, it may possibly be true that, in one instance, such as Whalley, a more beneficial disposition could have been made in favour of a college than by granting away the lands. But the question is, whether all, or even a great part, of the monastic estates could have been kept in mortmain with advantage. We may easily argue that the Derwentwater property, applied as it has been, has done the state more service, than if it had gone to maintain a race of Ratcliffes, and been squandered at White's or Newmarket. But does it follow that the

A very ungrounded prejudice had long obtained currency, and, notwithstanding the contradiction it has experienced in our more accurate age, seems still not eradicated, that the alms of monasteries maintained the indigent throughout the kingdom, and that the system of parochial relief, now so much the topic of complaint, was rendered necessary by the dissolution of those beneficent foundations. There can be no doubt that many of the impotent poor derived support from their charity. But the blind eleemosynary spirit inculcated by the Romish church is notoriously the cause, not the cure, of beggary and wretchedness. The monastic foundations, scattered in different counties, but by no means at regular distances, and often in sequestered places, could never answer the end of local and limited succour, meted out in just proportion to the demands of poverty. Their gates might indeed be open to those who knocked at them for alms, and came in search of streams that must always be too scanty for a thirsty multitude. Nothing could have a stronger tendency to promote that vagabond mendicity, which unceasing and very severe statutes were enacted to repress. It was and must always continue a hard problem, to discover the means of rescuing those whom labour cannot maintain from the last extremities of helpless suffering. The regular clergy were in all respects ill fitted for this great office of humanity. Even while the monasteries were yet standing, the scheme of a provision for the poor had been adopted by the legislature, by means of regular collections, which in the course of a long series of statutes, ending in the 43d of Elizabeth, were almost insensibly converted into compulsory assessments.* It is by no means probable that, however some in particular districts may have had to lament the cessation of

kingdom would be the more prosperous, if all the estates of the peerage were diverted to similar endowments? And can we seriously believe that, if such a plan had been adopted at the suppression of monasteries, either religion or learning would have been the better for such an inundation of prebendaries and schoolmasters?

* The first act for the relief of the impotent poor passed in 1535 (27 H. 8.

c. 25.). By this statute no alms were allowed to be given to beggars, on pain of forfeiting ten times the value; but a collection was to be made in every parish. The compulsory contributions, properly speaking, began in 1572 (14 Eliz. c. 5.). But by an earlier statute, 1 Edw. 6. c. 3., the bishop was empowered to proceed in his court against such as should refuse to contribute, or dissuade others from doing so.

hospitality in the convents, the poor in general, after some time, were placed in a worse condition by their dissolution ; nor are we to forget that the class to whom the abbey lands have fallen have been distinguished at all times, and never more than in the first century after that transference of property, for their charity and munificence.

These two great political measures, the separation from the Roman see, and the suppression of monasteries, so broke the vast power of the English clergy, and humbled their spirit, that they became the most abject of Henry's vassals, and dared not offer any steady opposition to his caprice, even when it led him to make innovations in the essential parts of their religion. It is certain that a large majority of that order would gladly have retained their allegiance to Rome, and that they viewed with horror the downfall of the monasteries. In rending away so much that had been incorporated with the public faith, Henry seemed to prepare the road for the still more radical changes of the reformers. These, a numerous and increasing sect, exulted by turns in the innovations he promulgated, lamented their dilatoriness and imperfection, or trembled at the reaction of his bigotry against themselves. Trained in the school of theological controversy, and drawing from those bitter waters fresh aliment for his sanguinary and imperious temper, he displayed the impartiality of his intolerance by alternately persecuting the two conflicting parties. We all have read how three persons convicted of disputing his supremacy, and three deniers of transubstantiation, were drawn on the same hurdle to execution. But the doctrinal system adopted by Henry in the latter years of his reign, varying indeed in some measure from time to time, was about equally removed from popish and protestant orthodoxy. The corporal presence of Christ in the consecrated elements was a tenet which no one might dispute without incurring the penalty of death by fire ; and the king had a capricious partiality to the Romish practice in those very points where a great many real catholics on the continent were earnest for its alteration, the communion of the laity by bread alone, and the celibacy of the clergy. But in several other respects he was wrought upon

by Cranmer to draw pretty near to the Lutheran creed, and to permit such explications to be given in the books set forth by his authority, the Institution, and the Erudition, of a Christian Man, as, if they did not absolutely proscribe most of the ancient opinions, threw at best much doubt upon them, and gave intimations which the people, now become attentive to these questions, were acute enough to interpret.*

It was natural to suspect, from the previous temper of the nation, that the revolutionary spirit which blazed out in Germany should spread rapidly over England. The enemies of ancient superstition at home, by frequent communication with the Lutheran and Swiss reformers, acquired not only more enlivening confidence, but a surer and more definite system of belief. Books printed in Germany or in the Flemish provinces, where at first the administration connived at the new religion, were imported and read with that eagerness and delight which always compensate the risk of forbidden studies.† Wolsey, who had no turn towards persecution, contented himself with ordering heretical writings to be burned, and strictly prohibiting their importation. But to withstand the course of popular opinion, is always like a combat against the elements in commotion; nor is it likely that a government far more steady and unanimous than that of Henry VIII. could have effectually prevented the diffusion of protestantism. And the severe punishment of many zealous reformers, in the subsequent part of this reign, tended beyond a doubt, to excite a favourable prejudice for men whose manifest sincerity, piety, and constancy in suffering, were as good pledges for the truth of their doctrine, as the people had been always taught to esteem the same qualities in the legends of the early martyrs. Nor

Progress of
the reformed
doctrine in
England.

* The Institution was printed in 1537; the Erudition, according to Burnet, in 1540; but in Collier and Strype's opinion, not till 1543. They are both artfully drawn, probably in the main by Cranmer, but not without the interference of some less favourable to the new doctrine, and under the eye of the king himself. Collier, 137. 189. The doctrinal variations in these two summaries of royal faith are by no means inconsiderable.

† Strype, i. 165. A statute enacted

in 1534 (25 H. 8. c. 15.), after reciting that "at this day there be within this realm a great number cunning and expert in printing, and as able to execute the said craft as any stranger," proceeds to forbid the sale of bound books imported from the continent. A terrible blow was thus levelled both against general literature and the reformed religion; but, like many other bad laws, produced very little effect.

were Henry's persecutions conducted upon the only rational principle, that of the inquisition, which judges from the analogy of medicine, that a deadly poison cannot be extirpated but by the speedy and radical excision of the diseased part ; but falling only upon a few of a more eager and officious zeal, left a well-grounded opinion among the rest, that by some degree of temporising prudence they might escape molestation till a season of liberty should arrive.

One of the books originally included in the list of proscription among the writings of Luther and the foreign Protestants, was a translation of the New Testament into English by Tyndale, printed at Antwerp in 1526. A complete version of the Bible, partly by Tyndale, and partly by Coverdale, appeared, perhaps at Hamburgh, in 1535 ; a second edition, under the name of Matthews, following in 1537 ; and as Cranmer's influence over the king became greater, and his aversion to the Roman church more inveterate, so material a change was made in the ecclesiastical policy of this reign as to direct the Scriptures in this translation (but with corrections in many places) to be set up in parish churches, and permit them to be publicly sold.* This

* The accounts of early editions of the English Bible in Burnet, Collier, Strype, and an essay by Johnson in Watson's Theological Tracts, vol. iii., are erroneous or defective. A letter of Strype in Harleian MSS. 3782., which has been printed, is better ; but the most complete enumeration is in Cotton's list of editions, 1821. The dispersion of the Scriptures, with full liberty to read them, was greatly due to Cromwell, as is shown by Burnet. Even after his fall, a proclamation, dated May 6. 1542, referring to the king's former injunctions for the same purpose, directs a large Bible to be set up in every parish church. But, next year the duke of Norfolk and Gardiner prevailing over Cranmer, Henry retraced a part of his steps ; and the act 34 H. 8. c. 1. forbids the sale of Tyndale's "false translation," and the reading of the Bible in churches, or by yeomen, women, and other incapable persons. The popish bishops, well aware how much turned on this general liberty of reading the Scriptures, did all in their

power to discredit the new version. Gardiner made a list of about one hundred words which he thought unfit to be translated, and which, in case of an authorised version (whereof the clergy in convocation had reluctantly admitted the expediency), ought, in his opinion, to be left in Latin. Tyndale's translation may, I apprehend, be reckoned the basis of that now in use, but has undergone several corrections before the last. It has been a matter of dispute whether it were made from the original languages or from the Vulgate. Hebrew and even Greek were very little known in England at that time.

The edition of 1537, called Matthews's Bible, printed by Grafton, contains marginal notes reflecting on the corruptions of popery. These it was thought expedient to suppress in that of 1539, commonly called Cranmer's Bible, as having been revised by him, and in later editions. In all these editions of Henry's reign, though the version is properly Tyndale's, there are, as I am informed, considerable variations and amendments. Thus, in

measure had a strong tendency to promote the Reformation, especially among those who were capable of reading; not surely that the controverted doctrines of the Romish church are so palpably erroneous as to bear no sort of examination, but because such a promulgation of the Scriptures at that particular time seemed both tacitly to admit the chief point of contest, that they were the exclusive standard of Christian faith, and to lead the people to interpret them with that sort of prejudice which a jury would feel in considering evidence that one party in a cause had attempted to suppress; a danger which those who wish to restrain the course of free discussion without very sure means of success will in all ages do well to reflect upon.

The great change of religious opinions was not so much effected by reasoning on points of theological controversy, upon which some are apt to fancy it turned, as on a persuasion that fraud and corruption pervaded the established church. The pretended miracles, which had so long held the understanding in captivity, were wisely exposed to ridicule and indignation by the government. Plays and interludes were represented in churches, of which the usual subject was the vices and corruptions of the monks and clergy. These were disapproved of by the graver sort, but no doubt served a useful purpose.* The press sent forth its light hosts of libels; and though the catholic party did not fail to try the same means of influence, they had both less liberty to write as they pleased, and fewer readers than their antagonists.†

Cranmer's Bible, the word *ecclesia* is always rendered congregation, instead of church; either as the primary meaning, or, more probably, to point out that the laity had a share in the government of a Christian society.

* Burnet, 318. Strype's *Life of Parker*, 18. Collier (187.) is of course much scandalised. In his view of things, it had been better to give up the Reformation entirely, than to suffer one reflection on the clergy. These dramatic satires on that order had also an effect in promoting the Reformation in Holland. Brandt's *History of Reformation in Low Countries*, vol. i. p. 128.

† "In place of the ancient reverence which was entertained for the pope and the Romish chair, there was not a masquerade, or other pastime, in which some one was not to be seen going about in the dress of a pope or cardinal. Even the women jested incessantly at the pope and his servants, and thought they could do no greater disgrace to any man than by calling him priest of the pope, or papist." Extract from an anonymous French MS. by a person resident at the English court, about 1540, in Raumer's *History of 16th and 17th centuries illustrated*, vol. ii. p. 66., 1845.

In this feverish state of the public mind on the most interesting subject, ensued the death of Henry VIII., who had excited and kept it up. More than once, during the latter part of his capricious reign, the popish party, headed by Norfolk and Gardiner, had gained an ascendant; and several persons had been burned for denying transubstantiation. But at the moment of his decease, Norfolk was a prisoner attainted of treason, Gardiner in disgrace, and the favour of Cranmer at its height. It is said that Henry had meditated some further changes in religion. Of his executors, the greater part, as their subsequent conduct evinces, were nearly indifferent to the two systems, except so far as more might be gained by innovation. But Somerset, the new protector, appears to have inclined sincerely towards the Reformation, though not wholly uninfluenced by similar motives. His authority readily overcame all opposition in the council; and it was soon perceived that Edward, whose singular precocity gave his opinions in childhood an importance not wholly ridiculous, had imbibed a steady and ardent attachment to the new religion, which probably, had he lived longer, would have led him both to diverge farther from what he thought an idolatrous superstition, and to have treated its adherents with severity.* Under his reign accordingly a series of alterations in the tenets and homilies of the English church were made, the principal of which I shall point out, without following a chronological order, or advert-
 ing to such matters of controversy as did not produce a sensible effect on the people.

* I can hardly avoid doubting, whether Edward VI.'s Journal, published in the second volume of Burnet, be altogether his own; because it is strange for a boy of ten years old to write with the precise brevity of a man of business. Yet it is hard to say how far an intercourse with able men on serious subjects may force a royal plant of such natural vigour; and his letters to his young friend Barnaby Fitzpatrick, published by H. Walpole in 1774, are quite unlike the style of a boy. One could wish this journal not to be genuine; for the manner in which he speaks of both his uncles' executions does

not show a good heart. Unfortunately, however, there is a letter extant, of the king to Fitzpatrick, which must be genuine, and is in the same strain. He treated his sister Mary harshly about her religion, and had, I suspect, too much Tudor blood in his veins. It is certain that he was a very extraordinary boy, or, as Cardan calls him, *monstrificus puellus*; and the reluctance with which he yielded, on the solicitations of Cranmer, to sign the warrant for burning Joan Boucher, is as much to his honour as it is against the archbishop's. [But see p. 95.]

I. It was obviously among the first steps required in order to introduce a mode of religion at once more reasonable and more earnest than the former, that the public services of the church should be expressed in the mother tongue of the congregation. The Latin ritual had been unchanged ever since the age when it was vernacular; partly through a sluggish dislike of innovation, but partly also because the mysteriousness of an unknown dialect served to impose on the vulgar, and to throw an air of wisdom around the priesthood. Yet what was thus concealed would have borne the light. Our own liturgy, so justly celebrated for its piety, elevation, and simplicity, is in great measure a translation from the catholic services, or more properly, from those which had been handed down from a more primitive age; those portions of course being omitted which had relation to different principles of worship. In the second year of Edward's reign, the reformation of the public service was accomplished, and an English liturgy compiled, not essentially different from that in present use.*

II. No part of exterior religion was more prominent, or more offensive to those who had imbibed a protestant spirit, than the worship, or at least veneration, of images, which in remote and barbarous ages had given excessive scandal both in the Greek and Latin churches, though long fully established in the practice of each. The populace, in towns where the reformed tenets prevailed, began to pull them down in the very first days of Edward's reign; and after a little pretence at distinguishing those which had not been abused, orders were given that all images should be taken away from churches. It was perhaps necessary thus to hinder the zealous Protestants from abating them as nuisances, which had already caused several disturbances.† But this order was executed with a rigour which lovers of art and antiquity have long deplored. Our churches bear witness to

* The litany had been translated into English in 1542. Burnet, i. 331. Collier, 111.; where it may be read, not much differing from that now in use. It was always held out by our church, when the object was conciliation, that the liturgy was essentially the same with the mass-

book. Strype's Annals, ii. 39. Hollingshed, iii. 921. (4to. edition.)

† "It was observed," says Strype, ii. 79., "that where images were left, there was most contest, and most peace where they were all sheer pulled down, as they were in some places."

Sketch of the chief points of difference between the two religions.

the devastation committed in the wantonness of triumphant reform by defacing statues and crosses on the exterior of buildings intended for worship, or windows and monuments within. Missals and other books dedicated to superstition perished in the same manner. Altars were taken down, and a great variety of ceremonies abrogated; such as the use of incense, tapers, and holy water; and though more of these were retained than eager innovators could approve, the whole surface of religious ordinances, all that is palpable to common minds, underwent a surprising transformation.

III. But this change in ceremonial observances and outward show was trifling when compared to that in the objects of worship, and in the purposes for which they were addressed. Those who have visited some catholic temples, and attended to the current language of devotion, must have perceived, what the writings of apologists or decrees of councils will never enable them to discover, that the saints, but more especially the Virgin, are almost exclusively the *popular* deities of that religion. All this polytheism was swept away by the reformers; and in this may be deemed to consist the most specific difference of the two systems. Nor did they spare the belief in purgatory, that unknown land which the hierarchy swayed with so absolute a rule, and to which the earth had been rendered a tributary province. Yet in the first liturgy put forth under Edward, the prayers for departed souls were retained; whether out of respect to the prejudices of the people, or to the immemorial antiquity of the practice. But such prayers, if not necessarily implying the doctrine of purgatory (which yet in the main they appear to do), are at least so closely connected with it, that the belief could never be eradicated while they remained. Hence, in the revision of the liturgy, four years afterwards, they were laid aside*; and several other changes made, to eradicate the vestiges of the ancient superstition.

* Collier, p. 257., enters into a vindication of the practice, which appears to have prevailed in the church from the second century. It was defended in general by the nonjurors, and the whole school of Andrews. But, independently of its wanting the authority of Scripture,

which the reformers set up exclusively of all tradition, it contradicted the doctrine of justification by mere faith, in the strict sense which they affixed to that tenet. See preamble of the act for dissolution of chantries, 1 Edw. 6. c. 14.

IV. Auricular confession, as commonly called, or the private and special confession of sins to a priest for the purpose of obtaining his absolution, an imperative duty in the church of Rome, and preserved as such in the statute of the six articles, and in the religious codes published by Henry VIII., was left to each man's discretion in the new order; a judicious temperament, which the reformers would have done well to adopt in some other points. And thus, while it has never been condemned in our church, it went without dispute into complete neglect. Those who desire to augment the influence of the clergy regret, of course, its discontinuance; and some may conceive that it would serve either for wholesome restraint, or useful admonition. It is very difficult, or perhaps beyond the reach of any human being, to determine absolutely how far these benefits, which cannot be reasonably denied to result in some instances from the rite of confession, outweigh the mischiefs connected with it. There seems to be something in the Roman catholic discipline (and I know nothing else so likely) which keeps the balance, as it were, of moral influence pretty even between the two religions, and compensates for the ignorance and superstition which the elder preserves: for I am not sure that the protestant system in the present age has any very sensible advantage in this respect; or that in countries where the comparison can fairly be made, as in Germany or Switzerland, there is more honesty in one sex, or more chastity in the other, when they belong to the reformed churches. Yet, on the other hand, the practice of confession is at the best of very doubtful utility, when considered in its full extent and general bearings. The ordinary confessor, listening mechanically to hundreds of penitents, can hardly preserve much authority over most of them. But in proportion as his attention is directed to the secrets of conscience, his influence may become dangerous; men grow accustomed to the control of one perhaps more feeble and guilty than themselves, but over whose frailties they exercise no reciprocal command; and, if the confessors of kings have been sometimes terrible to nations, their ascendancy is probably not less mischievous, in proportion to its extent, within the sphere of domestic life. In a political light, and with the

object of lessening the weight of the ecclesiastical order in temporal affairs, there cannot be the least hesitation as to the expediency of discontinuing the usage.*

V. It has very rarely been the custom of theologians to measure the importance of orthodox opinions by their effect on the lives and hearts of those who adopt them; nor was this predilection for speculative above practical doctrines ever more evident than in the leading controversy of the sixteenth century, that respecting the Lord's supper. No errors on this point could have had any influence on men's moral conduct, nor indeed much on the general nature of their faith; yet it was selected as the test of heresy; and most, if not all, of those who suffered death upon that charge, whether in England or on the continent, were convicted of denying the corporal presence in the sense of the Roman church. It had been well if the reformers had learned, by abhorring her persecution, not to practise it in a somewhat less degree upon each other, or by exposing the absurdities of transubstantiation, not to contend for equal nonsense of their own. Four principal theories, to say nothing of subordinate varieties, divided Europe at the accession of Edward VI. about the sacrament of the Eucharist. The church of Rome would not depart a single letter from transubstantiation, or the change, at the moment of consecration, of the substances of bread and wine into those of Christ's body and blood; the accidents, in school language, or sensible qualities of the former remaining, or becoming inherent in the new substance. This doctrine does not, as vulgarly supposed, contradict the evidence of our senses; since our senses can report nothing as to the unknown being, which the schoolmen denominated substance, and which alone was the subject of this conversion. But metaphysicians of later ages might inquire whether material substances, abstractedly considered, exist at all, or, if they exist, whether they can have any specific distinction except their sensible qualities. This, perhaps, did not suggest itself in the sixteenth century; but it was strongly

* Collier, p. 248., descants, in the true spirit of a high churchman, on the importance of confession. This also, as is

well known, is one of the points on which his party disagreed with the generality of Protestants.

objected that the simultaneous existence of a body in many places, which the Romish doctrine implied, was inconceivable, and even contradictory. Luther, partly, as it seems, out of his determination to multiply differences with the church, invented a theory somewhat different, usually called consubstantiation, which was adopted in the confession of Augsburg, and to which, at least down to the middle of the eighteenth century, the divines of that communion were much attached. They imagined the two substances to be united in the sacramental elements, so that they might be termed bread and wine, or the body and blood, with equal propriety.* But it must be obvious that there is little more than a metaphysical distinction between this doctrine and that of Rome; though, when it suited the Lutherans to magnify, rather than dissemble, their deviations from the mother church, it was raised into an important difference. A simpler and more rational explication occurred to Zuingle and Œcolampadius, from whom the Helvetian Protestants imbibed their faith. Rejecting every notion of a real presence, and divesting the institution of all its mystery, they saw only figurative symbols in the elements which Christ had appointed as a commemoration of his death. But this novel opinion excited as much indignation in Luther as in the Romanists. It was, indeed, a rock on which the Reformation was nearly shipwrecked; since the violent contests which it occasioned, and the narrow intolerance which one side at least displayed throughout the controversy, not only weakened on several occasions the temporal power of the protestant churches, but disgusted many of those who might have inclined towards espousing their sentiments. Besides these three hypotheses, a fourth was promulgated by Martin Bucer of Strasburgh, a man of much acuteness, but prone to metaphysical subtilty, and not, it is said, of a very ingenuous character.† Bucer, as I apprehend,

* *Nostra sententia est, says Luther, apud Burnet, 111. Appendix, 194., corpus ita cum pane, seu in pane esse, ut revera cum pane manducetur, et quemcunque motum vel actionem panis habet, eundem et corpus Christi.*

† "Bucer thought, that for avoiding contention, and for maintaining peace and quietness in the church, somewhat more

ambiguous words should be used, that might have a respect to both persuasions concerning the presence. But Martyr was of another judgment, and affected to speak of the sacrament with all plainness and perspicuity." *Strype, ii. 121.* The truth is, that there were but two opinions at bottom as to this main point of the controversy; nor in the nature of things

though his expressions are unusually confused, did not acknowledge a local presence of Christ's body and blood in the elements after consecration,—so far concurring with the Helvetians ; while he contended that they were really, and without figure, received by the worthy communicant through faith, so as to preserve the belief of a mysterious union, and of what was sometimes called a real presence. Bucer himself came to England early in the reign of Edward, and had a considerable share in advising the measures of reformation. But Peter Martyr, a disciple of the Swiss school, had also no small influence. In the forty-two articles set forth by authority, the real or corporeal presence, using these words as synonymous, is explicitly denied. This clause was omitted on the revision of the articles under Elizabeth.*

VI. These various innovations were exceedingly inimical to the influence and interests of the priesthood. But that order obtained a sort of compensation in being released from its obligation to celibacy. This obligation, though unwarranted by Scripture, rested on a most ancient and universal rule of discipline ; for though the Greek and Eastern churches have always permitted the ordination of married persons, yet they do not allow those already ordained to take wives. No very good reason, however, could be given for this distinction ; and the constrained celibacy of the Latin clergy had given rise to mischiefs, of which their general practice of retaining concubines might be reckoned among the smallest.† The German Protestants soon rejected this burthen, and encouraged regular as well as secular priests to marry. Cranmer had himself taken a wife in Germany, whom Henry's law of the six articles, one of which made the marriage of priests felony, compelled him to send away. In the reign of Edward this was justly reckoned an indispensable part of the new Reformation. But the bill for that purpose passed the

was it possible that there should be more ; for what can be predicated concerning a body, in its relation to a given space, but presence and absence ?

* Burnet, ii. 105. App. 216. Strype, ii. 121. 208. Collier, &c. The Calvinists certainly did not own a local presence in the elements.

† It appears to have been common for

the clergy, by licence from their bishops, to retain concubines, who were, Collier says, for the most part their wives, p. 262. But I do not clearly understand in what the distinction could have consisted ; for it seems unlikely that marriages of priests were ever solemnised at so late a period ; or if they were, they were invalid.

lords with some little difficulty, nine bishops and four peers dissenting; and its preamble cast such an imputation on the practice it allowed, treating the marriage of priests as ignominious and a tolerated evil, that another act was thought necessary a few years afterwards, when the Reformation was better established, to vindicate this right of the protestant church.* A great number of the clergy availed themselves of their liberty; which may probably have had as extensive an effect in conciliating the ecclesiastical profession, as the suppression of monasteries had in rendering the gentry favourable to the new order of religion.

But great as was the number of those whom conviction or self-interest enlisted under the protestant banner, it appears plain that the Reformation moved on with too precipitate a step for the majority. The new doctrines prevailed in London, in many large towns, and in the eastern counties. But in the north and west of England, the body of the people were strictly Catholics. The clergy, though not very scrupulous about conforming to the innovations, were generally averse to most of them.† And in spite of the church lands, I imagine that most of the nobility, if not the gentry, inclined to the same persuasion; not a few peers having sometimes dissented from the bills passed on the subject of religion in this reign, while no sort of disagreement appears in the upper house during that of Mary. In the western insurrection of 1549, which partly originated in the alleged grievance of inclosures, many of the demands made by the rebels go to the entire re-establishment of popery. Those of the Norfolk insurgents in the same year, whose political complaints were the same, do not, as far as I perceive, show any such tendency. But an historian, whose bias was certainly not unfavourable to protestantism, confesses that all endeavours were too weak to overcome the aversion of the people towards reformation, and even intimates that German troops were sent for from Calais, on account of the bigotry with which the bulk of the nation adhered to the old super-

* Stat. 2 & 3 Edw. 6. c. 21. 5 & 6 Edw. 6. c. 12. Burnet, 89.

† 2 Strype, 53. Latimer pressed the necessity of expelling these temporising

conformists, — “ Out with them all! I require it in God’s behalf: make them *quondams*, all the pack of them.” Id. 204. 2 Burnet, 143.

stition.* This is somewhat an humiliating admission, that the protestant faith was imposed upon our ancestors by a foreign army. And as the reformers, though still the fewer, were undeniably a great and increasing party, it may be natural to inquire, whether a regard to policy as well as equitable considerations should not have repressed still more, as it did in some measure, the zeal of Cranmer and Somerset? It might be asked, whether, in the acknowledged co-existence of two religions, some preference were not fairly claimed for the creed, which all had once held, and which the greater part yet retained; whether it were becoming that the councillors of an infant king should use such violence in breaking up the ecclesiastical constitution; whether it were to be expected that a free-spirited people should see their consciences thus transferred by proclamation, and all that they had learned to venerate not only torn away from them, but exposed to what they must reckon blasphemous contumely and profanation? The demolition of shrines and images, far unlike the speculative disputes of theologians, was an overt insult on every catholic heart. Still more were they exasperated at the ribaldry which vulgar Protestants uttered against their most sacred mystery. It was found necessary, in the very first act of the first protestant parliament, to denounce penalties against such as spoke irreverently of the sacrament, an indecency not unusual with those who held the Zuinglian opinion in that age of coarse pleasantries and unmixed invective.† Nor could the people repose much confidence in the judgment and sincerity of their governors, whom they had seen submitting without outward repugnance to Henry's various schemes of religion, and whom they saw every day enriching themselves with the plunder of the

* Burnet, iii. 190. 196. "The use of the old religion," says Paget, in remonstrating with Somerset on his rough treatment of some of the gentry, and partiality to the commons, "is forbidden by a law, and the use of the new is not yet printed in the stomachs of eleven out of twelve parts of the realm, whatever countenance men make outwardly to please them in whom they see the power resteth." Strype, ii. Appendix, H. H. This seems rather to refer to the upper

classes than to the whole people. But at any rate it was an exaggeration of the fact, the Protestants being certainly in a much greater proportion. Paget was the adviser of the scheme of sending for German troops in 1549, which, however, was in order to quell a seditious spirit in the nation, not by any means wholly founded upon religious grounds. Strype, xi. 169.

† 2 Edw. 6. c. 1. Strype, xi. 81.

church they affected to reform. There was a sort of endowed colleges or fraternities, called chantries, consisting of secular priests, whose duty was to say daily masses for the founders. These were abolished and given to the king by acts of parliament in the last year of Henry, and the first of Edward. It was intimated in the preamble of the latter statute that their revenues should be converted to the erection of schools, the augmentation of the universities, and the sustenance of the indigent.* But this was entirely neglected, and the estates fell into the hands of the courtiers. Nor did they content themselves with this escheated wealth of the church. Almost every bishopric was spoiled by their ravenous power in this reign, either through mere alienations, or long leases, or unequal exchanges. Exeter and Llandaff, from being among the richest sees, fell into the class of the poorest. Lichfield lost the chief part of its lands to raise an estate for lord Paget. London, Winchester, and even Canterbury, suffered considerably. The duke of Somerset was much beloved; yet he had given no unjust offence by pulling down some churches in order to erect Somerset House with the materials. He had even projected the demolition of Westminster Abbey; but the chapter averted this outrageous piece of rapacity, sufficient of itself to characterise that age, by the usual method, a grant of some of their estates.†

* 37 H. 8. c. 2. 1 Edw. 6. c. 14. Strype, ii. 63. Burnet, &c. Cranmer, as well as the catholic bishops, protested against this act, well knowing how little regard would be paid to its intention. In the latter part of the young king's reign, as he became more capable of exerting his own power, he endowed, as is well known, several excellent foundations.

† Strype, Burnet, Collier, *passim*. Harmer's Specimens, 100. Sir Philip Hobby, our minister in Germany, writes to the protector, in 1548, that the foreign Protestants thought our bishops too rich, and advises him to reduce them to a competent living; he particularly recommends his taking away all the prebends in England. Strype, 88. These counsels, and the acts which they prompted, disgust us, from the spirit of

rapacity they breathe. Yet it might be urged with some force, that the enormous wealth of the superior ecclesiastics had been the main cause of those corruptions which it was sought to cast away, and that most of the dignitaries were very averse to the new religion. Even Cranmer had written some years before to Cromwell, deprecating the establishment of any prebends out of the conventual estates, and speaking of the collegiate clergy as an idle, ignorant, and gormandising race, who might, without any harm, be extinguished along with the regulars. Burnet, iii. 141. But the gross selfishness of the great men in Edward's reign justly made him anxious to save what he could for the church, that seemed on the brink of absolute ruin. Collier mentions a characteristic circumstance. So great a quantity of church

Tolerance in religion, it is well known, so unanimously admitted (at least verbally) even by theologians in the present century, was seldom considered as practicable, much less as a matter of right, during the period of the Reformation. The difference in this respect between the Catholics and Protestants was only in degree, and in degree there was much less difference than we are apt to believe. Persecution is the deadly original sin of the reformed churches; that which cools every honest man's zeal for their cause, in proportion as his reading becomes more extensive. The Lutheran princes and cities in Germany constantly refused to tolerate the use of the mass as an idolatrous service*; and this name of idolatry, though adopted in retaliation for that of heresy, answered the same end as the other, of exciting animosity and uncharitableness. The Roman worship was equally proscribed in England. Many persons were sent to prison for hearing mass and similar offences.† The princess Mary supplicated in vain to have the exercise of her own religion at home; and Charles V. several times interceded in her behalf; but though Cranmer and Ridley, as well as the council, would have consented to this indulgence, the young king, whose education had unhappily infused a good deal of bigotry into his mind, could not be prevailed upon to connive at such idolatry.‡ Yet in one memorable instance he had shown a milder spirit, struggling against Cranmer, to save a fanatical woman from the punishment of heresy.§ This is a stain upon Cranmer's memory which

plate had been stolen, that a commission was appointed to inquire into the facts, and compel its restitution. Instead of this, the commissioners found more left than they thought sufficient, and seized the greater part to the king's use.

* They declared, in the famous protestation of Spire, which gave them the name of Protestants, that their preachers having confuted the mass by passages in Scripture, they could not permit their subjects to go thither; since it would afford a bad example, to suffer two sorts of service, directly opposite to each other, in their churches. Schmidt, *Hist. des Allemands*, vi. 394. vii. 24.

† Stat. 2 & 3 Edw. 6. c. 1. Strype's Cranmer, p. 233.

‡ Burnet, 192. Somerset had always allowed her to exercise her religion, though censured for this by Warwick, who died himself a papist, but had pretended to fall in with the young king's prejudices. Her ill treatment was subsequent to the protector's overthrow. It is to be observed, that, in her father's life, she had acknowledged his supremacy, and the justice of her mother's divorce. 1 Strype, 285. 2 Burnet, 241. Lingard, vi. 326. It was of course by intimidation; but that excuse might be made for others. Cranmer is said to have persuaded Henry not to put her to death, which we must in charity hope she did not know.

§ It has been pointed out to me by a

nothing but his own death could have lightened. In men hardly escaped from a similar peril, in men who had nothing to plead but the right of private judgment, in men who had defied the prescriptive authority of past ages and of established power, the crime of persecution assumes a far deeper hue, and is capable of far less extenuation, than in a Roman inquisitor. Thus the death of Servetus has weighed down the name and memory of Calvin. And though Cranmer was incapable of the rancorous malignity of the Genevan lawgiver, yet I regret to say that there is a peculiar circumstance of aggravation in his pursuing to death this woman, Joan Boucher, and a Dutchman that had been convicted of Arianism. It is said that he had been accessory in the preceding reign to the condemnation of Lambert, and perhaps some others, for opinions concerning the Lord's supper which he had himself afterwards embraced.* Such an evidence of the fallibility of human judgment, such an example that persecutions for heresy, how conscientiously soever managed, are liable to end in shedding the blood of those who maintain truth, should have taught him, above all men, a scrupulous repugnance to carry into effect those sanguinary laws. Compared with these executions for heresy, the imprisonment and deprivation of Gardiner and Bonner appear but measures of ordinary severity towards political adversaries under the pretext of religion; yet are they wholly unjustifiable, particularly in the former instance; and if the subsequent retaliation of those bad men was beyond all proportion excessive, we should remember that such is the natural consequence of tyrannical aggressions.†

correspondent, that Mr. Bruce, in his edition of Roger Hutchinson's works (Parker Society, 1842, preface, p. 8.), has given strong reasons for questioning this remonstrance of Edward with Cranmer, which rests originally on no authority but that of Fox. In some of its circumstances, the story told by Fox is certainly disproved; but it is not impossible that the young king may have expressed his reluctance to have the sentence carried into execution, though his signature of the warrant was not required. This, however, is mere conjecture; and perhaps it may be better that the whole anecdote

should vanish from history. This, of course, mitigates the censure on Cranmer in the text to an indefinite degree. 1845.

* When Joan Boucher was condemned, she said to her judges, "It was not long ago since you burned Anne Askew for a piece of bread, and yet came yourselves soon after to believe and profess the same doctrine for which you burned her; and now you will needs burn me for a piece of flesh, and in the end you will come to believe this also, when you have read the Scriptures and understand them." Strype, ii. 214.

† Gardiner had some virtues, and en-

The person most conspicuous, though Ridley was perhaps the most learned divine, in moulding the faith and discipline of the English church, which has not ^{Cranmer.} been very materially altered since his time, was archbishop Cranmer.* Few men, about whose conduct there is so little room for controversy upon facts, have been represented in more opposite lights. We know the favouring colours of protestant writers; but turn to the bitter invective of Bossuet;

certained sounder notions of the civil constitution of England than his adversaries. In a letter to sir John Godsolve, giving his reasons for refusing compliance with the injunctions issued by the council to the ecclesiastical visiters, (which, Burnet says, does him more honour than any thing else in his life,) he dwells on the king's wanting power to command any thing contrary to common law, or to a statute, and brings authorities for this. Burnet, ii. Append. 112. See also Lingard, vi. 387. for another instance. Nor was this regard to the constitution displayed only when out of the sunshine. For in the next reign he was against despotic counsels, of which an instance has been given in the last chapter. His conduct, indeed, with respect to the Spanish connection, is equivocal. He was much against the marriage at first, and took credit to himself for the securities exacted in the treaty with Philip, and established by statute. Burnet, ii. 267. But afterwards, if we may trust Noailles, he fell in with the Spanish party in the council, and even suggested to parliament that the queen should have the same power as her father to dispose of the succession by will. Ambassades de Noailles, iii. 153, &c. &c. Yet, according to Dr. Lingard, on the imperial ambassador's authority, he saved Elizabeth's life against all the council. The article GARDINER, in the Biographia Britannica, contains an elaborate and partial apology, at great length; and the historian just quoted has of course said all he could in favour of one who laboured so strenuously for the extirpation of the northern heresy. But he was certainly not an honest man, and had been active in Henry's reign against his real opinions.

Even if the ill treatment of Gardiner and Bonner by Edward's council could

be excused (and the latter by his rudeness might deserve some punishment), what can be said for the imprisonment of the bishops Heath and Day, worthy and moderate men, who had gone a great way with the reformation, but objected to the removal of altars, an innovation by no means necessary, and which should have been deferred till the people had grown ripe for further change? Mr. Southey says, "Gardiner and Bonner were deprived of their sees, and imprisoned: but *no rigour was used towards them.*" Book of the Church, ii. 111. Liberty and property being trifles!

* The doctrines of the English church were set forth in forty-two articles, drawn up, as is generally believed, by Cranmer and Ridley, with the advice of Bucer and Martyr, and perhaps of Cox. The three last of these, condemning some novel opinions, were not renewed under Elizabeth, and a few other variations were made; but upon the whole there is little difference, and none perhaps in those tenets which have been most the object of discussion. See the original Articles in Burnet, ii. App. N. 55. They were never confirmed by a convocation or a parliament, but imposed by the king's supremacy on all the clergy, and on the universities. His death, however, ensued before they could be actually subscribed. [The late editor of Cranmer's works thinks him mainly responsible for the forty-two articles: he probably took the advice of Ridley. A considerable portion of them, including those of chief importance, is taken, almost literally, either from the Augsburg Confession, or a set of articles agreed upon by some German and English divines at a conference in 1538. Jenkins's Cranmer, preface xxiii. 3. c. vii, also vol. iv. 273., where these articles are printed at length, 1845.]

and the patriarch of our reformed church stands forth as the most abandoned of time-serving hypocrites. No political factions affect the impartiality of men's judgment so grossly, or so permanently, as religious heats. Doubtless, if we should reverse the picture, and imagine the end and scope of Cranmer's labour to have been the establishment of the Roman Catholic religion in a protestant country, the estimate formed of his behaviour would be somewhat less favourable than it is at present. If, casting away all prejudice on either side, we weigh the character of this prelate in an equal balance, he will appear far indeed removed from the turpitude imputed to him by his enemies, yet not entitled to any extraordinary veneration. Though it is most eminently true of Cranmer that his faults were always the effect of circumstances, and not of intention; yet this palliating consideration is rather weakened when we recollect that he consented to place himself in a station where those circumstances occurred. At the time of Cranmer's elevation to the see of Canterbury, Henry, though on the point of separating for ever from Rome, had not absolutely determined upon so strong a measure; and his policy required that the new archbishop should solicit the usual bulls from the pope, and take the oath of canonical obedience to him. Cranmer, already a rebel from that dominion in his heart, had recourse to the disingenuous shift of a protest, before his consecration, that "he did not intend to restrain himself thereby from any thing to which he was bound by his duty to God or the king, or from taking part in any reformation of the English church which he might judge to be required."* This first deviation from integrity, as is almost always the case, drew after it many

* Strype's Cranmer, Appendix, p. 9. — I am sorry to find a respectable writer inclining to vindicate Cranmer in this protestation, which Burnet admits to agree better with the maxims of the casuists than with the prelate's sincerity: Todd's Introduction to Cranmer's Defence of the True Doctrine of the Sacrament (1825), p. 40. It is of no importance to inquire, whether the protest were made publicly or privately. Nothing can possibly turn upon this. It was, on either supposition, unknown to the pro-

misc, the pope at Rome. The question is, whether, having obtained the bulls from Rome on an express stipulation that he should take a certain oath, he had a right to offer a limitation, not explanatory, but utterly inconsistent with it? We are sure that Cranmer's views and intentions, which he very soon carried into effect, were irreconcilable with any sort of obedience to the pope; and if, under all the circumstances, his conduct was justifiable, there would be an end of all promissory obligations whatever.

others; and began that discreditable course of temporising, and undue compliance, to which he was reduced for the rest of Henry's reign. Cranmer's abilities were not perhaps of a high order, or at least they were unsuited to public affairs; but his principal defect was in that firmness by which men of more ordinary talents may insure respect. Nothing could be weaker than his conduct in the usurpation of lady Jane, which he might better have boldly sustained, like Ridley, as a step necessary for the conservation of protestantism, than given into against his conscience, overpowered by the importunities of a misguided boy. Had the malignity of his enemies been directed rather against his reputation than his life, had he been permitted to survive his shame, as a prisoner in the Tower, it must have seemed a more arduous task to defend the memory of Cranmer; but his fame has brightened in the fire that consumed him.*

Those who, with the habits of thinking that prevail in our times, cast back their eyes on the reign of Edward VI., will generally be disposed to censure the precipitancy, and still more the exclusive spirit, of our principal reformers. But relatively to the course that things had taken in Germany, and to the feverish zeal of that age, the moderation of Cranmer and Ridley, the only ecclesiastics who took a prominent share in these measures, was very conspicuous; and tended above every thing to place the Anglican church in that middle position which it has always preserved, between the Roman hierarchy and that of other protestant denominations. It is manifest, from the history of the Reformation in Germany, that its predisposing cause was the covetous and arrogant character of the superior ecclesiastics, founded upon vast temporal authority; a yoke long borne with impatience, and which the unanimous adherence of the prelates to Rome in the period of separation gave the Lutheran princes a good excuse for entirely throw-

His moderation in introducing changes not acceptable to the zealots.

* The character of Cranmer is summed up in no unfair manner by Mr. C. Butler, *Memoirs of English Catholics*, vol. i. p. 139. ; except that his obtaining from Anne Boleyn an acknowledgment of her supposed pre-contract of marriage, having proceeded from motives of hu-

manity, ought not to incur much censure, though the sentence of nullity was a mere mockery of law. — Poor Cranmer was compelled to subscribe not less than six recantations. Strype (iii. 232.) had the integrity to publish all these, which were not fully known before.

ing off. Some of the more temperate reformers, as Melancthon, would have admitted a limited jurisdiction of the episcopacy: but in general the destruction of that order, such as it then existed, may be deemed as fundamental a principle of the new discipline, as any theological point could be of the new doctrine. But, besides that the subjection of ecclesiastical to civil tribunals, and possibly other causes, had rendered the superior clergy in England less obnoxious than in Germany, there was this important difference between the two countries, that several bishops from zealous conviction, many more from pliability to self-interest, had gone along with the new-modelling of the English church by Henry and Edward; so that it was perfectly easy to keep up that form of government, in the regular succession which had usually been deemed essential; though the foreign reformers had neither the wish, nor possibly the means, to preserve it. Cranmer himself, indeed, during the reign of Henry, had bent, as usual, to the king's despotic humour; and favoured a novel theory of ecclesiastical authority, which resolved all its spiritual as well as temporal powers into the royal supremacy. Accordingly, at the accession of Edward, he himself, and several other bishops, took out commissions to hold their sees during pleasure.* But when the necessity of compliance had passed by, they showed a disposition not only to oppose the continual spoliation of church property, but to maintain the jurisdiction which the canon law had conferred upon them.† And though, as this papal code did not appear

* Burnet, ii. 6.

† There are two curious entries in the Lords' Journ. 14th and 18th of Nov. 1549, which point out the origin of the new code of ecclesiastical law mentioned in the next note: "Hodie questi sunt episcopi, contemni se a plebe, audere autem nihil pro potestate sua administrare, eo quod per publicas quasdam denuntiationes quas proclamaiones vocant, sublata esset penitus sua jurisdictio, adeo ut neminem iudicio sistere, nullum scelus punire, neminem ad ædem sacram cogere, neque cætera id genus munia ad eos pertinentia exequi auderent. Hæc querela ab omnibus proceribus non sine mærore audita est; et ut quam citissimè huic malo subveniretur, injunctum est episcopis ut formulam aliquam statuti hæc de re scrip-

tam traderent: quæ si consilio postea prælecta omnibus ordinibus probaretur, pro lege omnibus sententiis sanciri posset.

"18 Nov. Hodie lecta est billa pro jurisdictione episcoporum et aliorum ecclesiasticorum, quæ cum proceribus, eo quod episcopi nimis sibi arrogare viderentur, non placeret, visum est deligere prudentes aliquot viros utriusque ordinis, qui habitâ maturâ tante rei inter se deliberatione, referrent toti consilio quid pro ratione temporis et rei necessitate in hac causa agi expediret." Accordingly, the lords appoint the archbishop of Canterbury, the bishops of Ely, Durham, and Litchfield, lords Dorset, Wharton, and Stafford, with chief justice Montague.

very well adapted to a protestant church, a new scheme of ecclesiastical laws was drawn up, which the king's death rendered abortive, this was rather calculated to strengthen the hands of the spiritual courts than to withdraw any matter from their cognisance.*

* It had been enacted, 3 Edw. 6. c. 11., that thirty-two commissioners, half clergy, half lay, should be appointed to draw up a collection of new canons. But these, according to Strype, ii. 303. (though I do not find it in the act), might be reduced to eight, without preserving the equality of orders; and of those nominated in Nov. 1551, five were ecclesiastics, three laymen. The influence of the former shows itself in the collection, published with the title of *Reformatio Legum Ecclesiasticum*, and intended as a complete code of protestant canon law. This was referred for revival to a new commission; but the king's death ensued, and the business was never again taken up. Burnet, ii. 197. Collier, 326. The Latin style is highly praised; Cheke and Haddon, the most elegant scholars of that age, having been concerned in it. This, however, is of small importance. The canons are founded on a principle current among the clergy, that a rigorous discipline, enforced by church censures and the aid of the civil power, is the best safeguard of a Christian commonwealth against vice. But it is easy to perceive that its severity would never have been endured in this country, and that this was the true reason why it was laid aside: not, according to the improbable refinement with which Warburton has furnished Hurd, because the old canon law was thought more favourable to the prerogative of the crown. Compare Warburton's *Letters to Hurd*, p. 192., with the latter's *Moral and Political Dialogues*, p. 308. 4th edit.

The canons trench in several places on the known province of the common law, by assigning specific penalties and forfeitures to offences, as in the case of adultery; and though it is true that this was all subject to the confirmation of parliament, yet the lawyers would look with their usual jealousy on such provisions in ecclesiastical canons. But the great sin of this protestant legislation is its extension of the name and penalties of heresy, to the wilful denial of any part of

the authorised articles of faith. This is clear from the first and second titles. But it has been doubted whether capital punishments for this offence were intended to be preserved. Burnet, always favourable to the reformers, asserts that they were laid aside. Collier and Lingard, whose bias is the other way, maintain the contrary. There is, it appears to me, some difficulty in determining this. That all persons denying any one of the articles might be turned over to the secular power is evident. Yet it rather seems by one passage in the title, *de judiciis contra hæreses*, c. 10., that infamy and civil disability were the only punishments intended to be kept up, except in case of the denial of the Christian religion. For if a heretic were, as a matter of course, to be burned, it seems needless to provide, as in this chapter, that he should be incapable of being a witness, or of making a will. Dr. Lingard, on the other hand, says, "It regulates the delivery of the obstinate heretic to the civil magistrate, that he may *suffer death* according to law." The words to which he refers are these: *Cum sic penitus insederit error, et tam alte radices egerit, ut nec sententiâ quidem excommunicationis ad veritatem reus infecti possit, tum consumptis omnibus aliis remediis, ad extremum ad civiles magistratus ablegetur puniendus.* Id. tit. c. 4.

It is generally best, where the words are at all ambiguous, to give the reader the power of judging for himself. But I by no means pretend that Dr. Lingard is mistaken. On the contrary, the language of this passage leads to a strong suspicion that the rigour of popish persecution was intended to remain, especially as the writ *de hæretico comburendo* was in force by law, and there is no hint of taking it away. Yet it seems monstrous to conceive that the denial of predestination (which by the way is asserted in this collection, tit. *de hæresibus*, c. 22., with a shade more of Calvinism than in the articles) was to subject any one to be burned alive. And on the other hand,

The policy, or it may be the prejudices, of Cranmer induced him also to retain in the church a few ceremonial usages, which the Helvetic, though not the Lutheran, reformers had swept away; such as the copes and rochets of bishops, and the surplice of officiating priests. It should seem inconceivable that any one could object to these vestments, considered in themselves; far more, if they could answer in the slightest degree the end of conciliating a reluctant people. But this motive unfortunately was often disregarded in that age; and indeed in all ages an abhorrence of concession and compromise is a never-failing characteristic of religious factions. The foreign reformers then in England, two of whom, Bucer and Peter Martyr, enjoyed a deserved reputation, expressed their dissatisfaction at seeing these habits retained, and complained, in general, of the backwardness of the English reformation. Calvin and Bullinger wrote from Switzerland in the same strain.* Nor

there is this difficulty, that Arianism, Pelagianism, popery, anabaptism, are all put on the same footing; so that, if we deny that the papist or free-willer was to be burned, we must deny the same of the anti-trinitarian, which contradicts the principle and practice of that age. Upon the whole, I cannot form a decided opinion as to this matter. Dr. Lingard does not hesitate to say, "Cranmer and his associates perished in the flames which they had prepared to kindle for the destruction of their opponents."

Upon further consideration, I incline to suspect, that the temporal punishment of heresy was intended to be fixed by act of parliament; and probably with various degrees, which will account for the indefinite word "puniendus." [A manuscript of the *Reformatio Legum* in the British Museum, (Harl. 426.) has the following clause after the word *puniendus*: "Vel ut in perpetuum pellatur exilium, vel ad æternas carceris deprimitur tenebras, vel alioqui pro magistratus prudenti consideratione plectendus, ut maxime illius conversioni expedire ridentur." Jenkins's edition of Cranmer, vol. i. preface, cx. This seems to prove that capital penalties were not designed by the original compilers of this ecclesiastical code. 1845.]

The language of Dr. Lingard, as I have since observed, about "suffering death," is taken from Collier, who puts exactly the same construction on the canon.

Before I quit these canons, one mistake of Dr. Lingard's may be corrected. He says that divorces were allowed by them not only for adultery, but cruelty, desertion, and *incompatibility of temper*. But the contrary may be clearly shown, from tit. de matrimonio, c. 11., and tit. de divortii, c. 12. Divorce was allowed for something more than incompatibility of temper; namely, *capitales inimicitia*, meaning, as I conceive, attempts by one party on the other's life. In this respect, their scheme of a very important branch of social law seems far better than our own. Nothing can be more absurd than our modern *privilegia*, our acts of parliament to break the bond between an adulteress and her husband. Nor do I see how we can justify the denial of redress to women in every case of adultery and desertion. It does not follow that the marriage tie ought to be dissolved as easily as it is in the Lutheran states of Germany.

* Strype, *passim*. Burnet, ii. 154.; iii. Append. 200. Collier, 294. 303.

was this sentiment by any means confined to strangers. Hooper, an eminent divine, having been elected bishop of Gloucester, refused to be consecrated in the usual dress. It marks, almost ludicrously, the spirit of those times, that, instead of permitting him to decline the station, the council sent him to prison for some time, until by some mutual concessions the business was adjusted.* These events it would hardly be worth while to notice in such a work as the present, if they had not been the prologue to a long and serious drama.

It is certain that the re-establishment of popery on Mary's accession must have been acceptable to a large part, or perhaps to the majority, of the nation. There is Mary. Persecution under her. reason, however, to believe that the reformed doctrine had made a real progress in the few years of her brother's reign. The counties of Norfolk and Suffolk, which placed Mary on the throne as the lawful heir, were chiefly protestant, and experienced from her the usual gratitude and good faith of a bigot.† Noailles bears witness, in many of his despatches, to the unwillingness which great numbers of the people displayed to endure the restoration of popery, and to the queen's excessive unpopularity, even before her marriage with Philip had been resolved upon.‡ As for the higher classes, they partook far less than their inferiors in the religious zeal of that age. Henry, Edward, Mary, Elizabeth, found almost an equal compliance with their varying schemes of faith. Yet the larger proportion of the nobility and gentry appear to have preferred the catholic religion. Several peers opposed the bills for reformation under Edward; and others, who had gone along with the current, became active counsellors of Mary. Not a few persons of family emigrated in the latter reign; but with the exception of the second earl of Bedford, who suffered a short imprisonment on account of religion, the protestant martyrology contains no confessor of superior rank.§ The same accommodating spirit charac-

* Strype, Burnet. The former is the more accurate.

† Burnet, 237. 246. 3 Strype, 10. 341. No part of England suffered so much in the persecution.

‡ Ambassades de Noailles, v. ii. passim. 3 Strype, 100.

§ Strype, iii. 107. He reckons the emigrants at 800. Life of Cranmer, 314. Of these the most illustrious was the

terised, upon the whole, the clergy; and would have been far more general, if a considerable number had not availed themselves of the permission to marry granted by Edward; which led to their expulsion from their cures on his sister's coming to the throne.* Yet it was not the temper of Mary's parliaments, whatever pains had been taken about their election, to second her bigotry in surrendering the temporal fruits of their recent schism. The bill for restoring first fruits and impropriations in the queen's hands to the church passed not without difficulty; and it was found impossible to obtain a repeal of the act of supremacy without the pope's explicit confirmation of the abbey lands to their new proprietors. Even this confirmation, though made through the legate cardinal Pole, by virtue of a full commission, left not unreasonably an apprehension that, on some better opportunity, the imprescriptible nature of church property might be urged against the possessors.† With these selfish con-

duchess of Suffolk,—not the first cousin of the queen, but, as has been suggested to me, the sister of Charles Brandon, whose first wife was sister to Henry VIII. In the parliament of 1555, a bill sequestering the property of “the duchess of Suffolk and others, contemptuously gone over the seas,” was rejected by the commons on the third reading. Journals, 6th Dec.

It must not be understood that all the aristocracy were supple hypocrites, though they did not expose themselves voluntarily to prosecution. Noailles tells us that the earls of Oxford and Westmoreland, and lord Willoughby, were censured by the council *for religion*; and it was thought that the former would lose his title (more probably his hereditary office of chamberlain), which would be conferred on the earl of Pembroke, v. 319. Michele, the Venetian ambassador, in his *Relazione del Stato d'Inghilterra*, Lansdowne MSS. 840., does not speak favourably of the general affection towards popery. “The English in general,” he says, “would turn Jews or Turks if their sovereign pleased; but the restoration of the abbey lands by the crown keeps alive a constant fear among those who possess them.” Fol. 176. This restitution of church lands in the hands

of the crown cost the queen 60,000*l.* a year of revenue.

* Parke had extravagantly reckoned the number of these at 12,000, which Burnet reduces to 3000, vol. iii. 226. But upon this computation they formed a very considerable body on the protestant side. Burnet's calculation, however, is made by assuming the ejected ministers of the diocese of Norwich to have been in the ratio of the whole; which, from the eminent protestantism of that district, is not probable; and Dr. Lingard, on Wharton's authority, who has taken his ratio from the diocese of Canterbury, thinks they did not amount to more than about 1500.

† Burnet, ii. 298.; iii. 245. But see Phillips's *Life of Pole*, sect. ix., *contra*; and Ridley's answer to this, p. 272. In fact, no scheme of religion would on the whole have been so acceptable to the nation, as that which Henry left established, consisting chiefly of what was called catholic in doctrine, but free from the grosser abuses and from all connection with the see of Rome. Arbitrary and capricious as that king was, he carried the majority along with him, as I believe, in all great points, both as to what he renounced, and what he retained. Michele (*Relazione*, &c.) is of this opinion.

siderations others of a more generous nature conspired to render the old religion more obnoxious than it had been at the queen's accession. Her marriage with Philip, his encroaching disposition, the arbitrary turn of his counsels, the insolence imputed to the Spaniards who accompanied him, the unfortunate loss of Calais through that alliance, while it thoroughly alienated the kingdom from Mary, created a prejudice against the religion which the Spanish court so steadily favoured.* So violent indeed was the hatred conceived by the English nation against Spain during the short period of Philip's marriage with their queen, that it diverted the old channel of public feelings, and almost put an end to that dislike and jealousy of France which had so long existed. For at least a century after this time we rarely find in popular writers any expressions of hostility towards that country; though their national manners, so remote from our own, are not unfrequently the object of ridicule. The prejudices of the populace, as much as the policy of our counsellors, were far more directed against Spain.

But what had the greatest efficacy in disgusting the English with Mary's system of faith, was the cruelty by which it was accompanied. Though the privy council were in fact continually urging the bishops forward in this prosecution†, the latter bore the chief blame, and the abhorrence

Its effect rather favourable to protestantism.

* No one of our historians has been so severe on Mary's reign, except on a religious account, as Carte, on the authority of the letters of Noailles. Dr. Lingard, though with these before him, has softened and suppressed, till this queen appears honest and even amiable. But, admitting that the French ambassador had a temptation to exaggerate the faults of a government wholly devoted to Spain, it is manifest that Mary's reign was inglorious, her capacity narrow, and her temper sanguinary; that, although conscientious in some respects, she was as capable of dissimulation as her sister, and of breach of faith as her husband; that she obstinately and wilfully sacrificed her subjects' affections and interests to a misplaced and discreditable attachment; and that the words with which Carte has concluded the character of this unlamented sovereign, though little

pleasing to men of Dr. Lingard's profession, are perfectly just:—"Having reduced the nation to the brink of ruin, she left it, by her seasonable decease, to be restored by her admirable successor to its ancient prosperity and glory." I fully admit, at the same time, that Dr. Lingard has proved Elizabeth to have been as dangerous a prisoner, as she afterwards found the queen of Scots.

† Strype, ii. 17. Burnet, iii. 263., and Append. 285., where there is a letter from the king and queen to Bonner, as if even he wanted excitement to prosecute heretics. The number who suffered death by fire in this reign is reckoned by Fox at 284, by Speed at 277, and by lord Burghley at 290. Strype, iii. 473. These numbers come so near to each other, that they may be presumed also to approach the truth. But Carte, on the authority of one of Noailles's letters, thinks

entertained for them naturally extended to the doctrine they professed. A sort of instinctive reasoning told the people, what the learned on neither side had been able to discover, that the truth of a religion begins to be very suspicious, when it stands in need of prisons and scaffolds to eke out its evidences. And as the English were constitutionally humane, and not hardened by continually witnessing the infliction of barbarous punishments, there arose a sympathy for men suffering torments with such meekness and patience, which the populace of some other nations were perhaps less apt to display, especially in executions on the score of heresy.* The theologian indeed and the philosopher may concur in deriding the notion that either sincerity or moral rectitude can be the test of truth; yet among the various species of authority to which recourse had been had to supersede or to supply the deficiencies of argument, I know not whether any be more reasonable, and none certainly is so congenial to unsophisticated minds. Many are said to have become protestants under Mary, who, at her coming to the throne

many more were put to death than our martyrologists have discovered. And the prefacer to Ridley's *Treatise de Cœnâ Domini*, supposed to be bishop Grindal, says that 800 suffered in this manner for religion. Burnet, ii. 364. I incline, however, to the lower statements.

* Burnet makes a very just observation on the cruelties of this period, that "they raised that horror in the whole nation, that there seems ever since that time such an abhorrence to that religion to be derived down from father to son, that it is no wonder an aversion so deeply rooted, and raised upon such grounds, does upon every new provocation or jealousy of returning to it break out in most violent and convulsive symptoms." p. 338. "*Delicta majorum immeritus luis, Romane.*" But those who would diminish this aversion, and prevent these convulsive symptoms, will do better by avoiding for the future either such panegyrics on Mary and her advisers, or such insidious extenuations of her persecution as we have lately read, and which do not raise a favourable impression of their sincerity in the principles of toleration to which they profess to have been converted.

Noailles, who, though an enemy to Mary's government, must, as a catholic, be reckoned an unsuspecting witness, remarkably confirms the account given by Fox, and since by all our writers, of the death of Rogers, the proto-martyr, and its effect on the people. "Ce jour d'huy a esté faite la confirmation de l'alliance entre le pape et ce royaume par un sacrifice publique et solemnel d'un docteur prédicant nommé Rogerus, lequel a été brulé tout vif pour estre Lutherien; mais il est mort persistant en son opinion. A quoy le plus grand partie de ce peuple a pris tel plaisir, qu'ils n'ont eu crainte du luy faire plusieurs acclamations pour comforter son courage; et même ses enfans y on assisté, le consolant de telle façon qu'il semblaît qu'on le menait aux noces." V. 173.

[The execration with which Mary's bishops were met in the next reign is attested in a letter of Parkhurst to Conrad Gesner. "Jam et Deo et hominibus sunt exosi, nec usquam nisi inviti prorepunt, ne forte fiat tumultus in populo. Multi coram eos vocant carnifices." Zurich Letters, by Parker Society, p. 18. 1845.]

had retained the contrary persuasion.* And the strongest proof of this may be drawn from the acquiescence of the great body of the kingdom in the re-establishment of protestantism by Elizabeth, when compared with the seditions and discontent on that account under Edward. The course which this famous princess steered in ecclesiastical concerns, during her long reign, will form the subject of the two ensuing chapters.

* Strype, iii. 285.

CHAPTER III.

ON THE LAWS OF ELIZABETH'S REIGN RESPECTING
THE ROMAN CATHOLICS.

Change of Religion on the Queen's Accession — Acts of Supremacy and Uniformity — Restraint of Roman Catholic Worship in the first Years of Elizabeth — Statute of 1562 — Speech of Lord Montague against it — This Act not fully enforced — Application of the Emperor in behalf of the English Catholics — Persecution of this Body in the ensuing Period — Uncertain Succession of the Crown between the Families of Scotland and Suffolk — The Queen's unwillingness to decide this, or to marry — Imprisonment of Lady Catherine Grey — Mary Queen of Scotland — Combination in her Favour — Bull of Pius V. — Statutes for the Queen's Security — Catholics more rigorously treated — Refugees in the Netherlands — Their Hostility to the Government — Fresh Laws against the Catholic Worship — Execution of Campion and others — Defence of the Queen by Burleigh — Increased Severity of the Government — Mary — Plot in her Favour — Her Execution — Remarks upon it — Continued Persecution of Roman Catholics — General Observations.

THE accession of Elizabeth, gratifying to the whole nation on account of the late queen's extreme unpopularity, infused peculiar joy into the hearts of all well-wishers to the Reformation. Child of that famous marriage which had severed the connexion of England with the Roman see, and trained betimes in the learned and reasoning discipline of protestant theology, suspected and oppressed for that very reason by a sister's jealousy, and scarcely preserved from the death which at one time threatened her, there was every ground to be confident, that, notwithstanding her forced compliance with the catholic rites during the late reign, her inclinations had continued steadfast to the opposite side.* Nor was she long in manifesting this disposition sufficiently to alarm one party, though not entirely to satisfy the other. Her great prudence, and that of her advisers, which taught her to move

Change of religion on the queen's accession.

* Elizabeth was much suspected of a concern in the conspiracy of 1554, which was more extensive than appeared from Wyatt's insurrection, and had in view

the placing her on the throne, with the earl of Devonshire for her husband. Wyatt indeed at his execution acquitted her; but as he said as much for Devon-

slowly, while the temper of the nation was still uncertain, and her government still embarrassed with a French war and a Spanish alliance, joined with a certain tendency in her religious sentiments not so thoroughly protestant as had been expected, produced some complaints of delay from the ardent reformers just returned from exile. She directed Sir Edward Carne, her sister's ambassador at Rome, to notify her accession to Paul IV. Several catholic writers have laid stress on this circumstance as indicative of a desire to remain in his communion; and have attributed her separation from it to his arrogant reply, commanding her to lay down the title of royalty, and to submit her pretensions to his decision.* But she had begun to make alterations, though not

shire, who is proved by the letters of Noailles to have been engaged, his testimony is of less value. Nothing however appears in these letters, I believe, to criminate Elizabeth. Her life was saved, against the advice of the imperial court, and of their party in the cabinet, especially lord Paget, by the influence of Gardiner, according to Dr. Lingard, writing on the authority of Renard's dispatches. Burnet, who had no access to that source of information, imagines Gardiner to have been her most inveterate enemy. She was even released from prison for the time, though soon afterwards detained again, and kept in custody, as is well known, for the rest of this reign. Her inimitable dissimulation was all required to save her from the penalties of heresy and treason. It appears by the memoir of the Venetian ambassador, in 1557 (Lansdowne MSS. 840.), as well as from the letters of Noailles, that Mary was desirous to change the succession, and would have done so, had it not been for Philip's reluctance, and the impracticability of obtaining the consent of parliament. Though herself of a dissembling character, she could not conceal the hatred she bore to one who brought back the memory of her mother's and her own wrongs; especially when she saw all eyes turned towards the successor, and felt that the curse of her own barrenness was to fall on her beloved religion. Elizabeth had been not only forced to have a chapel in her house, and to give all exterior signs of conformity, but to protest on oath her attachment to the catholic faith; though

Hume, who always loves a popular story, gives credence to the well-known verses ascribed to her, in order to elude a declaration of her opinion on the sacrament. The inquisitors of that age were not so easily turned round by an equivocal answer. Yet Elizabeth's faith was constantly suspected. "Accresce oltrò questo l'odio," says the Venetian, "il sapere che sia aliena dalla religione presente, per essere non pur nata, ma dotta ed allevata nell'altra, che se bene con la esteriore ha mostrato, e mostra di essersi ridotta, vivendo cattolicamente, pure è opinione che dissimuli e nell'interiore la ritenga più che mai."

* This remarkable fact, which runs through all domestic and foreign histories, has been disputed, and as far as appears, disproved, by the late editor of Dodd's Church History of England, vol. iv. preface, on the authority of Carne's own letters in the State Paper Office. It is at least highly probable, not to say evident, from these, that Elizabeth never contemplated so much intercourse with the pope, even as a temporal sovereign, or to notify her accession to him; and it had before been shown by Strype, that, on Dec. 1. 1558, an order was despatched to Carne, forbidding him to proceed in an ecclesiastical suit, wherein, as English ambassador, he had been engaged. Strype's Annals, i. 34. Carne, on his own solicitation, was recalled, Feb. 10.: though the pope would not suffer him, nor, when he saw what was going forward at home, was he willing, to return. Mr. Tierney, the editor of Dodd,

very essential, in the church service, before the pope's behaviour could have become known to her; and the bishops must have been well aware of the course she designed to pursue, when they adopted the violent and impolitic resolution of refusing to officiate at her coronation.* Her council was formed of a very few catholics, of several pliant conformists with all changes, and of some known friends to the protestant interest. But two of these, Cecil and Bacon, were so much higher in her confidence, and so incomparably superior in talents to the other counsellors, that it was evident which way she must incline.† The parliament met about two months after her accession. The creed of parliament from the time of Henry VIII. had been always that of the court; whether it were that elections had constantly been influenced, as we know was sometimes the case, or that men of adverse principles, yielding to the torrent, had left the way clear to the partisans of power. This first, like

conceives the story of Paul IV.'s intemperate language to have been coined by "the inventive powers of Paul Sarpi," who first published it in his *History of the Council of Trent*, in 1619. From him Mr. T. supposes Spondanus and Pallavicino to have taken it; and from them it has passed to a multitude of Catholic as well as Protestant historians. It may, however, seem rather doubtful whether Spondanus would have taken this simply on the authority of Sarpi; and we may perhaps conjecture, that the anecdote had been already in circulation, even if it had never appeared in print, (a negative hard to establish,) before the publication of the *History of the Council of Trent*. Nor is it improbable that Paul, according to the violence of his disposition, had uttered some such language, and even to Carne himself, though not, as the story represents it, in reply to an official communication. But it is chiefly material to observe, that Elizabeth displayed her determination to keep aloof from Rome in the very beginning of her reign. 1845.

* Elizabeth ascended the throne November 17. 1558. On the 5th of December Mary was buried; and on this occasion White, bishop of Winchester, in preaching her funeral sermon, spoke with virulence against the protestant exiles,

and expressed apprehension of their return. Burnet, iii. 272. Directions to read part of the service in English, and forbidding the elevation of the host, were issued prior to the proclamation of December 27. against innovations without authority. The great seal was taken from Archbishop Heath early in January, and given to sir Nicholas Bacon. Parker was pitched upon to succeed Pole at Canterbury in the preceding month. From the dates of these and other facts, it may be fairly inferred that Elizabeth's resolution was formed independently of the pope's behaviour towards sir Edward Carne; though that might probably exasperate her against the adherents of the Roman see, and make their religion appear more inconsistent with their civil allegiance. If, indeed, the refusal of the bishops to officiate at her coronation (Jan. 14. 1558-9), were founded in any degree on Paul IV.'s denial of her title, it must have seemed in that age within a hair's breadth of high treason. But it more probably arose from her order that the host should not be elevated, which in truth was not legally to be justified.

† See a paper by Cecil on the best means of reforming religion, written at this time with all his cautious wisdom, in Burnet, or in Strype's *Annals of the Reformation*, or in the *Somers Tracts*.

all subsequent parliaments, was to the full as favourable to protestantism as the queen could desire: the first fruits of benefices, and, what was far more important, the supremacy in ecclesiastical affairs, were restored to the crown; the laws made concerning religion in Edward's time were re-enacted. These acts did not pass without considerable opposition among the lords; nine temporal peers, besides all the bishops, having protested against the bill of uniformity establishing the Anglican liturgy, though some pains had been taken to soften the passages most obnoxious to catholics.* But the act restoring the royal supremacy met with less resistance; whether it were that the system of Henry retained its hold over some minds, or that it did not encroach, like the former, on the liberty of conscience, or that men not over-scrupulous were satisfied with the interpretation which the queen caused to be put upon the oath.

Several of the bishops had submitted to the Reformation under Edward VI. But they had acted, in general, so conspicuous a part in the late restoration of popery, that, even amidst so many examples of false profession, shame restrained them from a second apostasy. Their number happened not to exceed sixteen, one of whom was prevailed on to conform; while the rest, refusing the oath of supremacy, were deprived of their bishoprics by the court of ecclesiastical high commission. In the summer of 1559, the queen appointed a general ecclesiastical visitation, to compel the observance of the protestant formularies. It appears from their reports that only about one hundred dignitaries, and eighty parochial priests, resigned their benefices, or were deprived.† Men

* Parl. Hist. vol. i. p. 394. In the reign of Edward, a prayer had been inserted in the liturgy to deliver us "from the bishop of Rome and all his detestable enormities." This was now struck out; and, what was more acceptable to the nation, the words used in distributing the elements were so contrived by blending the two forms successively adopted under Edward, as neither to offend the popish or Lutheran, nor the Zuinglian communicant. A rubric directed against the doctrine of the real or corporal presence was omitted. This was replaced after

the restoration. Burnet owns that the greater part of the nation still adhered to this tenet, though it was not the opinion of the rulers of the church. ii. 390. 406.

† Burnet; Strype's Annals, 169. Pensions were reserved for those who quitted their benefices on account of religion. Burnet, ii. 398. This was a very liberal measure, and at the same time a politic check on their conduct. Lingard thinks the number must have been much greater; but the visitors' reports seem the best authority. It is however highly probable

eminent for their zeal in the protestant cause, and most of them exiles during the persecution, occupied the vacant sees. And thus, before the end of 1559, the English church, so long contended for as a prize by the two religions, was lost for ever to that of Rome.

These two statutes, commonly denominated the acts of supremacy and uniformity, form the basis of that restrictive code of laws, deemed by some one of the fundamental bulwarks, by others the reproach of our constitution, which pressed so heavily for more than two centuries upon the adherents to the Romish church. By the former all beneficed ecclesiastics, and all laymen holding office under the crown, were obliged to take the oath of supremacy, renouncing the spiritual as well as temporal jurisdiction of every foreign prince or prelate, on pain of forfeiting their office or benefice; and it was rendered highly penal, and for the third offence treasonable, to maintain such supremacy by writing or advised speaking.* The latter statute trench-

that others resigned their preferments afterwards, when the casuistry of their church grew more scrupulous. It may be added, that the visitors restored the married clergy who had been dispossessed in the preceding reign; which would of course considerably augment the number of sufferers for popery.

* 1 Eliz. c. 1. The oath of supremacy was expressed as follows: — "I, A. B., do utterly testify and declare, that the queen's highness is the only supreme governor of this realm, and all other her highness's dominions and countries, as well in all spiritual and ecclesiastical things or causes, as temporal; and that no foreign prince, person, prelate, state, or potentate, hath or ought to have any jurisdiction, power, superiority, pre-eminence, or authority, ecclesiastical or spiritual, within this realm; and therefore I do utterly renounce and forsake all foreign jurisdictions, powers, superiorities, and authorities, and do promise that from henceforth I shall bear faith and true allegiance to the queen's highness, her heirs and lawful successors, and to my power shall assist and defend all jurisdictions, pre-eminences, privileges, and authorities, granted or belonging to the queen's highness, her heirs and suc-

cessors, or united and annexed to the imperial crown of this realm."

A remarkable passage in the injunctions to the ecclesiastical visitors of 1559, which may be reckoned in the nature of a contemporaneous exposition of the law, restrains the royal supremacy established by this act, and asserted in the above oath, in the following words: "Her majesty forbiddeth all manner her subjects to give ear or credit to such perverse and malicious persons, which most sinisterly and maliciously labour to notify to her loving subjects, how by words of the said oath it may be collected, that the kings or queens of this realm, possessors of the crown, may challenge authority and power of ministry of divine service in the church; wherein her said subjects be much abused by such evil-disposed persons. For certainly her majesty neither doth, nor ever will, challenge any other authority than that was challenged and lately used by the said noble kings of famous memory, king Henry VIII. and king Edward VI., which is, and was of ancient time, due to the imperial crown of this realm; that is, under God to have the sovereignty and rule over all manner of persons born within these her realms, dominions, and

more on the natural rights of conscience; prohibiting, under pain of forfeiting goods and chattels for the first offence, of a year's imprisonment for the second, and of imprisonment during life for the third, the use by a minister, whether beneficed or not, of any but the established liturgy; and imposed a fine of one shilling on all who should absent themselves from church on Sundays and holydays.*

This act operated as an absolute interdiction of the catholic rites, however privately celebrated. It has frequently been asserted, that the government connived at the domestic exercise of that religion during these first years of Elizabeth's reign. This may possibly have been the case with respect to some persons of very high rank whom it was inexpedient to irritate. But we find instances of severity towards catholics, even in that early period; and it is evident that their solemn rites were only performed by stealth, and at much hazard. Thus sir

Restraint of Roman catholic worship in the first years of Elizabeth.

countries, of what estate, either ecclesiastical or temporal, soever they be, so as no other foreign power shall or ought to have any superiority over them. And if any person that hath conceived any other sense of the form of the said oath shall accept the same with this interpretation, sense, or meaning, her majesty is well pleased to accept every such in that behalf, as her good and obedient subjects, and shall acquit them of all manner of penalties contained in the said act, against such as shall peremptorily or obstinately take the same oath." 1 Somers Tracts, edit. Scott, 73.

This interpretation was afterwards given in one of the thirty-nine articles, which having been confirmed by parliament, it is undoubtedly to be reckoned the true sense of the oath. Mr. Butler, in his *Memoirs of English Catholics*, vol. i. p. 157., enters into a discussion of the question, whether Roman catholics might conscientiously take the oath of supremacy in this sense. It appears that in the seventeenth century some contended for the affirmative; and this seems to explain the fact, that several persons of that persuasion, besides peers from whom the oath was not exacted, did actually hold offices under the Stuarts, and even enter into parliament, and that the

test act and declaration against transubstantiation were thus rendered necessary to make their exclusion certain. Mr. B. decides against taking the oath, but on grounds by no means sufficient; and oddly overlooks the decisive objection, that it denies in toto the jurisdiction and ecclesiastical authority of the pope. No writer, as far as my slender knowledge extends, of the Gallican or German school of discipline, has gone to this length; certainly not Mr. Butler himself, who in a modern publication, *Book of the Roman Catholic Church*, p. 120., seems to consider even the appellat jurisdiction in ecclesiastical causes as vested in the holy see by divine right.

As to the exposition before given of the oath of supremacy, I conceive that it was intended not only to relieve the scruples of catholics, but of those who had imbibed from the school of Calvin an apprehension of what is sometimes, though rather improperly, called Erastianism, — the merging of all spiritual powers, even those of ordination and of preaching, in the paramount authority of the state, towards which the despotism of Henry, and obsequiousness of Cramer, had seemed to bring the church of England.

* 1 Eliz. c. 2.

Edward Waldgrave and his lady were sent to the Tower in 1561, for hearing mass and having a priest in their house. Many others about the same time were punished for the like offence.* Two bishops, one of whom, I regret to say, was Grindal, write to the council in 1562, concerning a priest apprehended in a lady's house, that neither he nor the servants would be sworn to answer to articles, saying they would not accuse themselves; and, after a wise remark on this, that "papisty is like to end in anabaptistry," proceed to hint, that "some think that if this priest might be put to some kind of torment, and so driven to confess what he knoweth, he might gain the queen's majesty a good mass of money by the masses that he hath said; but this we refer to your lordship's wisdom."† This commencement of persecution induced many catholics to fly beyond sea, and gave rise to those re-unions of disaffected exiles, which never ceased to endanger the throne of Elizabeth.

It cannot, as far as appears, be truly alleged that any greater provocation had as yet been given by the catholics, than that of pertinaciously continuing to believe and worship as their fathers had done before them. I request those who may hesitate about this, to pay some attention to the order of time, before they form their opinions. The master mover, that became afterwards so busy, had not yet put his wires into action. Every prudent man at Rome (and we shall not at least deny that there were such) condemned the precipitate and insolent behaviour of Paul IV. towards Elizabeth, as they did most other parts of his administration. Pius IV., the successor of that injudicious old man, aware of the inestimable importance of reconciliation, and suspecting probably that the queen's turn of thinking did not exclude all hope of it, despatched a nuncio to England, with an invitation to send ambassadors to the council at Trent, and with powers, as is said, to confirm the English liturgy, and to permit double communion; one of the few concessions which the more indulgent Romanists of that age were not very re-

* Strype's Annals, i. 233. 241.

† Haynes, 395. The penalty for causing mass to be said, by the act of uniformity, was only 100 marks for the first

offence. These imprisonments were probably in many cases illegal, and only sustained by the arbitrary power of the high commission court.

luctant to make.* But Elizabeth had taken her line as to the court of Rome; the nuncio received a message at Brussels, that he must not enter the kingdom; and she was too wise to countenance the impartial fathers of Trent, whose labours had nearly drawn to a close, and whose decisions on the controverted points it had never been very difficult to foretell. I have not found that Pius IV., more moderate than most other pontiffs of the sixteenth century, took any measures hostile to the temporal government of this realm: but the deprived ecclesiastics were not unfairly anxious to keep alive the faith of their former hearers, and to prevent them from sliding into conformity, through indifference and disuse of their ancient rites.† The means taken were chiefly the same as had been adopted against themselves, the dispersion of small papers either in a serious or lively strain; but, the remarkable position in which the queen was placed rendering her death a most important contingency, the popish party made use of pretended conjurations and prophecies of that event, in order to unsettle the people's minds, and dispose them to anticipate another re-action.‡ Partly through these political circumstances, but far more from the hard usage they experienced for professing their religion, there seems to have been an increasing restlessness among the catholics about 1562, which was met with new rigour by the parliament of that year.§

* Strype, 220.

† Questions of conscience were circulated, with answers, all tending to show the unlawfulness of conformity. Strype, 228. There was nothing more in this than the catholic clergy were bound in consistency with their principles to do, though it seemed very atrocious to bigots. Mr. Butler says, that some theologians at Trent were consulted as to the lawfulness of occasional conformity to the Anglican rites, who pronounced against it. Mem. of Catholics, i. 171.

‡ The trick of conjuration about the queen's death began very early in her reign (Strype, i. 7.), and led to a penal statute against "fond and fantastical prophecies." 5 Eliz. c. 15.

§ I know not how to charge the catholics with the conspiracy of the two

Poles, nephews of the cardinal, and some others, to obtain five thousand troops from the duke of Guise, and proclaim Mary queen. This seems however to have been the immediate provocation for the statute 5 Eliz.; and it may be thought to indicate a good deal of discontent in that party upon which the conspirators relied. But as Elizabeth spared the lives of all who were arraigned, and we know no details of the case, it may be doubted whether their intentions were altogether so criminal as was charged. Strype, i. 333. Camden, 388. (in Kennet).

Strype tells us (i. 374.) of resolutions adopted against the queen in a consistory held by Pius IV. in 1563; one of these is a pardon to any cook, brewer, vintner, or other, that would poison her.

The act entitled, “for the assurance of the queen’s royal power over all estates and subjects within her dominions,” enacts with an iniquitous and sanguinary retrospect, that all persons, who had ever taken holy orders or any degree in the universities, or had been admitted to the practice of the laws, or held any office in their execution, should be bound to take the oath of supremacy, when tendered to them by a bishop, or by commissioners appointed under the great seal. The penalty for the first refusal of this oath was that of a *præmunire*; but any person, who after the space of three months from the first tender, should again refuse it when in like manner tendered, incurred the pains of high treason. The oath of supremacy was imposed by the statute on every member of the House of Commons, but could not be tendered to a peer; the queen declaring her full confidence in those hereditary counsellors. Several peers of great weight and dignity were still catholics.*

This harsh statute did not pass without opposition. Two speeches against it have been preserved; one by lord Speech of lord Montagu against it. Montagu in the house of lords, the other by Mr. Atkinson in the commons, breathing such generous abhorrence of persecution as some erroneously imagine to have been unknown to that age, because we rarely meet with it in theological writings. “This law,” said lord Montagu, “is not necessary; forasmuch as the catholics of this realm disturb not, nor hinder the public affairs of the realms, neither spiritual nor temporal. They dispute not, they preach not, they disobey not the queen; they cause no trouble nor tumults among the people; so that no man can say that thereby the realm doth receive any hurt or damage by them. They have brought into the realm no novelties in doctrine and religion. This being true and evident, as it is indeed, there is no necessity why any new law should be made against them. And where there is no sore nor grief, medicines are superfluous, and also hurtful and dangerous. I do entreat,” he says afterwards, “whether it be just to make this penal statute to force the subjects of this realm to

But this is so unlikely, and so little in that pope’s character, that it makes us suspect the rest, as false information of a spy.

* 5 Eliz. c. 1.

receive and believe the religion of protestants on pain of death. This I say to be a thing most unjust; for that it is repugnant to the natural liberty of men's understanding. For understanding may be persuaded, but not forced." And farther on: "It is an easy thing to understand that a thing so unjust, and so contrary to all reason and liberty of man, cannot be put in execution but with great incommodity and difficulty. For what man is there so without courage and stomach, or void of all honour, that can consent or agree to receive an opinion and new religion by force and compulsion; or will swear that he thinketh the contrary to what he thinketh? To be still, or dissemble, may be borne and suffered for a time—to keep his reckoning with God alone; but to be compelled to lie and to swear, or else to die therefore, are things that no man ought to suffer and endure. And it is to be feared rather than to die they will seek how to defend themselves; whereby should ensue the contrary of what every good prince and well advised commonwealth ought to seek and pretend, that is, to keep their kingdom and government in peace."*

I am never very willing to admit as an apology for unjust or cruel enactments, that they are not designed to be generally executed; a pretext often insidious, always insecure, and tending to mask the approaches of arbitrary government. But it is certain that Elizabeth did not wish this act to be enforced in its full severity. And archbishop Parker, by far the most prudent churchman of the time, judging some of the bishops too little moderate in their dealings with the papists, warned them privately to use great caution in tendering the oath of supremacy according to the act, and never to do so the second time, on which the penalty of treason might attach, without his previous approbation.† The temper of some of his colleagues was more

Statute of
1562 not fully
enforced.

* Strype, Collier, Parliament. History. The original source is the manuscript collections of Fox the martyrologist, a very unsuspecting authority; so that there seems every reason to consider this speech, as well as Mr. Atkinson's, authentic. The following is a specimen of the sort of answer given to these arguments: "They say it touches conscience,

and it is a thing wherein a man ought to have a scruple; but if any hath a conscience in it, these four years' space might have settled it. Also, after his first refusal, he hath three months' respite for conference and settling of his conscience," Strype, 270.

† Strype's Life of Parker, 125.

narrow and vindictive. Several of the deprived prelates had been detained in a sort of honourable custody in the palaces of their successors.* Bonner, the most justly obnoxious of them all, was confined in the Marshalsea. Upon the occasion of this new statute, Horn, bishop of Winchester, indignant at the impunity of such a man, proceeded to tender him the oath of supremacy, with an evident intention of driving him to high treason. Bonner, however, instead of evading this attack, intrepidly denied the other to be a lawful bishop; and strange as it may seem, not only escaped all further molestation, but had the pleasure of seeing his adversaries reduced to pass an act of parliament, declaring the present bishops to have been legally consecrated.† This statute, and especially its preamble, might lead a hasty reader to suspect that the celebrated story of an irregular consecration of the first protestant bishops at the Nag's-head tavern was not wholly undeserving of credit. That tale, however, has been satisfactorily refuted; the only irregularity which gave rise to this statute consisted in the use of an ordinal, which had not been legally re-established.

It was not long after the act imposing such heavy penalties on catholic priests for refusing the oath of supremacy, that the emperor Ferdinand addressed two letters to Elizabeth, interceding for the adherents to that religion, both with respect to those new severities to which they might become liable by conscientiously declining that oath, and to the prohibition of the free exercise of their rites. He suggested that it might be reasonable to allow them the use of one church in every city. And he concluded with an expression, which might possibly be designed to intimate that his own conduct towards the protestants in his dominions would be influenced by her concurrence in his request.‡ Such considerations were not without great im-

Application of the emperor in behalf of the English catholics.

* Strype's Annals, 149. Tunstall was treated in a very handsome manner by Parker, whose guest he was. But Feckenham, abbot of Westminster, met with rather unkind usage, though he had been active in saving the lives of protestants under Mary, from bishops Horn and Cox, (the latter of whom seems to have been an honest, but narrow-spirited

and peevish man,) and at last was sent to Wisbeach gaol for refusing the oath of supremacy. Strype, i. 457. ii. 526. Fuller's Church History, 178.

† 8 Eliz. c. 1. Eleven peers dissented, all noted catholics, except the earl of Sussex. Strype, i. 492.

‡ Nobis vero factura est rem adeo gratam, ut omnem simul daturi operam,

portance. The protestant religion was gaining ground in Austria, where a large proportion of the nobility as well as citizens had for some years earnestly claimed its public toleration. Ferdinand, prudent and averse from bigoted counsels, and for every reason solicitous to heal the wounds which religious differences had made in the empire, while he was endeavouring, not absolutely without hope of success, to obtain some concessions from the pope, had shown a disposition to grant further indulgences to his protestant subjects. His son, Maximilian, not only through his moderate temper, but some real inclination towards the new doctrines, bade fair to carry much farther the liberal policy of the reigning emperor.* It was consulting very little the general interests of protestantism, to disgust persons so capable and so well disposed to befriend it. But our queen, although free from the fanatical spirit of persecution which actuated part of her subjects, was too deeply imbued with arbitrary principles to endure any public deviation from the mode of worship she should prescribe. And it must perhaps be admitted that experience alone could fully demonstrate the safety of toleration, and show the fallacy of apprehensions that unprejudiced men might have entertained. In her answer to Ferdinand, the queen declares that she cannot grant churches to those who disagree from her religion, being against the laws of her parliament, and highly dangerous to the state of her kingdom; as it would sow various opinions in the nation to distract the minds of honest men, and would cherish parties and factions that might disturb the present tranquillity of the commonwealth. Yet enough had already occurred in France to lead observing men to suspect that severities and restrictions are by no means an infallible specific to prevent or subdue religious factions.

quo possimus eam rem serenitati vestræ mutuis benevolentiæ et fraterni animi studiis cumulatissimè compensare. See the letter in the additions to the first volume of Strype's Annals, prefixed to the second, p. 67. It has been erroneously referred by Camden, whom many have followed, to the year 1559, but bears date 24th Sept. 1563.

* For the dispositions of Ferdinand

and Maximilian towards religious toleration in Austria, which indeed for a time existed, see F. Paul, Concile de Trente (par Courayer), ii. 72. 197. 220, &c. Schmidt, Hist. des Allemands, viii. 120. 179. &c. Flechier, Vie de Commendom, 388.; or Coxe's House of Austria. [To these we may now add Ranke's excellent History of the Popes of the 16th and 17th centuries.]

Camden and many others have asserted that by systematic connivance the Roman catholics enjoyed a pretty free use of their religion for the first fourteen years of Elizabeth's reign. But this is not reconcilable to many passages in Strype's collections. We find abundance of persons harassed for recusancy, that is, for not attending the protestant church, and driven to insincere promises of conformity. Others were dragged before ecclesiastical commissioners for harbouring priests, or for sending money to those who had fled beyond sea.* Students of the inns of court, where popery had a strong hold at this time, were examined in the star-chamber as to their religion, and on not giving satisfactory answers, were committed to the Fleet.† The catholic party were not always scrupulous about the usual artifices of an oppressed people, meeting force by fraud, and concealing their heartfelt wishes under the mask of ready submission, or even of zealous attachment. A great majority both of clergy and laity yielded to the times; and of these temporising conformists it cannot be doubted that many lost by degrees all thought of returning to their ancient fold. But others, while they complied with exterior ceremonies, retained in their private devotions their accustomed mode of worship. It is an admitted fact, that the catholics generally attended the church, till it came to be reckoned a distinctive sign of their having renounced their own religion. They persuaded themselves (and the English priests, uninstructed and accustomed to a temporising conduct, did not discourage the notion,) that the private observance of their own rites would excuse a formal obedience to the civil power.‡ The Romish scheme

* Strype, 513, et alibi.

† Strype, 522. He says the lawyers in most eminent places were generally favourers of popery, p. 269. But, if he means the judges, they did not long continue so.

‡ Cum regina Maria moreretur, et religio in Angliâ mutaret, post episcopos et prælatos catholicos captos et fugatos, populus velut ovium grex sine pastore in magnis tenebris et caligine animarum suarum oberravit. Unde etiam factum est multi ut catholicorum superstitionibus impiis dissimulationibus et gravibus juramentis contra sanctæ sedis apostolicæ

auctoritatem, cum admodum parvo aut plane nullo conscientiarum suarum scrupulo assuescerent. Frequentabant ergo hæreticorum synagogas, intererant eorum concionibus, atque ad easdem etiam audiendas filios et familiam suam compellabant. Videbatur illis ut catholici essent, sufficere una cum hæreticis eorum templa non adire, ferri autem posse si ante vel post illos eadem intrassent. Communicabatur de sacrilegâ Calvinî cœnâ, vel secreto et clanculum intra privatos parietes. Missam qui audiverant, ac postea Calvinianos se haberi volebant, sic se de præcepto satisfecisse existimabant. De-

of worship, though it attaches more importance to ceremonial rites, has one remarkable difference from the protestant, that it is far less social; and consequently the prevention of its open exercise has far less tendency to weaken men's religious associations, so long as their individual intercourse with a priest, its essential requisite, can be preserved. Priests therefore travelled the country in various disguises, to keep alive a flame which the practice of outward conformity was calculated to extinguish. There was not a county throughout England, says a catholic historian, where several of Mary's clergy did not reside, and were commonly called the old priests. They served as chaplains in private families.* By stealth, at the dead of night, in private chambers, in the secret lurking places of an ill-peopled country, with all the mystery that subdues the imagination, with all the mutual trust that invigorates constancy, these proscribed ecclesiastics celebrated their solemn rites, more impressive in such concealment than if surrounded by all their former splendour. The strong predilection indeed of mankind for mystery, which has probably led many to tamper in political conspiracies without much further motive, will suffice to preserve secret associations, even where their purposes are far less interesting than those of religion. Many of these itinerant priests assumed the character of protestant preachers; and it has been said, with some truth, though not probably without exaggeration, that, under the directions of their crafty court, they fomented the division then springing up, and mingled with the anabaptists and other sectaries, in the hope both of exciting dislike to the establishment, and of instilling their

ferebantur filii catholicorum ad baptisteria hæreticorum, ac inter illorum manus matrimonia contrahebant. Atque hæc omnia sine omni serupulo fiebant, facta propter catholicorum sacerdotum ignorantiam, qui talia vel licere credebant, vel timore quodam præpediti dissimulabant. Nunc autem per Dei misericordiam omnes catholici intelligunt, ut salventur non satis esse corde fidem catholicam credere, sed eandem etiam ore oportere confiteri. Ribadeneira de Schismate, p. 53. See also Butler's English Catholics, vol. iii. p. 156. [There is nothing in this statement of the fact,

which serves to countenance the very unfair misrepresentations lately given, as if the Roman catholics generally had acquiesced in the Anglican worship, believing it to be substantially the same as their own. They frequented our churches, because the law compelled them by penalties so to do, not out of a notion that very little change had been made by the reformation. It is true, of course, that many became real protestants, by habitual attendance on our rites, and by disuse of their own. But these were not the recusants of a later period. 1845.]

* Dodd's Church Hist. vol. ii. p. 8.

own tenets, slightly disguised, into the minds of unwary enthusiasts.*

It is my thorough conviction that the persecution, for it can obtain no better name†, carried on against the English catholics, however it might serve to delude the government by producing an apparent conformity, could not but excite a spirit of disloyalty in many adherents of that faith. Nor would it be safe to assert that a more conciliating policy would have altogether disarmed their hostility, much less laid at rest those busy hopes of the future, which the peculiar circumstances of Elizabeth's reign had a tendency to produce. This remarkable posture of affairs affected all her civil, and still more her ecclesiastical policy. Her own title to the crown depended absolutely on a parliamentary recognition. The act of 35 H. 8. c. 1. had settled the crown upon her, and thus far restrained the previous statute, 28 H. 8. c. 7., which had empowered her father to regulate the succession at his pleasure. Besides this legislative authority, his testament had bequeathed the kingdom to Elizabeth after her sister Mary; and the common

Persecution of the catholics in the ensuing period.

* Thomas Heath, brother to the late archbishop of York, was seized at Rochester about 1570, well provided with anabaptist and Arian tracts for circulation. Strype, i. 521. For other instances, see pp. 281. 484. Life of Parker, 244. Nalson's Collections, vol. i. Introduction, p. 39, &c. from a pamphlet written also by Nalson, entitled, Foxes and Firebrands. It was surmised that one Henry Nicolas, chief of a set of fanatics, called the Family of Love, of whom we read a great deal in this reign, and who sprouted up again about the time of Cromwell, was secretly employed by the popish party. Strype, ii. 37. 589. 595. But these conjectures were very often ill-founded, and possibly so in this instance, though the passages quoted by Strype (589.) are suspicious. Brandt however (Hist. of Reformation in Low Countries, vol. i. p. 105.) does not suspect Nicolas of being other than a fanatic. His sect appeared in the Netherlands about 1555.

† "That church [of England] and the queen, its re-founder, are clear of persecution, as regards the catholics. No church, no sect, no individual even, had

yet professed the principle of toleration." Southey's Book of the Church, vol. ii. p. 285. If the second of these sentences is intended as a proof of the first, I must say, it is little to the purpose. But it is not true in this broad way of assertion. Not to mention sir Thomas More's Utopia, the principle of toleration had been avowed by the chancellor l'Hospital, and many others in France. I mention him as on the stronger side; for in fact the weaker had always professed the general principle, and could demand toleration from those of different sentiments on no other plea. And as to capital inflictions for heresy, which Mr. S. seems chiefly to have in his mind, there is reason to believe that many protestants never approved them. Sleidan intimates, vol. iii. p. 263., that Calvin incurred odium by the death of Servetus. And Melancthon says expressly the same thing, in the letter which he unfortunately wrote to the reformer of Geneva, declaring his own approbation of the crime; and which I am willing to ascribe rather to his constitutional fear of giving offence, than to sincere conviction.

consent of the nation had ratified her possession. But the queen of Scots, niece of Henry by Margaret, his elder sister, had a prior right to the throne during Elizabeth's life, in the eyes of such catholics as preferred an hereditary to a parliamentary title, and was reckoned by the far greater part of the nation its presumptive heir after her decease. There could indeed be no question of this, had the succession been left to its natural course. But Henry had exercised the power with which his parliament, in too servile a spirit, yet in the plenitude of its sovereign authority, had invested him, by settling the succession in remainder upon the house of Suffolk, descendants of his second sister Mary, to whom he postponed the elder line of Scotland. Mary left two daughters, Frances and Eleanor. The former became wife of Grey, marquis of Dorset, created duke of Suffolk by Edward; and had three daughters,—Jane, whose fate is well known, Catherine and Mary. Eleanor Brandon, by her union with the earl of Cumberland, had a daughter, who married the earl of Derby. At the beginning of Elizabeth's reign, or rather after the death of the duchess of Suffolk, lady Catherine Grey was by statute law the presumptive heiress of the crown; but according to the rules of hereditary descent, which the bulk of mankind do not readily permit an arbitrary and capricious enactment to disturb, Mary queen of Scots, grand-daughter of Margaret, was the indisputable representative of her royal progenitors, and the next in succession to Elizabeth.

Uncertain succession of the crown between the families of Scotland and Suffolk.

This reversion, indeed, after a youthful princess, might well appear rather an improbable contingency. It was to be expected that a fertile marriage would defeat all speculations about her inheritance; nor had Elizabeth been many weeks on the throne, before this began to occupy her subjects' minds.* Among several who were named, two very soon became the prominent candidates for her favour, the archduke Charles, son of the emperor Ferdinand, and lord Robert Dudley, sometime after created earl of Leicester; one recommended by his dignity and alliances, the other by her own evident partiality.

Elizabeth's unwillingness to decide the succession, or to marry.

* The address of the house of commons, begging the queen to marry, was on Feb. 6. 1559.

She gave at the outset so little encouragement to the former proposal, that Leicester's ambition did not appear extravagant.* But her ablest counsellors, who knew his vices, and her greatest peers, who thought his nobility recent and ill acquired, deprecated so unworthy a connection.† Few will pretend to explore the labyrinths of Elizabeth's heart; yet we may almost conclude that her passion for this favourite kept up a struggle against her wisdom for the first seven or eight years of her reign. Meantime she still continued unmarried; and those expressions she had so early used, of her resolution to live and die a virgin, began to appear less like coy affectation than at first. Never had a sovereign's marriage been more desirable for a kingdom. Cecil, aware how important it was that the queen should marry, but dreading her union with Leicester, contrived, about the end of 1564, to renew the treaty with the archduke Charles.‡ During this negotiation, which lasted from two to three years, she showed not a little of that evasive and dissembling coquetry which was to be more fully displayed on subsequent occasions.§ Leicester deemed himself so much interested

* Haynes, 233.

† See particularly two letters in the Hardwicke State Papers, i. 122. and 163., dated in October and November, 1560, which show the alarm excited by the queen's ill-placed partiality.

‡ Cecil's earnestness for the Austrian marriage appears plainly in Haynes, 430.; and still more in a remarkable minute, where he has drawn up, in parallel columns, according to a rather formal but perspicuous method he much used, his reasons in favour of the archduke, and against the earl of Leicester. The former chiefly relate to foreign politics, and may be conjectured by those acquainted with history. The latter are as follows: 1. Nothing is increased by marriage of him, either in riches, estimation, or power. 2. It will be thought that the slanderous speeches of the queen with the earl have been true. 3. He shall study nothing but to enhance his own particular friends to wealth, to offices, to lands, and to offend others. 4. He is infamed by death of his wife. 5. He is far in debt. 6. He is likely to be unkind, and jealous of the queen's ma-

esty. Id. 444 These suggestions, and especially the second, if actually laid before the queen, show the plainness and freedom which this great statesman ventured to use towards her. The allusion to the death of Leicester's wife, which had occurred in a very suspicious manner, at Cumnor, near Oxford, and is well known as the foundation of the novel of Kenilworth, though related there with great anachronism and confusion of persons, may be frequently met with in contemporary documents. By the above quoted letters in the Hardwicke Papers, it appears that those who disliked Leicester had spoken freely of this report to the queen.

§ Elizabeth carried her dissimulation so far as to propose marriage articles, which were formally laid before the imperial ambassador. These, though copied from what had been agreed on Mary's marriage with Philip, now seemed highly ridiculous, when exacted from a younger brother without territories or revenues. *Jura et leges regni conserventur, neque quicquam mutetur in religione aut in statu publico. Officia et magistratus ex-*

as to quarrel with those who manifested any zeal for the Austrian marriage; but his mistress gradually overcame her misplaced inclinations; and from the time when that connection was broken off, his prospects of becoming her husband seem rapidly to have vanished away. The pretext made for relinquishing this treaty with the arch-duke was Elizabeth's constant refusal to tolerate the exercise of his religion; a difficulty which, whether real or ostensible, recurred in all her subsequent negotiations of a similar nature.*

In every parliament of Elizabeth, the house of commons was zealously attached to the protestant interest. This, as well as an apprehension of disturbance from a contested succession, led to those importunate solicitations that she would choose a husband, which she so artfully evaded. A determination so contrary to her apparent interest, and to the earnest desire of her people, may give some countenance to the surmises of the time, that she was restrained from marriage by a secret consciousness that it was unlikely to be fruitful.† Whether these conjectures were well founded, of

ereantur per naturales. Neque regina, neque liberi sui educantur ex regno sine consensu regni, &c. Haynes, 438.

Cecil was not too wise a man to give some credit to astrology. The stars were consulted about the queen's marriage; and those veracious oracles gave response, that she should be married in the thirty-first year of her age to a *foreigner*, and have one son, who would be a great prince, and a daughter, &c. &c. Strype, ii. 16., and Appendix, 4., where the nonsense may be read at full length. Perhaps, however, the wily minister was no dupe, but meant that his mistress should be. [See, as to Elizabeth's intentions to marry at this time, the extracts from despatches of the French ambassador, in Raumer, vol. ii. p. 85.]

* The council appear in general to have been as resolute against tolerating the exercise of the catholic religion in any husband the queen might choose, as herself. We find however that several divines were consulted on two questions: 1. Whether it were lawful to marry a papist. 2. Whether the queen might permit mass to be said. To which answers were given, not agreeing with each other. Strype, ii. 150., and Ap-

pendix, 31. 33. When the earl of Worcester was sent over to Paris in 1571, as proxy for the queen, who had been made sponsor for Charles IX.'s infant daughter, she would not permit him, though himself a catholic, to be present at the mass on that occasion. ii. 171.

† "The people," Camden says, "cursed Huic, the queen's physician, as having dissuaded the queen from marrying on account of some impediment and defect in her." Many will recollect the allusion to this in Mary's scandalous letter to Elizabeth, wherein, under pretence of repeating what the countess of Shrewsbury had said, she utters every thing that female spite and ungovernable malice could dictate. But in the long and confidential correspondence of Cecil, Walsingham, and sir Thomas Smith, about the queen's marriage with the duke of Anjou, in 1571, for which they were evidently most anxious, I do not perceive the slightest intimation that the prospect of her bearing children was at all less favourable than in any other case. The council seem, indeed, in the subsequent treaty with the other duke of Anjou, in 1579, when she was forty-six, to have reckoned on something rather

which I know no evidence, or whether the risk of experiencing that ingratitude which the husbands of sovereign princesses have often displayed, and of which one glaring example was immediately before her eyes, outweighed in her judgment that of remaining single, or whether she might not even apprehend a more desperate combination of the catholic party at home and abroad, if the birth of any issue from her should shut out their hopes of Mary's succession, it is difficult for us to decide.

Though the queen's marriage were the primary object of these addresses, as the most probable means of securing an undisputed heir to the crown, yet she might have satisfied the parliament in some degree by limiting the succession to one certain line. But it seems doubtful whether this would have answered the proposed end. If she had taken a firm resolution against matrimony, which, unless on the supposition already hinted, could hardly be reconciled with a sincere regard for her people's welfare, it might be less dangerous to leave the course of events to regulate her inheritance. Though all parties seem to have conspired in pressing her to some decisive settlement on this subject, it would not have been easy to content the two factions, who looked for a successor to very different quarters.* It is evi-

beyond the usual laws of nature in this respect; for in a minute by Cecil of the reasons for and against this marriage, he sets down the probability of issue on the favourable side. "By marrying with Monsieur she is likely to have children, *because of his youth*;" as if her age were no objection.

* Camden, after telling us that the queen's disinclination to marry raised great clamours, and that the earls of Pembroke and Leicester had professed their opinion that she ought to be obliged to take a husband, or that a successor should be declared by act of parliament even against her will, asserts some time after, as inconsistently as improperly, that "very few but malecontents and traitors appeared very solicitous in the business of a successor." P. 401. (in Kennet's Complete Hist. of England, vol. ii.) This, however, from Camden's known proneness to flatter James, seems

to indicate that the Suffolk party were more active than the Scots upon this occasion. Their strength lay in the house of commons, which was wholly protestant, and rather puritan.

At the end of Murden's State Papers is a short journal kept by Cecil, containing a succinct and authentic summary of events in Elizabeth's reign. I extract as a specimen such passages as bear on the present subject.

Oct. 6. 1566. Certain lewd bills thrown abroad against the queen's majesty for not assenting to have the matter of succession proved in parliament; and bills also to charge sir W. Cecil the secretary with the occasion thereof.

27. Certain lords, viz. the earls of Pembroke and Leicester, were excluded the presence-chamber, for furthering the proposition of the succession to be declared by parliament without the queen's allowance.

dent that any confirmation of the Suffolk title would have been regarded by the queen of Scots and her numerous partisans as a flagrant injustice, to which they would not submit but by compulsion : and on the other hand, by re-establishing the hereditary line, Elizabeth would have lost her check on one whom she had reason to consider as a rival and competitor, and whose influence was already alarmingly extensive among her subjects.

She had, however, in one of the first years of her reign, without any better motive than her own jealous and malignant humour, taken a step not only harsh and arbitrary, but very little consonant to policy, which had almost put it out of her power to defeat the queen of Scots' succession. Lady Catherine Grey, who has been already mentioned as next in remainder of the house of Suffolk, proved with child by a private marriage, as they both alleged, with the earl of Hertford. The queen, always envious of the happiness of lovers, and jealous of all who could entertain any hopes of the succession, threw them both into the Tower. By connivance of their keepers, the lady bore a second child during this imprisonment. Upon this Elizabeth caused an enquiry to be instituted before a commission of privy counsellors and civilians ; wherein, the parties being unable to adduce proof of their marriage, archbishop Parker pronounced that their cohabitation was illegal, and that they should be censured for fornication. He was to be pitied if the law obliged him to utter so harsh a sentence, or to be blamed if it did not. Even had the marriage never been solemnised, it was impossible to doubt the existence of a contract, which both were still desirous to perform. But there is reason to believe that there had been an actual marriage, though so hasty and clandestine that they had not taken precautions to secure evidence of it. The injured lady

Imprisonment of lady Catherine Grey.

Nov. 12. Messrs. Bell and Monson moved trouble in the parliament about the succession.

14. The queen had before her thirty lords and thirty commoners, to receive her answer concerning their petition for the succession and for marriage. Dalton was blamed for speaking in the commons' house.

24. Command given to the parliament not to treat of the succession.

Nota: in this parliament time the queen's majesty did remit a part of the offer of a subsidy to the commons, who offered largely, to the end to have had the succession established. P. 762.

sunk under this hardship and indignity* ; but the legitimacy of her children was acknowledged by general consent, and, in a distant age, by a legislative declaration. These proceedings excited much dissatisfaction ; generous minds revolted from their severity, and many lamented to see the reformed branch of the royal stock thus bruised by the queen's unkind and impolitic jealousy.† Hales, clerk of the hanaper, a zealous protestant, having written in favour of Lady Catherine's marriage, and of her title to the succession, was sent to the Tower.‡ The lord keeper Bacon himself, a known friend to the house of Suffolk, being suspected of having prompted Hales to write this treatise, lost much of his mistress's favour. Even Cecil, though he had taken a share in prosecuting lady Catherine, perhaps in some degree from an apprehension that the queen might remember he had once joined in proclaiming her sister Jane, did not always escape the same suspicion § ; and it is probable that he felt the im-

* Catherine, after her release from the Tower, was placed in the custody of her uncle lord John Grey, but still suffering the queen's displeasure, and separated from her husband. Several interesting letters from her and her uncle to Cecil are among the Lansdowne MSS., vol. vi. They cannot be read without indignation at Elizabeth's unfeeling severity. Sorrow killed this poor young woman the next year, who was never permitted to see her husband again. Strype, i. 391. The earl of Hertford underwent a long imprisonment, and continued in obscurity during Elizabeth's reign ; but had some public employments under her successor. He was twice afterwards married, and lived to a very advanced age, not dying till 1621, near sixty years after his ill-starred and ambitious love. It is worth while to read the epitaph on his monument in the S. E. aisle of Salisbury cathedral, an affecting testimony to the purity and faithfulness of an attachment, rendered still more sacred by misfortune and time. *Quo desiderio veteres revocavit amores ! I shall revert to the question of this marriage in a subsequent chapter.*

† Haynes, 396.

‡ Id. 413. Strype, 410. Hales's treatise in favour of the authenticity of Henry's will is among the Harleian MSS., n. 537. and 555., and has also been

printed in the Appendix to Hereditary Right Asserted, fol. 1713.

§ Camden, p. 416., ascribes the powerful coalition formed against him in 1569, wherein Norfolk and Leicester were combined with all the catholic peers, to his predilection for the house of Suffolk. But it was more probably owing to their knowledge of his integrity and attachment to his sovereign, which would steadfastly oppose their wicked design of bringing about Norfolk's marriage with Mary, as well as to their jealousy of his influence. Carte reports on the authority of the despatches of Fenelon, the French ambassador, that they intended to bring him to account for breaking off the ancient league with the house of Burgundy, or, in other words, for maintaining the protestant interest. Vol. iii. p. 483.

A papist writer, under the name of Andreas Philopater, gives an account of this confederacy against Cecil at some length. Norfolk and Leicester belonged to it ; and the object was to defeat the Suffolk succession, which Cecil and Bacon favoured. Leicester betrayed his associates to the queen. It had been intended that Norfolk should accuse the two counsellors before the lords, *ea ratione ut è senatu regiâque abreptos ad curiæ januas in crucem agi pæciperet, eoque perfectò*

prudence of entirely discountenancing a party from which the queen and religion had nothing to dread. There is reason to believe that the house of Suffolk was favoured in parliament; the address of the commons in 1563, imploring the queen to settle the succession, contains several indications of a spirit unfriendly to the Scottish line*; and a speech is extant, said to have been made as late as 1571, expressly vindicating the rival pretension.† If indeed we consider with attention the statute of 13 Eliz. c. 1., which renders it treasonable to deny that the sovereigns of this kingdom, with consent of parliament, might alter the line of succession, it will appear little short of a confirmation of that title, which the descendants of Mary Brandon derived from a parliamentary settlement. But the doubtful birth of lord Beauchamp and his brother, as well as an ignoble marriage, which Frances, the younger sister of lady Catherine Grey, had thought it prudent to contract, deprived this party of all political consequence much sooner, as I conceive, than the wisest of Elizabeth's advisers could have desired; and gave rise to various other pretensions, which failed not to occupy speculative or intriguing tempers throughout this reign.

We may well avoid the tedious and intricate paths of Scottish history, where each fact must be sustained by a controversial discussion. Every one will re-^{Mary queen of Scotland.}collect, that Mary Stuart's retention of the arms and style of England gave the first, and, as it proved, inexpiable provocation to Elizabeth. It is indeed true that she was queen consort of France, a state lately at war with England, and that if the sovereigns of the latter country, even in peace, would persist in claiming the French throne, they could hardly complain of this retaliation. But, although it might be difficult to find a diplomatic answer to this, yet every one was sensible of an important difference between a title retained through vanity, and expressive of pretensions long

rectè deinceps ad forum progressus explicaret populo tum hujus facti rationem, tum successionis etiam regnandi legitimam seriem, si quid forte reginæ humanitus accideret. P. 43.

* D'wes, 81.

† Strype, 11. Append. This speech seems to have been made while Catherine Grey was living; perhaps therefore it was in a former parliament, for no account that I have seen represents her as having been alive so late as 1571.

since abandoned, from one that several foreign powers were prepared to recognise, and a great part of the nation might perhaps only want opportunity to support.* If, however, after the death of Francis II. had set the queen of Scots free from all adverse connexions, she had with more readiness and apparent sincerity renounced a pretension which could not be made compatible with Elizabeth's friendship, she might perhaps have escaped some of the consequences of that powerful neighbour's jealousy. But, whether it were that female weakness restrained her from unequivocally abandoning claims which she deemed well founded, and which future events might enable her to realise even in Elizabeth's lifetime, or whether she fancied that to drop the arms of England from her scutcheon would look like a dereliction of her right of succession, no satisfaction was fairly given on this point to the English court. Elizabeth took a far more effective revenge, by intriguing with all the malecontents of Scotland. But while she was endeavouring to render Mary's throne uncomfortable and insecure, she did not employ that influence against her in England, which lay more fairly in her power. She certainly was not unfavourable to the queen of Scots' succession, however she might decline compliance with importunate and injudicious solicitations to declare it. She

* There was something peculiar in Mary's mode of blazonry. She bore Scotland and England quarterly, the former being first; but over all was a half scutcheon of pretence with the arms of England, the sinister half being as it were obscured, in order to intimate that she was kept out of her right. Strype, vol. i. p. 8.

The despatches of Throckmorton, the English ambassador in France, bear continual testimony to the insulting and hostile manner in which Francis II. and his queen displayed their pretensions to our crown. Forbes's State Papers, vol. i. passim. The following is an instance. At the entrance of the king and queen into Chatelherault, 23d Nov. 1559, these lines formed the inscription over one of the gates :

Gallia perpetuis pugnaxque Britannia bellis
Olim odio inter se dimicure pari.
Nunc Gallos totoque remotos orbe Britannos
Unum dos Mariæ cogit imperium.

Ergo pace potes, Francisce, quod omnibus
armis
Mille patres annis non potuere tui.

This offensive behaviour of the French court is the apology of Elizabeth's intrigues during the same period with the malecontents, which to a certain extent cannot be denied by any one who has read the collection above quoted; though I do not think Dr. Lingard warranted in asserting her privity to the conspiracy of Amboise as a proved fact. Throckmorton was a man very likely to exceed his instructions; and there is much reason to believe that he did so. It is remarkable that no modern French writers that I have seen, Anquetil, Garnier, Lacrosette, or the editors of the General Collection of Memoirs, seem to have been aware of Elizabeth's secret intrigues with the king of Navarre and other protestant chiefs in 1559, which these letters, published by Forbes in 1740, demonstrate.

threw both Hales and one Thornton into prison for writing against that title. And when Mary's secretary, Lethington, urged that Henry's testament, which alone stood in their way, should be examined, alleging that it had not been signed by the king, she paid no attention to this imprudent request.*

The circumstances wherein Mary found herself placed on her arrival in Scotland were sufficiently embarrassing to divert her attention from any regular scheme against Elizabeth, though she may sometimes have indulged visionary hopes; nor is it probable that, with the most circumspect management, she could so far have mitigated the rancour of some or checked the ambition of others, as to find leisure for hostile intrigues. But her imprudent marriage with Darnley, and the far greater errors of her subsequent behaviour, by lowering both her resources and reputation as far as possible, seemed to be pledges of perfect security from that quarter. Yet it was precisely when Mary was become most feeble and helpless, that Elizabeth's apprehensions grew most serious and well-founded.

At the time when Mary, escaped from captivity, threw herself on the protection of a related, though rival queen, three courses lay open to Elizabeth, and were discussed in her councils. To restore her by force of arms, or rather by a mediation which would certainly have been effectual, to the throne which she had compulsorily abdicated, was the most generous, and would perhaps have turned out the most judicious proceeding. Reigning thus with tarnished honour and diminished power, she must have continually depended on the support of England, and become little better than a vassal of its sovereign. Still it might be objected by many, that the queen's honour was concerned not to maintain too decidedly the cause of one accused by common fame, and

* Burnet, i. Append. 266. Many letters, both of Mary herself and of her secretary, the famous Maitland of Lethington, occur in Haynes's State Papers, about the end of 1561. In one of his to Cecil, he urges, in answer to what had been alleged by the English court, that a collateral successor had never been declared in any prince's life-time, that what-

ever reason there might be for that, "if the succession had remained untouched according to the law, yet where by a limitation men had gone about to prevent the providence of God, and shift one into the place due to another, the offended party could not but seek the redress thereof." P. 373.

even by evidence that had already been made public, of adultery and the assassination of her husband. To have permitted her retreat into France would have shown an impartial neutrality; and probably that court was too much occupied at home to have afforded her any material assistance. Yet this appeared rather dangerous; and policy was supposed, as frequently happens, to indicate a measure absolutely repugnant to justice, that of detaining her in perpetual custody.* Whether this policy had no other fault than its want of justice, may reasonably be called in question.

The queen's determination neither to marry nor limit the succession had inevitably turned every one's thoughts towards the contingency of her death. She was young indeed; but had been dangerously ill, once in 1562†, and again in 1568. Of all possible competitors for the throne, Mary was incomparably the most powerful, both among the nobility and the people. Besides the undivided attachment of all who retained any longings for the ancient religion, and many such were to be found at Elizabeth's court and chapel, she had the stronghold of hereditary right, and the general sentiment that revolts from acknowledging the omnipotency of a servile parliament. Cecil, whom no one could suspect of partiality towards her, admits in a remarkable minute on the state of the kingdom, in 1569, that "the queen of Scots' strength standeth by the universal opinion of the world for the justice of her title, as coming of the ancient line."‡ This was no doubt in some degree counteracted by a sense of the danger which her accession would occasion to the protestant church, and which, far more than its parliamentary title, kept up a sort of party for the house of Suffolk. The crimes imputed to her did not immediately gain credit among the people; and some of

Combination
in favour of
Mary.

* A very remarkable letter of the earl of Sussex, Oct. 22. 1568, contains these words: "I think surely no end can be made good for England, except the person of the Scottish queen be detained, by one means or other in England." The whole letter manifests the spirit of Elizabeth's advisers, and does no great credit to Sussex's sense of justice, but a great deal to his ability. Yet he afterwards

became an advocate for the duke of Norfolk's marriage with Mary. Lodge's Illustrations, vol. ii. p. 4.

† Hume and Carte say, this first illness was the small-pox. But it appears by a letter from the queen to lord Shrewsbury, Lodge, 279., that her attack in 1571 was suspected to be that disorder.

‡ Haynes, 580.

higher rank were too experienced politicians to turn aside for such considerations. She had always preserved her connexions among the English nobility, of whom many were catholics, and others adverse to Cecil, by whose counsels the queen had been principally directed in all her conduct with regard to Scotland and its sovereign.* After the unfinished process of enquiry to which Mary submitted at York and Hampton Court, when the charge of participation in Darnley's murder had been substantiated by evidence at least that she did not disprove, and the whole course of which proceedings created a very unfavourable impression both in England and on the continent, no time was to be lost by those who considered her as the object of their dearest hopes. She was in the kingdom; she might, by a bold rescue, be placed at their head; every hour's delay increased the danger of her being delivered up to the rebel Scots; and doubtless some eager protestants had already begun to demand her exclusion by an absolute decision of the legislature.

Elizabeth must have laid her account, if not with the disaffection of the catholic party, yet at least with their attachment to the queen of Scots. But the extensive combination that appeared, in 1569, to bring about by force the duke of Norfolk's marriage with that princess, might well startle her cabinet. In this combination Westmoreland and Northumberland, avowed catholics, Pembroke and Arundel, suspected ones, were mingled with Sussex and even Leicester, unquestioned protestants. The duke of Norfolk himself, greater and richer than any English subject, had gone such lengths in this conspiracy, that his life became the just forfeit of his guilt and folly. It is almost impossible to pity this unhappy man, who, lured by the most criminal ambition, after proclaiming the queen of Scots a notorious adulteress and murderer, would have compassed a union with her at the

* In a conversation which Mary had with one Rooksby, a spy of Cecil's, about the spring of 1566, she imprudently named several of her friends, and of others whom she hoped to win, such as the duke of Norfolk, the earls of Derby, Northumberland, Westmoreland, Cumberland, Shrewsbury. "She had the better hope

of this, for that she thought them to be all of the old religion, which she meant to restore again with all expedition, and thereby win the hearts of the common people." The whole passage is worth notice. Haynes, 447. See also Melvil's Memoirs, for the dispositions of an English party towards Mary in 1566.

hazard of his sovereign's crown, of the tranquillity and even independence of his country, and of the reformed religion.* There is abundant proof of his intrigues with the duke of Alva, who had engaged to invade the kingdom. His trial was not indeed conducted in a manner that we can approve (such was the nature of state proceedings in that age); nor can it, I think, be denied that it formed a precedent of constructive treason not easily reconcilable with the statute; but much evidence is extant that his prosecutors did not adduce; and no one fell by a sentence more amply merited, or the execution of which was more indispensable.†

Norfolk was the dupe throughout all this intrigue of more artful men; first of Murray and Lethington, who had filled his mind with ambitious hopes, and afterwards of Italian agents employed by Pius V. to procure a combination of the catholic party. Collateral to Norfolk's conspiracy, but doubtless connected with it, was that of the northern earls of Northumberland and Westmoreland, long prepared, and perfectly foreseen by the government, of which the ostensible and manifest aim was the re-establishment of popery.‡

Pius V., who took a far more active part than his predecessor in English affairs, and had secretly instigated this insurrection, now published his celebrated bull, excommunicating and deposing Elizabeth, in order to second the

* Murden's State Papers, 134. 180. Norfolk was a very weak man, the dupe of some very cunning ones. We may observe that his submission to the queen, *Id.* 153., is expressed in a style which would now be thought most pusillanimous in a man of much lower station, yet he died with great intrepidity. But such was the tone of those times; an exaggerated hypocrisy prevailed in every thing.

† State Trials, i. 957. He was interrogated by the queen's counsel with the most insidious questions. All the material evidence was read to the lords from written depositions of witnesses who might have been called, contrary to the statute of Edward VI. But the Burghley Papers, published by Haynes and Murden, contain a mass of documents relative to this conspiracy, which leave no doubt as to the most heinous charge, that of inviting the duke of Alva to in-

vade the kingdom. There is reason to suspect that he feigned himself a catholic in order to secure Alva's assistance. Murden, p. 10.

‡ The northern counties were at this time chiefly catholic. "There are not," says Sadler, writing from thence, "ten gentlemen in this country who do favour and allow of her majesty's proceedings in the cause of religion." Lingard, vii. 54. It was consequently the great resort of the priests from the Netherlands, and in the feeble state of the protestant church there wanted sufficient ministers to stand up in its defence, Strype, i. 509. et post; ii. 183. Many of the gentry indeed were still disaffected in other parts towards the new religion. A profession of conformity was required in 1569 from all justices of the peace, which some refused, and others made against their consciences. *Id.* i. 567.

efforts of her rebellious subjects.* This is, perhaps, with the exception of that issued by Sixtus V. against Henry IV. of France, the latest blast of that trumpet, which had thrilled the hearts of monarchs. Yet there was nothing in the sound that bespoke declining vigour; even the illegitimacy of Elizabeth's birth is scarcely alluded to; and the pope seems to have chosen rather to tread the path of his predecessors, and absolve her subjects from their allegiance, as the just and necessary punishment of her heresy.

Since nothing so much strengthens any government as an unsuccessful endeavour to subvert it, it may be thought that the complete failure of the rebellion under the earls of Northumberland and Westmoreland, with the detection and punishment of the duke of Norfolk, rendered Elizabeth's throne more secure. But those events revealed the number of her enemies, or at least of those in whom no confidence could be reposed. The rebellion, though provided against by the ministry, and headed by two peers of great family but no personal weight, had not only assumed for a time a most formidable aspect in the north, but caused many to waver in other parts of the kingdom.† Even in Norfolk, an eminently protestant county, there was a slight insurrection in 1570, out of attachment to the duke.‡ If her greatest subject could thus be led astray from his faith and loyalty, if others not less near to her councils could unite with him in measures so contrary to her wishes and interests, on whom was she firmly to rely? Who, especially, could be trusted, were she to be snatched away from the world, for the maintenance of the protestant establishment under a yet unknown successor? This was the manifest and principal danger that her counsellors had to dread. Her own great reputation, and the respectful attachment of her people, might give reason to hope that no machinations would be successful against her crown; but let us reflect in what situation the kingdom would have been left by her death in a sudden ill-

* Camden has quoted a long passage from Hieronymo Catena's *Life of Pius V.*, published at Rome in 1558, which illustrates the evidence to the same effect contained in the *Burghley Papers*, and

partly adduced on the duke of Norfolk's trial.

† *Strype*, i. 546. 553. 556.

‡ *Strype*, i. 578. *Camden*, 428. *Lodge*, ii. 45.

ness, such as she had more than once experienced in earlier years, and again in 1571. "You must think," lord Burleigh writes to Walsingham, on that occasion, "such a matter would drive me to the end of my wits." And sir Thomas Smith expresses his fears in equally strong language.* Such statesmen do not entertain apprehensions lightly. Whom, in truth, could her privy council, on such an event, have resolved to proclaim? The house of Suffolk, had its right been more generally recognised than it was, (lady Catherine being now dead,) presented no undoubted heir. The young king of Scotland, an alien and an infant, could only have reigned through a regency; and it might have been difficult to have selected from the English nobility a fit person to undertake that office, or at least one in whose elevation the rest would have acquiesced. It appears most probable that the numerous and powerful faction who had promoted Norfolk's union with Mary would have conspired again to remove her from her prison to the throne. Of such a revolution the disgrace of Cecil and Elizabeth's wisest ministers must have been the immediate consequence; and it is probable that the restoration of the catholic worship would have ensued. These apprehensions prompted Cecil, Walsingham, and Smith to press the queen's marriage with the duke of Anjou far more earnestly than would otherwise have appeared consistent with her interests. A union with any member of that perfidious court was repugnant to genuine protestant sentiments. But the queen's absolute want of foreign alliances, and the secret hostility both of France and Spain, impressed Cecil with that deep sense of the perils of the time which his private letters so strongly bespeak. A treaty was believed to have been concluded in 1567, to which the two last mentioned powers, with the emperor Maximilian and some other catholic princes, were parties, for the extirpation of the protestant religion.† No alliance that

* Strype, ii. 88. Life of Smith, 152.

† Strype, i. 502. I do not give any credit whatever to this league, as printed in Strype, which seems to have been fabricated by some of the queen's emissaries. There had been, not perhaps a treaty, but a verbal agreement between France and Spain at Bayonne some time

before; but its object was apparently confined to the suppression of protestantism in France and the Netherlands. Had they succeeded however in this, the next blow would have been struck at England. It seems very unlikely that Maximilian was concerned in such a league.

the court of Charles IX. could have formed with Elizabeth was likely to have diverted it from pursuing this object; and it may have been fortunate that her own insincerity saved her from being the dupe of those who practised it so well. Walsingham himself, sagacious as he was, fell into the snares of that den of treachery, giving credit to the young king's assurances almost on the very eve of St. Bartholomew.*

The bull of Pius V., far more injurious in its consequences to those it was designed to serve than to Elizabeth, forms a leading epoch in the history of our English catholics. It rested upon a principle never universally acknowledged, and regarded with much jealousy by temporal governments, yet maintained in all countries by many whose zeal and ability rendered them formidable, — the right vested in the supreme pontiff to depose kings for heinous crimes against the church. One Felton affixed this bull to the gates of the bishop of London's palace, and suffered death for the offence. So audacious a manifestation of disloyalty was imputed with little justice to the catholics at large, but might more reasonably lie at the door of those active instruments of Rome, the English refugee priests and jesuits dispersed over Flanders and lately established at Douay, who were continually passing into the kingdom, not only to keep alive the precarious faith of the laity, but, as was generally surmised, to excite them against their sovereign.† This produced the act of Statutes for the queen's security. 13 Eliz. c. 2. ; which, after reciting these mischiefs, enacts that all persons publishing any bull from Rome, or absolving and reconciling any one to the Romish church, or being so reconciled, should incur the penalties of high treason; and such as brought into the realm any crosses, pictures, or superstitious things consecrated by the pope or under his authority, should be liable to a præmunire. Those who should conceal or connive at the offenders were to be held

* Strype, vol. ii.

† The college of Douay for English refugee priests was established in 1568 or 1569. Lingard, 374. Strype seems, but I believe through inadvertence, to put this event several years later. Annals, ii. 630. It was dissolved by Requesens,

while governor of Flanders, but revived at Rheims in 1575, under the protection of the cardinal of Lorraine, and returned to Douay in 1593. Similar colleges were founded at Rome in 1579, at Valladolid in 1589, at St. Omer in 1596, and at Louvain in 1606.

guilty of misprision of treason. This statute exposed the catholic priesthood, and in great measure the laity, to the continual risk of martyrdom; for so many had fallen away from their faith through a pliant spirit of conformity with the times, that the regular discipline would exact their absolution and reconciliation before they could be reinstated in the church's communion. Another act of the same session, manifestly levelled against the partisans of Mary, and even against herself, makes it high treason to affirm that the queen ought not to enjoy the crown, but some other person; or to publish that she is a heretic, schismatic, tyrant, infidel, or usurper of the crown; or to claim right to the crown, or to usurp the same during the queen's life; or to affirm that the laws and statutes do not bind the right of the crown, and the descent, limitation, inheritance, or governance thereof. And whosoever should, during the queen's life, by any book or work written or printed, expressly affirm, before the same had been established by parliament, that any one particular person was or ought to be heir and successor to the queen, except the same be the natural issue of her body, or should print or utter any such book or writing, was for the first offence to be imprisoned a year, and to forfeit half his goods; and for the second to incur the penalties of a præmunire.*

It is impossible to misunderstand the chief aim of this statute. But the house of commons, in which the zealous protestants, or, as they were now rather denominated, puritans, had a predominant influence, were not content with these demonstrations against the unfortunate captive. Fear, as often happens, excited a sanguinary spirit amongst them; they addressed the queen upon what they called the great cause, that is, the business of the queen of Scots, presenting by their committee reasons gathered out of the civil law to prove that "it standeth not only with justice, but also with the queen's majesty's honour and safety, to proceed criminally

* 13 Eliz. c. 1. This act was made at first retrospective, so as to affect every one who had at any time denied the queen's title. A member objected to this in debate "as a precedent most perilous." But sir Francis Knollys, Mr. Norton, and others, defended it. D'Ewes, 162. It

seems to have been amended by the lords. So little notion had men of observing the first principles of equity towards their enemies! There is much reason from the debate to suspect that the *ex post facto* words were levelled at Mary.

against the pretended Scottish queen.”* Elizabeth, who could not really dislike these symptoms of hatred towards her rival, took the opportunity of simulating more humanity than the commons; and when they sent a bill to the upper house attainting Mary of treason, checked its course by pro-roguing the parliament. Her backwardness to concur in any measures for securing the kingdom, as far as in her lay, from those calamities which her decease might occasion, could not but displease lord Burleigh. “All that we laboured for, he writes to Walsingham in 1572, “and had with full consent brought to fashion, I mean a law to make the Scottish queen unable and unworthy of succession to the crown, was by her majesty neither assented to nor rejected, but deferred.” Some of those about her, he hints, made herself her own enemy, by persuading her not to countenance these proceedings in parliament.† I do not think it admits of much question that, at this juncture, the civil and religious institutions of England would have been rendered more secure by Mary’s exclusion from the throne, which indeed, after all that had occurred, she could not be endured to fill without national dishonour. But the violent measures suggested against her life were hardly, under all the circumstances of her case, to be reconciled with justice; even admitting her privity to the northern rebellion and to the projected invasion by the duke of Alva. These however were not approved merely by an eager party in the commons: Archbishop Parker does not scruple to write about her to Cecil — “If that only [one] desperate person were taken away, as by justice soon it might be, the queen’s majesty’s good subjects would be in better hope, and the papists’ daily expectation vanquished.”‡ And Walsingham, during his embassy at Paris, desires that “the queen should see how much they (the papists) built upon the possibility of that dangerous woman’s coming to the crown of England, whose life was a step to her majesty’s death;” adding that “she was bound for her own safety and that of her subjects, to add to God’s providence her own policy, so far as might stand with justice.” §

* Strype, ii. 133 D’Ewes, 207.

† Life of Parker, 354.

‡ Strype, ii. 135.

§ Strype’s Annals, ii. 48.

We cannot wonder to read that these new statutes increased the dissatisfaction of the Roman Catholics, who perceived a systematic determination to extirpate their religion. Governments ought always to remember that the intimidation of a few disaffected persons is dearly bought by alienating any large portion of the community.* Many retired to foreign countries, and receiving for their maintenance pensions from the court of Spain, became unhappy instruments of its ambitious enterprises. Those who remained at home could hardly think their oppression much mitigated by the precarious indulgences which Elizabeth's caprice, or rather the fluctuation of different parties in her councils, sometimes extended to them. The queen indeed, so far as we can penetrate her dissimulation, seems to have been really averse to extreme rigour against her catholic subjects: and her greatest minister, as we shall more fully see afterwards, was at this time in the same sentiments. But such of her advisers as leaned towards the puritan faction, and too many of the Anglican clergy, whether puritan or not, thought no measure of charity or compassion should be extended to them. With the divines they were idolaters; with the council they were a dangerous and disaffected party; with the judges they were refractory transgressors of statutes; on every side they were obnoxious and oppressed. A few aged men having been set at liberty, Sampson, the famous puritan, himself a sufferer for conscience sake, wrote a letter of remonstrance to lord Burleigh. He urged in this that they should be compelled to hear sermons, though he would not at first oblige them to communicate.† A bill having been introduced in

* Murden's Papers, p. 43., contain proofs of the increased discontent among the catholics in consequence of the penal laws.

† Strype, ii. 330. See too in vol. iii. Appendix 68., a series of petitions intended to be offered to the queen and parliament, about 1583. These came from the puritanical mint, and show the dread that party entertained of Mary's succession, and of a relapse into popery. It is urged in these, that no toleration should be granted to the popish worship in private houses. Nor in fact had they much cause to complain that it was so.

Knox's famous intolerance is well known. "One mass," he declared in preaching against Mary's private chapel at Holyrood-house, "was more fearful unto him than if ten thousand armed enemies were landed in any part of the realm, on purpose to suppress the whole religion." M'Crie's Life of Knox, vol. ii. p. 24. In a conversation with Maitland he asserted most explicitly the duty of putting idolaters to death. Id. p. 120. Nothing can be more sanguinary than the reformer's spirit in this remarkable interview. St. Dominic could not have surpassed him. It is strange to see men,

the session of 1571, imposing a penalty for not receiving the communion, it was objected that consciences ought not to be forced. But Mr. Strickland entirely denied this principle, and quoted authorities against it.* Even Parker, by no means tainted with puritan bigotry, and who had been reckoned moderate in his proceedings towards catholics, complained of what he called “a Machiavel government;” that is, of the queen’s lenity in not absolutely rooting them out.†

This indulgence, however, shown by Elizabeth, the topic of reproach in those times, and sometimes of boast in our own, never extended to any positive toleration, nor even to any general connivance at the Romish worship in its most private exercise. She published a declaration in 1570, that she did not intend to sift men’s consciences, provided they observed her laws by coming to church; which, as she well knew, the strict catholics deemed inconsistent with their integrity.‡ Nor did the government always abstain from an inquisition into men’s private thoughts. The inns of court were more than once purified of popery by examining their members on articles of faith. Gentlemen of good families in the country were harassed in the same manner.§ One sir Richard Shelley, who had long acted as a sort of spy for Cecil on the continent, and given much useful information, requested only leave to enjoy his religion without hindrance; but the queen did not accede to this without much reluctance and delay.|| She had indeed assigned no other ostensible pretext for breaking off her own treaty of marriage with the archduke Charles, and subsequently with the dukes of Anjou and Alençon, than her determination not to suffer the mass to be celebrated even in her husband’s private chapel. It is worthy to be repeatedly inculcated on the reader, since so false a colour has been often employed to disguise the eccle-

professing all the while our modern creed of charity and toleration, extol these sanguinary spirits of the sixteenth century. The English puritans, though I cannot cite any passages so strong as the foregoing, were much the bitterest enemies of the catholics. When we read a letter from any one, such as Mr. Topcliffe, very fierce against the latter, we

may expect to find him put in a word in favour of silenced ministers.

* D’Ewes, 161. 177.

† Strype’s Life of Parker, 354.

‡ Strype’s Annals, i. 582. Honest old Strype, who thinks church and state never in the wrong, calls this “a notable piece of favour.”

§ Strype’s Annals, ii. 110. 408.

|| Id. iii. 127.

siastical tyranny of this reign, that the most clandestine exercise of the Romish worship was severely punished. Thus we read in the life of Whitgift, that on information given that some ladies and others heard mass in the house of one Edwards by night, in the county of Denbigh, he being then bishop of Worcester and vice-president of Wales, was directed to make inquiry into the facts; and finally was instructed to commit Edwards to close prison: and as for another person implicated, named Morice, "if he remained obstinate, he might cause some kind of torture to be used upon him; and the like order they prayed him to use with the others."* But this is one of many instances, the events of every day, forgotten on the morrow, and of which no general historian takes account. Nothing but the minute and patient diligence of such a compiler as Strype, who thinks no fact below his regard, could have preserved this from oblivion.†

* Life of Whitgift, 83. See too p. 99., and Annals of Reformation, ii. 631, &c.; also Holingshed, ann. 1574, ad init.

† An almost incredible specimen of ungracious behaviour towards a Roman catholic gentleman is mentioned in a letter of Topcliffe, a man whose daily occupation was to hunt out and molest men for popery. "The next good news, but in account the highest, her majesty hath served God with great zeal and comfortable examples; for by her council two notorious papists, young Rockwood, the master of Euston-hall, where her majesty did lie upon Sunday now a fortnight, and one Downes, a gentleman, were both committed, the one to the town prison at Norwich, the other to the county prison there, for obstinate papistry; and seven more gentlemen of worship were committed to several houses in Norwich as prisoners; two of the Lovels, another Downes, one Benningfield, one Parry, and two others not worth memory for badness of belief.

"This Rockwood is a papist of kind [family] newly crept out of his late wardship. Her majesty, by some means I know not, was lodged at his house, Euston, far unmeet for her highness; nevertheless, the gentleman brought into her presence by like device, her majesty gave him ordinary thanks for his bad

house, and her fair hand to kiss: but my lord chamberlain, nobly and gravely understanding that Rockwood was excommunicated for papistry, called him before him, demanded of him how he durst presume to attempt her royal presence, he, unfit to accompany any christian person; forthwith said he was fitter for a pair of stocks, commanded him out of the court, and yet to attend her council's pleasure at Norwich he was committed. And to dissyffer [sic] the gentleman to the full, a piece of plate being missed in the court, and searched for in his hay-house, in the hay-rick, such an image of our lady was there found, as for greatness, for gayness, and workmanship, I did never see a match; and after a sort of country dances ended, in her majesty's sight the idol was set behind the people who avoided; she rather seemed a beast raised upon a sudden from hell by conjuring, than the picture for whom it had been so often and so long abused. Her majesty commanded it to the fire, which in her sight by the country folks was quickly done to her content, and unspeakable joy of every one but some one or two who had sucked of the idol's poisoned milk.

"Shortly after, a great sort of good preachers, who had been long commanded to silence for a little niceness, were licensed, and again commanded to preach;

It will not surprise those who have observed the effect of all persecution for matters of opinion upon the human mind, that during this period the Romish party continued such in numbers and in zeal as to give the most lively alarm to Elizabeth's administration. One cause of this was beyond doubt the connivance of justices of the peace, a great many of whom were secretly attached to the same interest, though it was not easy to exclude them from the commission, on account of their wealth and respectability.* The facility with which catholic rites can be performed in secret, as before observed, was a still more important circumstance. Nor did the voluntary exiles established in Flanders re-
 mit their diligence in filling the kingdom with emis-
 saries. The object of many at least among them, it cannot for a moment be doubted, from the era of the bull of Pius V., if not earlier, was nothing less than to subvert the queen's throne. They were closely united with the court of Spain, which had passed from the character of an ally and pretended friend, to that of a cold and jealous neighbour, and at length of an implacable adversary. Though no war had been declared between Elizabeth and Philip, neither party had scrupled to enter into leagues with the dis-

Refugees in the Netherlands. Their hostility to the government.

a greater and more universal joy to the countries, and the most of the court, than the disgrace of the papists: and the gentlemen of those parts, being great and hot protestants, almost before by policy discredited and disgraced, were greatly countenanced.

"I was so happy lately, amongst other good graces, that her majesty did tell me of sundry lewd papist beasts that have resorted to Buxton," &c. Lodge, ii. 188. 30 Aug. 1578.

This Topcliffe was the most implacable persecutor of his age. In a letter to lord Burleigh, Strype, iv. 39., he urges him to imprison all the principal recusants, and especially women, "the farther off from their own family and friends the better." The whole letter is curious, as a specimen of the prevalent spirit, especially among the puritans, whom Topcliffe favoured. Instances of the ill-treatment experienced by respectable families (the Fitzherberts and Foljambes), and even aged ladies, without any other

provocation than their recusancy, may be found in Lodge, ii. 372. 462.; iii. 22. [See also Dodd's Church History, vol. iii. passim, with the additional facts contributed by the last editor.] But those farthest removed from puritanism, partook sometimes of the same tyrannous spirit. Aylmer, bishop of London, renowned for his persecution of non-conformists, is said by Rishton de Schismate, p. 319., to have sent a young catholic lady to be whipped in Bridewell for refusing to conform. If the authority is suspicious (and yet I do not perceive that Rishton is a liar like Sanders), the fact is rendered hardly improbable by Aylmer's harsh character.

* Strype's Life of Smith, 171.; Annals, ii. 631. 636.; iii. 479.; and Appendix. 170. The last reference is to a list of magistrates sent up by the bishops from each diocese, with their characters. Several of these, but the wives of many more, were inclined to popery.

affected subjects of the other. Such sworn vassals of Rome and Spain as an Allen or a Persons, were just objects of the English government's distrust: it is the extension of that jealousy to the peaceful and loyal which we stigmatize as oppressive, and even as impolitic.*

In concert with the directing powers of the Vatican and Escorial, the refugees redoubled their exertions about the year 1580. Mary was now wearing out her years in hopeless captivity; her son, though they did not lose hope of him, had received a strictly protestant education; while a new generation had grown up in England, rather inclined to diverge more widely from the ancient religion than to suffer its restoration. Such were they who formed the house of commons that met in 1581, discontented with the severities used against the puritans, but ready to go beyond any measures that the court might propose to subdue and extirpate popery. Here an act was passed, which, after repeating the former provisions that had made it high treason to reconcile any of her majesty's subjects, or to be reconciled to the church of Rome, imposes a penalty of 20*l.* a month on all persons absenting themselves from church, unless they shall hear the English service at home: such as could not pay the same within three months after judgment were to

* Allen's Admonition to the Nobility and People of England, written in 1588, to promote the success of the Armada, is full of gross lies against the queen. See an analysis of it in Lingard, note B. B. Mr. Butler fully acknowledges, what indeed the whole tenor of historical documents for this reign confirms, that Allen and Persons were actively engaged in endeavouring to dethrone Elizabeth by means of a Spanish force. But it must, I think, be candidly confessed by protestants, that they had very little influence over the superior catholic laity. And an argument may be drawn from hence against those who conceive the political conduct of catholics to be entirely swayed by their priests, when even in the sixteenth century the efforts of these able men, united with the head of their church, could produce so little effect. Strype owns that Allen's book gave offence to many catholics, iii. 560. Life of Whitgift, 505. One Wright of Douay an-

swered a case of conscience, whether catholics might take up arms to assist the king of Spain against the queen, in the negative. Id. 251. Annals, 565. This man, though a known loyalist, and actually in the employment of the ministry, was afterwards kept in a disagreeable sort of confinement in the dean of Westminster's house, of which he complains with much reason. Birch's Memoirs, vol. ii. p. 71. et alibi. Though it does not fall within the province of a writer on the constitution to enlarge on Elizabeth's foreign policy, I must observe, in consequence of the laboured attempts of Dr. Lingard to represent it as perfectly Machiavelian, and without any motive but wanton malignity, that, with respect to France and Spain, and even Scotland, it was strictly defensive, and justified by the law of self-preservation; though, in some of the means employed, she did not always adhere more scrupulously to good faith than her enemies.

Fresh laws
against the
catholic
worship.

be imprisoned until they should conform. The queen, by a subsequent act, had the power of seizing two thirds of the party's land, and all his goods, for default of payment.* These grievous penalties on recusancy, as the wilful absence of catholics from church came now to be denominated, were doubtless founded on the extreme difficulty of proving an actual celebration of their own rites. But they established a persecution which fell not at all short in principle of that for which the inquisition had become so odious. Nor were the statutes merely designed for terror's sake, to keep a check over the disaffected, as some would pretend. They were executed in the most sweeping and indiscriminating manner, unless perhaps a few families of high rank might enjoy a connivance.†

It had certainly been the desire of Elizabeth to abstain from capital punishments on the score of religion. The first instance of a priest suffering death by her statutes was in 1577, when one Mayne was hanged at Launceston, without any charge against him except his religion, and a gentleman who had harboured him was sentenced to imprisonment for life.‡ In the next year, if we may trust the zealous catholic writers, Thomas Sherwood, a boy of fourteen years, was executed for refusing to deny the temporal power of the pope, when urged by his judges.§ But in 1581 several seminary priests from Flanders having been arrested, whose projects were supposed (perhaps not wholly without foundation) to be very inconsistent with their allegiance, it was unhappily deemed necessary to hold out some more conspicuous examples of rigour. Of those brought to trial, the most eminent was Campian, formerly a protestant, but long known as the boast of Douay for his learning and

* 23 Eliz. c. 1. and 29 Eliz. c. 6.

† Strype's Whitgift, p. 117., and other authorities, *passim*.

‡ Camden, Lingard. Two others suffered at Tyburn not long afterwards for the same offence. Holingshed, 344. See in Butler's Mem. of Catholics, vol. iii. p. 382., an affecting narrative, from Dodd's Church History, of the sufferings of Mr. Tregian and his family, the gentleman whose chaplain Mayne had been. I see no cause to doubt its truth.

§ Ribadeneira, *Continuatio Sanderi et Rishtoni de Schismate Anglicano*, p. 111. Philopater, p. 247. This circumstance of Sherwood's age is not mentioned by Stowe; nor does Dr. Lingard advert to it. No woman was put to death under the penal code, so far as I remember; which of itself distinguishes the persecution from that of Mary, and of the house of Austria in Spain and the Netherlands.

virtues.* This man, so justly respected, was put to the rack, and revealed through torture the names of some catholic gentlemen with whom he had conversed.† He appears to have been indicted along with several other priests, not on the recent statutes, but on that of 25 Edw. III., for compassing and imagining the queen's death. Nothing that I have read affords the slightest proof of Campian's concern in treasonable practices, though his connexions, and profession as a jesuit, render it by no means unlikely. If we may confide in the published trial, the prosecution was as unfairly conducted, and supported by as slender evidence, as any perhaps which can be found in our books.‡ But as this account, wherein Campian's language is full of a dignified eloquence, rather seems to have been compiled by a partial hand, its faithfulness may not be above suspicion. For the same reason I hesitate to admit his alleged declarations at the place of execution, where, as well as at his trial, he is represented to have expressly acknowledged Elizabeth, and to have prayed for her as his queen *de facto* and *de jure*. For this was one of the questions propounded to him before his trial, which he refused to answer, in such a manner as betrayed his way of thinking. Most of those interrogated at the same time, on being pressed whether the queen was their lawful sovereign whom they were bound to obey, notwithstanding any sentence of deprivation that the pope might pronounce, endeavoured, like Campian, to evade the snare. A few, who unequivocally disclaimed the deposing power of the Roman see, were pardoned.§ It is more honourable to

* Strype's Parker, 375.

† Strype's Annals, ii. 644.

‡ State Trials, i. 1050; from the *Phœnix Britannicus*.

§ State Trials, i. 1078. Butler's English Catholics, i. 184. 244. Lingard, vii. 182; whose remarks are just and candid. A tract, of which I have only seen an Italian translation, printed at Macerata in 1585, entitled *Historia del glorioso martirio di diciotto sacerdoti e un secolare, fatti morire in Inghilterra per la confessione e difensione della fede cattolica*, by no means asserts that he acknowledged Elizabeth to be queen *de jure*, but rather that he refused to give an opinion as to her right. He prayed however for her

as a queen. "Io ho pregato, e prego per lei. All' ora il Signor Howardo li domandò per qual regina egli pregasse, se per Elisabetta? Al quale rispose, Sì, per Elisabetta." Mr. Butler quotes this tract in English.

The trials and deaths of Campian and his associates are told in the continuation of Holingshed, with a savageness and bigotry which, I am very sure, no scribe for the Inquisition could have surpassed, p. 456. But it is plain, even from this account, that Campian owned Elizabeth as queen. See particularly p. 448., for the insulting manner in which this writer describes the pious fortitude of these butchered ecclesiastics.

Campian's memory that we should reject these pretended declarations, than imagine him to have made them at the expense of his consistency and integrity. For the pope's right to deprive kings of their crowns was in that age the common creed of the jesuits, to whose order Campian belonged; and the continent was full of writings published by the English exiles, by Sanders, Bristow, Persons, and Allen, against Elizabeth's unlawful usurpation of the throne. But many availed themselves of what was called an explanation of the bull of Pius V., given by his successor Gregory XIII.; namely, that the bull should be considered as always in force against Elizabeth and the heretics, but should only be binding on catholics when due execution of it could be had.* This was designed to satisfy the consciences of some papists in submitting to her government, and taking the oath of allegiance. But in thus granting a permission to dissemble, in hope of better opportunity for revolt, this interpretation was not likely to tranquillize her council, or conciliate them towards the Romish party. The distinction, however, between a king by possession and one by right, was neither heard for the first, nor for the last time, in the reign of Elizabeth.

* Strype, ii. 637. Butler's Eng. Catholics, i. 196. The earl of Southampton asked Mary's ambassador, bishop Lesley, whether, after the bull, he could in conscience obey Elizabeth. Lesley answered, that as long as she was the stronger he ought to obey her. Murden, p. 30. The writer quoted before by the name of Andreas Philopater (Persons, translated by Cresswell, according to Mr. Butler, vol. iii. p. 236.), after justifying at length the resistance of the League to Henry IV., adds the following remarkable paragraph: "Hinc etiam infert universa theologorum et jurisconsultorum schola, et est certum et de fide, quemcunque principem christianum, si a religione catholicâ manifestè deflexerit, et alios advocare voluerit, excidere statim omni potestate et dignitate, ex ipsâ vi juris tum divini tum humani, hocque ante omnem sententiam supremi pastoris ac judicis contra ipsum prolatam; et subditos quoscunque liberos esse ab omni jursamenti obligatione, quod ei de obedientiâ tanquam principi legitimo præstitissent, posseque et debere (si vires

habeant) istiusmodi hominem, tanquam apostatam, hæreticum, ac Christi domini desertorem, et inimicum reipublicæ suæ, hostemque ex hominum christianorum dominatu ejicere, ne alios inficiat, vel suo exemplo aut imperio a fide avertat," p. 149. He quotes four authorities for this in the margin, from the works of divines or canonists.

This broad duty, however, of expelling a heretic sovereign, he qualifies by two conditions; first, that the subjects should have the power, "ut vires habeant idoneas ad hoc subditi;" secondly, that the heresy be undeniable. There can, in truth, be no doubt that the allegiance professed to the queen by the seminary priests and jesuits, and, as far as their influence extended, by all catholics, was with this reservation — till they should be strong enough to throw it off. See the same tract, p. 229. But after all, when we come fairly to consider it, is not this the case with every disaffected party in every state? a good reason for watchfulness, but none for extermination.

It is the lot of every Government that is not founded on the popular opinion of legitimacy, to receive only a precarious allegiance. Subject to this reservation, which was pretty generally known, it does not appear that the priests or other Roman catholics, examined at various times during this reign, are more chargeable with insincerity or dissimulation than accused persons generally are.

The public executions, numerous as they were, scarcely form the most odious part of this persecution. The common law of England has always abhorred the accursed mysteries of a prison-house; and neither admits of torture to extort confession, nor of any penal infliction not warranted by a judicial sentence. But this law, though still sacred in the courts of justice, was set aside by the privy council under the Tudor line. The rack seldom stood idle in the Tower for all the latter part of Elizabeth's reign.* To those who remember the annals of their country, that dark and gloomy pile affords associations not quite so numerous and recent as the Bastile once did, yet enough to excite our hatred and horror. But standing as it does in such striking contrast to the fresh and flourishing constructions of modern wealth, the proofs and the rewards of civil and religious liberty, it seems like a captive tyrant, reserved to grace the triumph of a victorious republic, and should teach us to reflect in thankfulness, how highly we have been elevated in virtue and happiness above our forefathers.

Such excessive severities under the pretext of treason, but sustained by very little evidence of any other offence than the exercise of the catholic ministry, excited indignation throughout a great part of Europe. The queen was held forth in pamphlets, dispersed every where from Rome and Douay,

* Rishton and Ribadeneira. See in Lingard, note U, a specification of the different kinds of torture used in this reign.

The government did not pretend to deny the employment of torture. But the puritans, eager as they were to exert the utmost severity of the law against the professors of the old religion, had more regard to civil liberty than to approve such a violation of it. Beal, clerk

of the council, wrote, about 1585, a vehement book against the ecclesiastical system, from which Whitgift picks out various enormous propositions, as he thinks them; one of which is, "that he condemns, without exception of any cause, racking of grievous offenders, as being cruel, barbarous, contrary to law, and unto the liberty of English subjects." Strype's Whitgift, p. 212.

not only as a usurper and heretic, but a tyrant more ferocious than any heathen persecutor, for inadequate parallels to whom they ransacked all former history.* These exaggerations, coming from the very precincts of the Inquisition, required the unblushing forehead of bigotry; but the charge of cruelty stood on too many facts to be passed over, and it was thought expedient to repel it by two remarkable pamphlets, both ascribed to the pen of lord Burleigh. One of these, entitled, "The Execution of Justice in England for Maintenance of public and private Peace," Defence of the queen, by Burleigh. appears to have been published in 1583. It contains an elaborate justification of the late prosecutions for treason, as no way connected with religious tenets, but grounded on the ancient laws for protection of the queen's person and government from conspiracy. It is alleged that a vast number of catholics, whether of the laity or priesthood, among whom the deprived bishops are particularly enumerated, had lived unmolested on the score of their faith, because they paid due temporal allegiance to their sovereign. Nor were any indicted for treason, but such as obstinately maintained the

* The persecution of catholics in England was made use of as an argument against permitting Henry IV. to reign in France, as appears by the title of a tract published in 1586: *Avertissement des catholiques Anglois aux François catholiques, du danger où ils sont de perdre leur religion, et d'expérimenter, comme en Angleterre, la cruauté des ministres, s'ils reçoivent à la couronne un roy qui soit hérétique.* It is in the British Museum.

One of the attacks on Elizabeth deserves some notice, as it has lately been revived. In the statute 13 Eliz. an expression is used, "her majesty, and the natural issue of her body," instead of the more common legal phrase, "lawful issue." This probably was adopted by the queen out of prudery, as if the usual term implied the possibility of her having unlawful issue. But the papistical libellers, followed by an absurd advocate of Mary in later times, put the most absurd interpretation on the word "natural," as if it was meant to secure the succession for some imaginary bastards by Leicester. And Dr. Lingard is not ashamed to insinuate the same suspicion, vol. viii.

p. 81. note. Surely what was congenial to the dark malignity of Persons, and the blind frenzy of Whitaker, does not become the good sense, I cannot say the candour, of this writer.

It is true that some, not prejudiced against Elizabeth, have doubted whether "Cupid's fiery dart" was as effectually "quenched in the chaste beams of the watery moon," as her poet intimates. This I must leave to the reader's judgment. She certainly went strange lengths of indelicacy. But, if she might sacrifice herself to the queen of Cnidus and Paphos, she was unmercifully severe to those about her, of both sexes, who showed any inclination to that worship, though under the escort of Hymen. Miss Aikin, in her well-written and interesting Memoirs of the Court of Elizabeth, has collected several instances from Harrington and Birch. It is by no means true, as Dr. Lingard asserts, on the authority of one Faunt, an austere puritan, that her court was dissolute, comparatively at least with the general character of courts; though neither was it so virtuous as the enthusiasts of the Elizabethan period suppose.

pope's bull depriving the queen of her crown. And even of these offenders, as many as after condemnation would renounce their traitorous principles, had been permitted to live; such was her majesty's unwillingness, it is asserted, to have any blood spilled without this just and urgent cause proceeding from themselves. But that any matter of opinion, not proved to have ripened into an overt act, and extorted only, or rather conjectured, through a compulsive inquiry, could sustain in law or justice a conviction for high treason, is what the author of this pamphlet has not rendered manifest.*

A second and much shorter paper bears for title, "A Declaration of the favourable dealing of her Majesty's Commissioners, appointed for the examination of certain traitors, and of tortures unjustly reported to be done upon them for matter of religion." Its scope was to palliate the imputation of excessive cruelty with which Europe was then resounding. Those who revere the memory of lord Burleigh must blush for this pitiful apology. "It is affirmed for truth," he says, "that the forms of torture in their severity or rigour of execution have not been such and in such manner performed, as the slanderers and seditious libellers have published. And that even the principal offender, Campian himself, who was sent and came from Rome, and continued here in sundry corners of the realm, having secretly wandered in the greater part of the shires of England in a disguised suit, to the intent to make special preparation of treasons, was never so racked but that he was perfectly able to walk and to write, and did presently write and subscribe all his confessions. The queen's servants, the warders, whose office and act it is to handle the rack, were ever by those that attended the examinations specially charged to use it in so charitable a manner as such a thing might be. None of those who were at any time put to the rack," he proceeds to assert, "were asked, during their torture, any question as to points of doctrine; but merely concerning their plots and conspiracies, and the per-

* Somers Tracts, i. 189. Strype, iii. 205. 265. 480. Strype says that he had seen the manuscript of this tract in lord Burleigh's hand-writing. It was answered by cardinal Allen, to whom a reply was made by poor Stubbe, after he

had lost his right hand. An Italian translation of the Execution of Justice was published at London in 1584. This shows how anxious the queen was to repel the charges of cruelty, which she must have felt to be not wholly unfounded.

sons with whom they had had dealings, and what was their own opinion as to the pope's right to deprive the queen of her crown. Nor was any one so racked until it was rendered evidently probable, by former detections or confessions, that he was guilty; nor was the torture ever employed to wring out confessions at random; nor unless the party had first refused to declare the truth at the queen's commandment." Such miserable excuses serve only to mingle contempt with our detestation.* But it is due to Elizabeth to observe, that she ordered the torture to be disused; and upon a subsequent occasion, the quartering of some concerned in Babington's conspiracy having been executed with unusual cruelty, gave directions that the rest should not be taken down from the gallows until they were dead.†

I should be reluctant, but for the consent of several authorities, to ascribe this little tract to lord Burleigh, for his honour's sake. But we may quote with more satisfaction a memorial addressed by him to the queen about the same year, 1583, full not only of sagacious, but just and tolerant advice. "Considering," he says, "that the urging of the oath of supremacy must needs, in some degree, beget despair, since in the taking of it, he [the papist] must either think he doth an unlawful act, as without the special grace of God he cannot think otherwise, or else, by refusing it, must become a traitor, which before some hurt done seemeth hard; I humbly submit this to your excellent consideration, whether, with as much security of your majesty's person and state, and more satisfaction for them, it were not better to leave the oath to this sense, that whosoever would not bear arms against all foreign princes, and namely the pope, that should any way invade your majesty's dominions, he should be a traitor. For hereof this commodity will ensue, that those papists, as I think most papists would, that should take this oath, would be divided from the great mutual confidence which is now between the pope and them, by reason of their afflictions for him; and such priests as would refuse that oath then, no tongue could say for shame that they suffer for religion, if they did suffer.

* Somers Tracts, p. 209.

† State Trials, i. 1160.

“But here it may be objected, they would dissemble and equivocate with this oath, and that the pope would dispense with them in that case. Even so may they with the present oath both dissemble and equivocate, and also have the pope’s dispensation for the present oath, as well as for the other. But this is certain, that whomsoever the conscience, or fear of breaking an oath, doth bind, him would that oath bind. And that they make conscience of an oath, the trouble, losses, and disgraces that they suffer for refusing the same do sufficiently testify; and you know that the perjury of either oath is equal.”

These sentiments are not such as bigoted theologians were then, or have been since, accustomed to entertain. “I account,” he says afterwards, “that putting to death does no ways lessen them; since we find by experience, that it worketh no such effect, but, like hydra’s heads, upon cutting off one, seven grow up, persecution being accounted as the badge of the church: and therefore they should never have the honour to take any pretence of martyrdom in England, where the fulness of blood and greatness of heart is such that they will even for shameful things go bravely to death; much more, when they think themselves to climb heaven, and this vice of obstinacy seems to the common people a divine constancy; so that for my part I wish no lessening of their number, but by preaching and by education of the younger under schoolmasters.” And hence the means he recommends for keeping down popery, after the encouragement of diligent preachers and schoolmasters, are, “the taking order that, from the highest counsellor to the lowest constable, none shall have any charge or office but such as will really pray and communicate in their congregation according to the doctrine received generally into this realm;” and next, the protection of tenants against their popish landlords, “that they be not put out of their living, for embracing the established religion.” — “This,” he says, “would greatly bind the commons’ hearts unto you, in whom indeed consisteth the power and strength of your realm; and it will make them less, or nothing at all, depend on their landlords. And, although there may hereby grow some wrong, which the tenants upon that confidence may offer to their

landlords, yet those wrongs are very easily, even with one wink of your majesty's, redressed; and are nothing comparable to the danger of having many thousands depending on the adverse party."*

The strictness used with recusants, which much increased from 1579 or 1580, had the usual consequence of persecution, that of multiplying hypocrites. For, in fact, if men will once bring themselves to comply, to take all oaths, to practise all conformity, to oppose simulation and dissimulation to arbitrary inquiries, it is hardly possible that any government should not be baffled. Fraud becomes an over-match for power. The real danger meanwhile, the internal disaffection, remains as before, or is aggravated. The laws enacted against popery were precisely calculated to produce this result. Many indeed, especially of the female sex, whose religion, lying commonly more in sentiment than reason, is less ductile to the sophisms of worldly wisdom, stood out and endured the penalties. But the oath of supremacy was not refused, the worship of the church was frequented, by multitudes who secretly repined for a change; and the council, whose fear of open enmity had prompted their first severities, were led on by the fear of dissembled resentment to devise yet further measures of the same kind. Hence, in 1584, a law was enacted, enjoining all jesuits, seminary priests, and other priests, whether ordained within or without the kingdom, to depart from it within forty days, on pain of being adjudged traitors. The penalty of fine and imprisonment at the queen's pleasure was inflicted on such as, knowing any priest to be within the realm, should not discover it to a magistrate. This seemed to fill up the measure of persecution, and to render the longer preservation of this obnoxious religion absolutely impracticable. Some of its adherents presented a petition against this bill, praying that they might not be suspected of disloyalty on account of refraining from the public worship, which they did to avoid sin; and that their priests might not be banished from the kingdom.† And they all very justly complained of this determined op-

Increased
severity of
the govern-
ment.

* Somers Tracts, 164.

† Strype, iii. 298. Shelley, though notoriously loyal and frequently employed

by Burleigh, was taken up and examined before the council for preparing this petition.

pression. The queen, without any fault of theirs, they alleged, had been alienated by the artifices of Leicester and Walsingham. Snares were laid to involve them unawares in the guilt of treason; their steps were watched by spies; and it was become intolerable to continue in England. Camden indeed asserts that counterfeit letters were privately sent in the name of the queen of Scots or of the exiles, and left in papists' houses.* A general inquisition seems to have been made about this time; but whether it was founded on sufficient grounds of previous suspicion, we cannot absolutely determine. The earl of Northumberland, brother of him who had been executed for the rebellion of 1570, and the earl of Arundel, son of the unfortunate duke of Norfolk, were committed to the Tower, where the former put an end to his own life (for we cannot charge the government with an unproved murder); and the second, after being condemned for a traitorous correspondence with the queen's enemies, died in that custody. But whether or no some conspiracies (I mean more active than usual, for there was one perpetual conspiracy of Rome and Spain during most of the queen's reign) had preceded these severe and unfair methods by which her ministry counteracted them, it was not long before schemes, more formidable than ever, were put in action against her life. As the whole body of catholics was irritated and alarmed by the laws of proscription against their clergy, and by the heavy penalties on recusancy, which, as they alleged, showed a manifest purpose to reduce them to poverty†; so some desperate men saw no

* P. 591. Proofs of the text are too numerous for quotation, and occur continually to a reader of Strype's 2d and 3d volumes. In vol. 3. Append. 158. we have a letter to the queen from one Antony Tyrrel, a priest, who seems to have acted as an informer, wherein he declares all his accusations of catholics to be false. This man had formerly professed himself a protestant, and returned afterwards to the same religion; so that his veracity may be dubious. So, a little further on, we find in the same collection, p. 250., a letter from one Bennet, a priest, to lord Arundel, lamenting the false accusations he had given in against him,

and craving pardon. It is always possible, as I have just hinted, that these retractations may be more false than the charges. But ministers who employ spies, without the utmost distrust of their information, are sure to become their dupes, and end by the most violent injustice and tyranny.

† The rich catholics compounded for their recusancy by annual payments, which were of some consideration in the queen's rather scanty revenue. A list of such recusants, and of the annual fines paid by them in 1594, is published in Strype, iv. 197.; but is plainly very imperfect. The total was 3323*l.* 1*s.* 10*d.*

surer means to rescue their cause than the queen's assassination. One Somerville, half a lunatic, and Parry, a man who, long employed as a spy upon the papists, had learned to serve with sincerity those he was sent to betray, were the first who suffered death for unconnected plots against Elizabeth's life.* More deep-laid machinations were carried on by several catholic laymen at home and abroad, among whom a brother of lord Paget was the most prominent.†

A few paid as much as 140*l.* per annum. The average seems however to have been about 20*l.* Vol. iii. Append. 153.; see also p. 258. Probably these compositions, though oppressive, were not quite so serious as the catholics pretended.

* Parry seems to have been privately reconciled to the church of Rome about 1580; after which he continued to correspond with Cecil, but generally recommending some catholics to mercy. He says, in one letter, that a book printed at Rome, *De Persecutione Anglicanâ*, had raised a barbarous opinion of our cruelty; and that he could wish that in those cases it might please her majesty to pardon the dismembering and drawing. Strype, iii. 260. He sat afterwards in the parliament of 1584, taking of course the oath of supremacy, where he alone opposed the act against catholic priests. Parl. Hist. 822. Whether he were actually guilty of plotting against the queen's life (for this part of his treason he denied at the scaffold), I cannot say; but his speech there made contained some very good advice to her. The ministry garbled this before its publication in Holingshed and other books; but Strype has preserved a genuine copy; vol. iii. Append. 102. It is plain that Parry died a catholic; though some late writers of that communion have tried to disclaim him. Dr. Lingard, it may be added, admits that there were many schemes to assassinate Elizabeth, though he will not confess any particular instance. "There exist," he says, "in the archives at Simancas several notices of such offers." P. 384.

† It might be inferred from some authorities that the catholics had become in a great degree disaffected to the queen about 1584, in consequence of the extreme rigour practised against them. In a memoir of one Crichton, a Scots jesuit, intended to show the easiness of invading

England, he says, that "all the catholics without exception favour the enterprise; first, for the sake of the restitution of the catholic faith; secondly, for the right and interest which the queen of Scots has to the kingdom, and to deliver her out of prison; thirdly, for the great trouble and misery they endured more and more, being kept out of all employments, and dishonoured in their own countries, and treated with great injustice and partiality when they have need to recur to law; and also for the execution of the laws touching the confiscation of their goods in such sort as in so short time would reduce the catholics to extreme poverty." Strype, iii. 415. And in the report of the earl of Northumberland's treasons, laid before the star-chamber, we read that "Throckmorton said, that the bottom of this enterprise, which was not to be known to many, was, that if a toleration of religion might not be obtained without alteration of the government, that then the government should be altered, and the queen removed." Somers Tracts, vol. i. p. 205. Further proofs that the rigour used towards the catholics was the great means of promoting Philip's designs occur in Birch's *Memoirs of Elizabeth*, i. 82. et alibi.

We have also a letter from Persons in England to Allen in 1586, giving a good account of the zeal of the catholics, though a very bad one of their condition through severe imprisonment and other ill treatment. Strype, iii. 412. and Append. 151. Rishton and Ribadeneira bear testimony that the persecution had rendered the laity more zealous and sincere. *De Schismate*, l. iii. 320., and l. iv. 53.

Yet to all this we may oppose their good conduct in the year of the Spanish Armada, and in general during the queen's reign; which proves that the loyalty of the main body was more firm

These had in view two objects, the deliverance of Mary, and the death of her enemy. Some perhaps who were engaged in the former project did not give countenance to the latter. But few, if any, ministers have been better served by their spies than Cecil and Walsingham. It is surprising to see how every letter seems to have been intercepted, every thread of these conspiracies unravelled, every secret revealed to these wise counsellors of the queen. They saw that while one lived, whom so many deemed the presumptive heir, and from whose succession they anticipated, at least in possibility, an entire reversal of all that had been wrought for thirty years, the queen was as a mark for the pistol or dagger of every zealot. And fortunate, no question, they thought it, that the detection of Babington's conspiracy enabled them with truth, or a semblance of truth, to impute a participation in that crime to the most dangerous enemy whom, for their mistress, their religion, or themselves, they had to apprehend.

Mary had now consumed the best years of her life in custody ; and, though still the perpetual object of the
 Mary. queen's vigilance, had perhaps gradually become somewhat less formidable to the protestant interest. Whether she would have ascended the throne, if Elizabeth had died during the latter years of her imprisonment, must appear very doubtful, when we consider the increasing strength of the puritans, the antipathy of the nation to Spain, the prevailing opinion of her consent to Darnley's murder, and the obvious expedient of treating her son, now advancing to manhood, as the representative of her claim. The new projects imputed to her friends even against the queen's life, exasperated the hatred of the protestants against Mary. An association was formed in 1584, the members of which bound themselves by oath "to withstand and pursue, as well by force of arms as by all other means of revenge, all manner of persons, of whatsoever state they shall be, and their abettors, that shall attempt

than their readers wished, or their enemies believed. However, if any of my readers should incline to suspect that there was more disposition among this part of the community to throw off their allegiance to the queen altogether than I have ad-

mitted, he may possibly be in the right ; and I shall not impugn his opinion, provided he concurs in attributing the whole, or nearly the whole, of this disaffection to her unjust aggressions on the liberty of conscience.

any act, or counsel or consent to any thing that shall tend to the harm of her majesty's royal person; and never to desist from all manner of forcible pursuit against such persons, to the utter extermination of them, their counsellors, aiders, and abettors. And if any such wicked attempt against her most royal person shall be taken in hand or procured, whereby any that have, may, or shall pretend title to come to this crown by the untimely death of her majesty so wickedly procured, (which God of his mercy forbid!) that the same may be avenged, we do not only bind ourselves both jointly and severally never to allow, accept, or favour any such pretended successor, by whom or for whom any such detestable act shall be attempted or committed, as unworthy of all government in any christian realm or civil state, but do also further vow and promise, as we are most bound, and that in the presence of the eternal and everlasting God, *to prosecute such person or persons to death*, with our joint and particular forces, and to act the utmost revenge upon them, that by any means we or any of us can devise and do, or cause to be devised and done for their utter overthrow and extirpation.*

The pledge given by this voluntary association received the sanction of parliament in an act "for the security of the queen's person, and continuance of the realm in peace." This statute enacts that, if any invasion or rebellion should be made by or for any person pretending title to the crown after her majesty's decease, or if any thing be confessed or imagined tending to the hurt of her person with the privity of any such person, a number of peers, privy counsellors, and judges, to be commissioned by the queen, should examine and give judgment on such offences, and all circumstances relating thereto; after which judgment all persons against whom it should be published should be disabled for ever to make any such claim.† I omit some further provisions to the same effect, for the sake of brevity. But we may remark that this statute differs from the associators' engagement, in omitting the outrageous threat of pursuing to death any person, whether privy or not to the design, on whose

* State Trials, i. 1162.

† 27 Eliz. c. i.

behalf an attempt against the queen's life should be made. The main intention of the statute was to procure, in the event of any rebellious movements, what the queen's counsellors had long ardently desired to obtain from her, an absolute exclusion of Mary from the succession. But, if the scheme of assassination, devised by some of her desperate partisans, had taken effect, however questionable might be her concern in it, I have little doubt that the rage of the nation would, with or without some process of law, have instantly avenged it in her blood. This was, in the language of parliament, their great cause; an expression which, though it may have an ultimate reference to the general interest of religion, is never applied, so far as I remember, but to the punishment of Mary, which they had demanded in 1572, and now clamoured for in 1586. The addresses of both houses to the queen, to carry the sentence passed by the commissioners into effect, her evasive answers and feigned reluctance, as well as the strange scenes of hypocrisy which she acted afterwards, are well known matters of history, upon which it is unnecessary to dwell. No one will be found to excuse the hollow affectation of Elizabeth; but the famous sentence that brought Mary to the scaffold, though it has certainly left in popular opinion a darker stain on the queen's memory than any other transaction of her life, if not capable of complete vindication, has at least encountered a disproportioned censure.

Execution
of Mary.

It is of course essential to any kind of apology for Elizabeth in this matter, that Mary should have been assenting to a conspiracy against her life. For it could be no real crime to endeavour at her own deliverance; nor, under the circumstances of so long and so unjust a detention, would even a conspiracy against the aggressor's power afford a moral justification for her death. But though the proceedings against her are by no means exempt from the shameful breach of legal rules, almost universal in trials for high treason during that reign, (the witnesses not having been examined in open court); yet the depositions of her two secretaries, joined to the confessions of Babington and other conspirators, form a body of evidence, not indeed irresistibly convincing, but far stronger than we find in many instances

Remarks
upon it.

where condemnation has ensued. And Hume has alleged sufficient reasons for believing its truth, derived from the great probability of her concurring in any scheme against her oppressor from the certainty of her long correspondence with the conspirators, (who, I may add, had not made any difficulty of hinting to her their designs against the queen's life*,) and from the deep guilt that the falsehood of the charge must inevitably attach to sir Francis Walsingham.† Those at least, who cannot acquit the queen of Scots of her husband's murder, will hardly imagine that she would scruple to concur in a crime so much more capable of extenuation, and so much more essential to her interests. But as the proofs are not perhaps complete, we must hypothetically assume her guilt, in order to set this famous problem in the casuistry of public law upon its proper footing.

It has been said so often, that few perhaps wait to reflect whether it has been said with reason, that Mary, as an independent sovereign, was not amenable to any English jurisdiction. This, however, does not appear unquestion-

* In Murden's State Papers we have abundant evidence of Mary's acquaintance with the plots going forward in 1585 and 1586 against Elizabeth's government, if not with those for her assassination. But Thomas Morgan, one of the most active conspirators, writes to her, 9th July, 1586:—"There be some good members that attend opportunity to do the queen of England a piece of service, which I trust will quiet many things, if it shall please God to lay his assistance to the cause, for the which I pray daily," p. 530. In her answer to this letter, she does not advert to this hint, but mentions Babington as in correspondence with her. At her trial she denied all communication with him. [In a letter from Persons to a Spanish nobleman, in 1597, it is said that Mary had reproved the duke of Guise and archbishop of Glasgow for omitting to supply a sum of money to a young English gentleman who had promised to murder Elizabeth. This, however, rests only on Persons's authority. Dodd's Church History of Catholics, by Tierney: the editor gives the letter from a manuscript in his own possession. Vol. 3. Append. lix. 1845.]

† It may probably be answered to this, that if the letter signed by Walsingham as well as Davison to sir Amias Paulet, urging him "to find out some way to shorten the life of the Scots queen," be genuine, which cannot perhaps be justly questioned (though it is so in the Biog. Brit. art. WALSINGHAM, note O), it will be difficult to give him credit for any scrupulousness with respect to Mary. But, without entirely justifying this letter, it is proper to remark, what the Marian party choose to overlook, that it was written after the sentence, during the queen's odious scenes of grimace, when some might argue, though erroneously, that, a legal trial having passed, the formal method of putting the prisoner to death, might, in so peculiar a case, be dispensed with. This was Elizabeth's own wish, in order to save her reputation, and enable her to throw the obloquy on her servants; which by Paulet's prudence and honour in refusing to obey her, by privately murdering his prisoner, she was reduced to do in a very bungling and scandalous manner.

able. By one of those principles of law which may be called natural, as forming the basis of a just and rational jurisprudence, every independent government is supreme within its own territory. Strangers, voluntarily resident within a state, owe a temporary allegiance to its sovereign, and are amenable to the jurisdiction of its tribunals; and this principle, which is perfectly conformable to natural law, has been extended by positive usage even to those who are detained in it by force. Instances have occurred very recently in England, when prisoners of war have suffered death for criminal offences; and, if some have doubted the propriety of carrying such sentences into effect, where a penalty of unusual severity has been inflicted by our municipal law, few, I believe, would dispute the fitness of punishing a prisoner of war for wilful murder, in such a manner as the general practice of civil societies and the prevailing sentiments of mankind agree to point out. It is certainly true that an exception to this rule, incorporated with the positive law of nations, and established, no doubt, before the age of Elizabeth, has rendered the ambassadors of sovereign princes exempt, in all ordinary cases at least, from criminal process. Whether, however, an ambassador may not be brought to punishment for such a flagrant abuse of the confidence which is implied by receiving him, as a conspiracy against the life itself of the prince at whose court he resides, has been doubted by those writers who are most inclined to respect the privileges with which courtesy and convenience have invested him.* A sovereign, during a temporary residence in the territories of another, must of course possess as extensive an immunity as his representative; but that he might, in such circumstances, frame plots for the prince's

* Questions were put to civilians by the queen's order in 1570, concerning the extent of Lesley, bishop of Ross's privilege as Mary's ambassador. Murden Papers, p. 18. Somers Tracts, i. 186. They answered, first, that an ambassador that raises rebellion against the prince to whom he is sent, by the law of nations, and the civil law of the Romans, has forfeited the privileges of an ambassador, and is liable to punishment: secondly, that if a prince be lawfully deposed from

his public authority, and another substituted in his stead, the agent of such a prince cannot challenge the privileges of an ambassador; since none but absolute princes, and such as enjoy a royal prerogative, can constitute ambassadors. These questions are so far curious, that they show the *jus gentium* to have been already reckoned a matter of science, in which a particular class of lawyers was conversant.

assassination with impunity, seems to take for granted some principle that I do not apprehend.

But whatever be the privilege of inviolability attached to sovereigns, it must, on every rational ground, be confined to those who enjoy and exercise dominion in some independent territory. An abdicated or dethroned monarch may preserve his title by the courtesy of other states, but cannot rank with sovereigns in the tribunals where public law is administered. I should be rather surprised to hear any one assert that the parliament of Paris was incompetent to try Christina for the murder of Monaldeschi. And, though we must admit that Mary's resignation of her crown was compulsory, and retracted on the first occasion; yet after a twenty years' loss of possession, when not one of her former subjects avowed allegiance to her, when the king of Scotland had been so long acknowledged by England and by all Europe, is it possible to consider her as more than a titular queen, divested of every substantial right to which a sovereign tribunal could have regard? She was styled accordingly, in the indictment, "Mary, daughter and heir of James the Fifth, late king of Scots, otherwise called Mary queen of Scots, dowager of France." We read even that some lawyers would have had her tried by a jury of the county of Stafford, rather than the special commission; which Elizabeth noticed as a strange indignity. The commission, however, was perfectly legal under the recent statute.*

But while we can hardly pronounce Mary's execution to have been so wholly iniquitous and unwarrantable as it has been represented, it may be admitted that a more generous nature than that of Elizabeth would not have exacted the law's full penalty. The queen of Scots' detention in England was in violation of all natural, public, and municipal law; and if reasons of state policy or precedents from the custom of princes are allowed to extenuate this injustice, it is to be asked whether such reasons and such precedents might not palliate the crime of assassination imputed to her. Some might perhaps allege, as was so frequently urged at the time, that if her life could be taken with justice, it could not be

* Strype, 360. 362. Civilians were consulted about the legality of trying Mary. *Idem*, Append. 138.

spared in prudence ; and that Elizabeth's higher duty to preserve her people from the risks of civil commotion must silence every feeling that could plead for mercy. Of this necessity different judgments may perhaps be formed ; it is evident, that Mary's death extinguished the best hope of popery in England : but the relative force of the two religions was greatly changed since Norfolk's conspiracy ; and it appears to me that an act of parliament explicitly cutting her off from the crown, and at the same time entailing it on her son, would have afforded a very reasonable prospect of securing the succession against all serious disturbance. But this neither suited the inclination of Elizabeth, nor of some among those who surrounded her.

As the catholics endured without any open murmuring the execution of her on whom their fond hopes had so long rested, so for the remainder of the queen's reign they by no means appear, when considered as a body, to have furnished any specious pretexts for severity. In that memorable year, when the dark cloud gathered around our coasts, when Europe stood by in fearful suspense, to behold what should be the result of that great cast in the game of human politics, what the craft of Rome, the power of Philip, the genius of Farnese, could achieve against the island-queen with her Drakes and Cecils,—in that agony of the protestant faith and English name, they stood the trial of their spirits without swerving from their allegiance. It was then that the catholics in every county repaired to the standard of the lord-lieutenant, imploring that they might not be suspected of bartering the national independence for their religion itself. It was then that the venerable lord Montague brought a troop of horse to the queen at Tilbury, commanded by himself, his son, and grandson.* It would have been a sign of gratitude

Continued
persecution
of Roman
Catholics.

* Butler's English Catholics, i. 259. ; Hume. This is strongly confirmed by a letter printed not long after, and republished in the Harleian Miscellany, vol. i. p. 142., with the name of one Leigh, a seminary priest, but probably the work of some protestant. He says, "for contributions of money, and for all other warlike actions, there was no difference between the catholic and the heretic. But in this case [of the Armada] to with-

stand the threatened conquest, yea, to defend the person of the queen, there appeared such a sympathy, concurrence, and consent of all sorts of persons, without respect of religion, as they all appeared to be ready to fight against all strangers, as it were with one heart and one body." Notwithstanding this, I am far from thinking that it would have been safe to place the catholics, generally speaking, in command. Sir William Stanley's recent

if the laws depriving them of the free exercise of their religion had been, if not repealed, yet suffered to sleep, after these proofs of loyalty. But the execution of priests and of other catholics became on the contrary more frequent, and the fines for recusancy exacted as rigorously as before.* A statute was enacted, restraining popish recusants, a distinctive name now first imposed by law, to particular places of residence, and subjecting them to other vexatious provisions.† All persons were forbidden by proclamation to harbour any of whose conformity they were not assured.‡ Some indulgence was doubtless shown during all Elizabeth's reign to particular persons, and it was not unusual to release priests from confinement; but such precarious and irregular connivance gave more scandal to the puritans than comfort to the opposite party.

The catholic martyrs under Elizabeth amount to no inconsiderable number. Dodd reckons them at 191; General observations. Milner has raised the list to 204. Fifteen of these, according to him, suffered for denying the queen's supremacy, 126 for exercising their ministry, and the rest for being reconciled to the Romish church. Many others died of hardships in prison, and many were deprived of their property.§

treachery in giving up Deventer to the Spaniards made it unreasonable for them to complain of exclusion from trust. Nor do I know that they did so. But trust and toleration are two different things. And even with respect to the former, I believe it far better to leave the matter in the hands of the executive government, which will not readily suffer itself to be betrayed, than to proscribe, as we have done, whole bodies by a legislative exclusion. Whenever, indeed, the government itself is not to be trusted, there arises a new condition of the problem.

* Strype, vols. iii. and iv. passim. Life of Whitgift, 401. 505. Murden, 667. Birch's Memoirs of Elizabeth, Lingard, &c. One hundred and ten catholics suffered death between 1588 and 1603. Lingard, 513.

† 33 Eliz. c. 2.

‡ Camden, 566. Strype, iv. 56. This was the declaration of October, 1591, which Andreas Philopater answered. Ribadeneira also inveighs against it.

According to them, its publication was delayed till after the death of Hatton, when the persecuting part of the queen's council gained the ascendancy.

§ Butler, 178. In Coke's famous speech in opening the case of the Powder-plot, he says that not more than thirty priests and five receivers had been executed in the whole of the queen's reign, and for religion not any one. State Trials, ii. 179.

Dr. Lingard says of those who were executed between 1588, and the queen's death, "The butchery, with a few exceptions, was performed on the victim while he was in full possession of his senses." Vol. viii. p. 356. I should be glad to think that the few exceptions were the other way. Much would depend on the humanity of the sheriff, which one might hope to be stronger in an English gentleman than his zeal against popery. But I cannot help acknowledging that there is reason to believe the disgusting cruelties of the legal sentence to have been fre-

There seems nevertheless to be good reason for doubting whether any one who was executed might not have saved his life by explicitly denying the pope's power to depose the queen. It was constantly maintained by her ministers, that no one had been executed for his religion. This would be an odious and hypocritical subterfuge, if it rested on the letter of these statutes, which adjudge the mere manifestation of a belief in the Roman catholic religion, under certain circumstances, to be an act of treason. But both lord Burleigh, in his Execution of Justice, and Walsingham, in a letter published by Burnet*, positively assert the contrary; and I am not aware that their assertion has been disproved. This certainly furnishes a distinction between the persecution under Elizabeth, (which, unjust as it was in its operation, yet as far as it extended to capital inflictions, had in view the security of the government,) and that which the protestants had sustained in her sister's reign, springing from mere bigotry and vindictive rancour, and not even shielding itself at the time with those shallow pretexts of policy which it has of late been attempted to set up in its extenuation. But that which renders these condemnations of popish priests so iniquitous, is, that the belief in, or rather, the refusal to disclaim, a speculative tenet, dangerous indeed and incompatible with loyalty, but not coupled with any overt act, was construed into treason; nor can any one affect to justify these sentences, who is not prepared to maintain that a refusal of the oath of abjuration, while the pretensions of the house of Stuart subsisted, might lawfully or justly have incurred the same penalty.†

quently inflicted. In an anonymous memorial among lord Burleigh's papers, written about 1586, it is recommended that priests persisting in their treasonable opinion should be hanged, "and the manner of drawing and quartering forborne." Strype, iii. 620. This seems to imply that it had been usually practised on the living. And lord Bacon, in his observations on a libel written against lord Burleigh in 1592, does not deny the "bowellings" of catholics; but makes a sort of apology for it, as "less cruel than the wheel or forepation, or even simple burning." Bacon's Works, vol. i. p. 534.

* Burnet, ii. 418.

† "Though no papists were in this reign put to death purely on account of their religion, as numberless protestants had been in the woful days of queen Mary, yet many were executed for treason." Churton's Life of Nowell, p. 147. Mr. Southey, whose abandonment of the oppressed side I sincerely regret, holds the same language; and a later writer, Mr. Townsend, in his Accusations of History against the Church of Rome, has laboured to defend the capital, as well as other, punishments of catholics under Elizabeth, on the same pretence of their treason.

Treason, by the law of England, and

An apology was always deduced for these measures, whether of restriction or punishment, adopted against all adherents to the Roman church, from the restless activity of that new militia which the Holy See had lately organised. The mendicant orders established in the thirteenth century had lent former popes a powerful aid towards subjecting both the laity and the secular priesthood, by their superior learning and ability, their emulous zeal, their systematic concert, their implicit obedience. But in all these requisites for good and faithful janissaries of the church, they were far excelled by the new order of Ignatius Loyola. Rome, I believe, found in their services what has stayed her fall. They contributed in a very material degree to check the tide of the reformation. Subtle alike and intrepid, pliant in their direction, unshaken in their aim, the sworn, implacable, unscrupulous enemies of protestant governments, the jesuits were a legitimate object of jealousy and restraint. As every member of that society enters into an engagement of absolute, unhesitating obedience to its superior, no one could justly complain that he was presumed capable at least of committing any crimes that the policy of his monarch might enjoin. But if the jesuits by their abilities and busy spirit of intrigue promoted the interests of Rome, they raised up enemies by the same means to themselves within the bosom of the church; and became little less obnoxious to the secular clergy, and to

according to the common use of language, is the crime of rebellion or conspiracy against the government. If a statute is made, by which the celebration of certain religious rites is subjected to the same penalties as rebellion or conspiracy, would any man, free from prejudice, and not designing to impose upon the uninformed, speak of persons convicted on such a statute as guilty of treason, without expressing in what sense he uses the words, or deny that they were as truly punished for their religion, as if they had been convicted of heresy? A man is punished for religion, when he incurs a penalty for its profession or exercise, to which he was not liable on any other account.

This is applicable to the great majority of capital convictions on this score under

Elizabeth. The persons convicted could not be traitors in any fair sense of the word, because they were not charged with any thing properly denominated treason. It certainly appears that Campian and some other priests about the same time were indicted on the statute of Edward III. for compassing the queen's death, or intending to depose her. But the only evidence, so far as we know or have reason to suspect, that could be brought against them, was their own admission, at least by refusing to adjure it, of the pope's power to depose heretical princes. I suppose it is unnecessary to prove that, without some overt act to show a design of acting upon this principle, it could not fall within the statute.

a great proportion of the laity, than to the protestants whom they were commissioned to oppose. Their intermeddling character was shown in the very prisons occupied by catholic recusants, where a schism broke out between the two parties, and the secular priests loudly complained of their usurping associates.* This was manifestly connected with the great problem of allegiance to the queen, which the one side being always ready to pay, did not relish the sharp usage it endured on account of the other's disaffection. The council indeed gave some signs of attending to this distinction, by a proclamation issued in 1602, ordering all priests to depart from the kingdom, unless they should come in and acknowledge their allegiance, with whom the queen would take further order.† Thirteen priests came forward on this, with a declaration of allegiance as full as could be devised. Some of the more violent papists blamed them for this; and the Louvain divines concurred in the censure.‡ There were now two parties among the English catholics; and those who, goaded by the sense of long persecution, and inflamed by obstinate bigotry, regarded every heretical government as unlawful or unworthy of obedience, used every machination to deter the rest from giving any test of their loyalty. These were the more busy, but by much the less numerous class; and their influence was mainly derived from the laws of severity, which they had braved or endured with fortitude. It is equally candid and reasonable to believe that, if a fair and legal toleration, or even a general connivance at the exercise of their worship, had been conceded in the first part of Elizabeth's reign, she would have spared herself those perpetual terrors of rebellion which occupied all her later years. Rome would not indeed have been appeased, and some desperate fanatic might have sought her life; but the English catholics collectively

* Watson's Quodlibets. True relation of the faction begun at Wisbech, 1601. These tracts contain rather an uninteresting account of the squabbles in Wisbech castle among the prisoners, but cast heavy reproaches on the jesuits, as the "fire-brands of all sedition, seeking by right or wrong simply or absolutely the monarchy of all England, enemies to all secular

priests, and the causes of all the discord in the English nation." P. 74. I have seen several other pamphlets of the time relating to this difference. Some account of it may be found in Camden, 648., and Strype, iv. 194., as well as in the catholic historians, Dodd and Lingard.

† Rymer, xv. 473. 488.

‡ Butler's Engl. Catholics, p. 261.

would have repaid her protection by an attachment, which even her rigour seems not wholly to have prevented.

It is not to be imagined that an entire unanimity prevailed in the councils of this reign as to the best mode of dealing with the adherents of Rome. Those temporary connivances or remissions of punishment, which, though to our present view they hardly lighten the shadows of this persecution, excited loud complaints from bigoted men, were owing to the queen's personal humour, or the influence of some advisers more liberal than the rest. Elizabeth herself seems always to have inclined rather to indulgence than extreme severity. Sir Christopher Hatton, for some years her chief favourite, incurred odium for his lenity towards papists, and was, in their own opinion, secretly inclined to them.* Whitgift found enough to do with an opposite party. And that too noble and high-minded spirit, so ill fitted for a servile and dissembling court, the earl of Essex, was the consistent friend of religious liberty, whether the catholic or the puritan were to enjoy it. But those councillors, on the other hand, who favoured the more precise reformers, and looked coldly on the established church, never failed to demonstrate their protestantism by excessive harshness towards the old religion's adherents. That bold bad man, whose favour is the great reproach of Elizabeth's reign, the earl of Leicester, and the sagacious, disinterested, inexorable Walsingham, were deemed the chief advisers of sanguinary punishments. But, after their deaths, the catholics were mortified to discover that lord Burleigh, from whom they had hoped for more moderation, persisted in the same severities; contrary, I think, to the principles he had himself laid down in the paper from which I have above made some extracts.†

The restraints and penalties, by which civil governments have at various times thought it expedient to limit the reli-

* Ribadeneira says, that Hatton, "animo Catholicus, nihil perinde quam innocentem illorum sanguinem adeo crudeliter perfundi dolebat." He prevented Cecil from promulgating a more atrocious edict than any other, which was published after his death in 1591. *De Schismate Anglie.*

c. 9. This must have been the proclamation of 29th Nov. 1591, forbidding all persons to harbour any one, of whose conformity they should not be well assured.

† Birch, i. 84.

gious liberties of their subjects, may be arranged in something like the following scale. The first and slightest degree is the requisition of a test of conformity to the established religion, as the condition of exercising offices of civil trust. The next step is to restrain the free promulgation of opinions, especially through the press. All prohibitions of the open exercise of religious worship appear to form a third, and more severe, class of restrictive laws. They become yet more rigorous, when they afford no indulgence to the most private and secret acts of devotion or expressions of opinion. Finally, the last stage of persecution is to enforce by legal penalties a conformity to the established church, or an abjuration of heterodox tenets.

The first degree in this classification, or the exclusion of dissidents from trust and power, though it be always incumbent on those who maintain it to prove its necessity, may, under certain rare circumstances, be conducive to the political well-being of a state; and can then only be reckoned an encroachment on the principles of toleration, when it ceases to produce a public benefit sufficient to compensate for the privation it occasions to its objects. Such was the English test act during the interval between 1672 and 1688. But, in my judgment, the instances which the history of mankind affords, where even these restrictions have been really consonant to the soundest policy, are by no means numerous. Cases may also be imagined, where the free discussion of controverted doctrines might, for a time at least, be subjected to some limitation for the sake of public tranquillity. I can scarcely conceive the necessity of restraining an open exercise of religious rites in any case, except that of glaring immorality. In no possible case can it be justifiable for the temporal power to intermeddle with the private devotions or doctrines of any man. But least of all can it carry its inquisition into the heart's recesses, and bend the reluctant conscience to an insincere profession of truth, or extort from it an acknowledgment of error, for the purpose of inflicting punishment. The statutes of Elizabeth's reign comprehend every one of these progressive degrees of restraint and persecution. And it is much to be regretted that any writers worthy of respect should, either through undue prejudice against an adverse

religion, or through timid acquiescence in whatever has been enacted, have offered for this odious code the false pretext of political necessity. That necessity, I am persuaded, can never be made out : the statutes were, in many instances, absolutely unjust ; in others, not demanded by circumstances ; in almost all, prompted by religious bigotry, by excessive apprehension, or by the arbitrary spirit with which our government was administered under Elizabeth.

CHAPTER IV.

ON THE LAWS OF ELIZABETH'S REIGN RESPECTING
PROTESTANT NON-CONFORMISTS.

Origin of the Differences among the English Protestants — Religious Inclinations of the Queen — Unwillingness of many to comply with the established Ceremonies — Conformity enforced by the Archbishop — Against the Disposition of others — A more determined Opposition, about 1570, led by Cartwright — Dangerous Nature of his Tenets — Puritans supported in the Commons — and in some Measure by the Council — Propheysings — Archbishops Grindal and Whitgift — Conduct of the latter in enforcing Conformity — High Commission Court — Lord Burleigh averse to Severity — Puritan Labels — Attempt to set up Presbyterian System — House of Commons averse to episcopal Authority — Independents liable to severe Laws — Hooker's Ecclesiastical Polity — Its Character — Spoliation of Church Revenues — General Remarks — Letter of Walsingham in Defence of the Queen's Government.

THE two statutes enacted in the first year of Elizabeth, commonly called the acts of supremacy and uniformity, are the main links of the Anglican church with the temporal constitution, and establish the subordination and dependency of the former; the first abrogating all jurisdiction and legislative power of ecclesiastical rulers, except under the authority of the crown; and the second prohibiting all changes of rites and discipline without the approbation of parliament. It was the constant policy of this queen to maintain her ecclesiastical prerogative and the laws she had enacted. But in following up this principle she found herself involved in many troubles, and had to contend with a religious party, quite opposite to the Romish, less dangerous indeed and inimical to her government, but full as vexatious and determined.

I have in another place slightly mentioned the differences that began to spring up under Edward VI. between the moderate reformers who established the new Anglican church, and those who accused them of proceeding with too much forbearance in casting off superstitions and abuses. These diversities of opinion were not

Origin of the differences among the English protestants.

without some relation to those which distinguished the two great families of protestantism in Europe. Luther, intent on his own system of dogmatic theology, had shown much indifference about retrenching exterior ceremonies, and had even favoured, especially in the first years of his preaching, that specious worship which some ardent reformers were eager to reduce to simplicity.* Crucifixes and images, tapers and priestly vestments, even for a time the elevation of the host and the Latin mass-book, continued in the Lutheran churches; while the disciples of Zuingle and Calvin were carefully eradicating them as popish idolatry and superstition. Cranmer and Ridley, the founders of the English reformation, justly deeming themselves independent of any foreign master, adopted a middle course between the Lutheran and Calvinistic ritual. The general tendency however of protestants, even in the reign of Edward VI., was towards the simpler forms; whether through the influence of those foreign divines who co-operated in our reformation, or because it was natural in the heat of religious animosity to recede as far as possible, especially in such exterior distinctions, from the opposite denomination. The death of Edward seems to have prevented a further approach to the scheme of Geneva in our ceremonies, and perhaps in our church-government. During the persecution of Mary's reign, the most eminent protestant clergymen took refuge in various cities of Germany and Switzerland. They were received by the Calvinists with hospitality and fraternal kindness; while the Lutheran divines, a narrow-minded intolerant faction, both neglected and insulted them.† Divisions soon arose among themselves about the use of the English service, in which a pretty considerable party was disposed to make alterations. The chief scene of these disturbances was Frankfort, where Knox, the famous reformer of Scotland, headed the innovators; while Cox, an eminent divine, much concerned in the establishment of Edward VI., and afterwards bishop of Ely, stood up for the original liturgy. Cox succeeded (not quite fairly, if we may rely on the only narrative we possess,) in driving his opponents from the city; but these disagreements

* Sleidan, Hist. de la Réformation, par Courayer, ii. 74. † Strype's Cranmer, 354.

were by no means healed, when the accession of Elizabeth recalled both parties to their own country, neither of them very likely to display more mutual charity in their prosperous hour, than they had been able to exercise in a common persecution.*

The first mortification these exiles endured on their return was to find a more dilatory advance towards public reformation of religion, and more of what they deemed lukewarmness, than their sanguine zeal had anticipated. Most part of this delay was owing to the greater prudence of the queen's counsellors, who felt the pulse of the nation before they ventured on such essential changes. But there was yet another obstacle, on which the reformers had not reckoned. Elizabeth, though resolute against submitting to the papal supremacy, was not so averse to all the tenets abjured by protestants, and loved also a more splendid worship than had prevailed in her brother's reign; while many of those returned from the continent were intent on copying a still simpler model. She reproved a divine who preached against the real presence, and is even said to have used prayers to the Virgin.† But her great struggle with the reformers was about images, and particularly the crucifix, which she retained, with lighted tapers before it, in her chapel; though in the injunctions to the ecclesiastical visitors of 1559, they are directed to have them taken away from

Religious
inclinations
of the
queen.

* These transactions have been perpetuated by a tract, entitled *Discourse of the Troubles at Frankfort*, first published in 1575, and reprinted in the well-known collection, entitled *The Phoenix*. It is fairly and temperately written, though with an avowed bias towards the puritan party. Whatever we read in any historian on the subject, is derived from this authority; but the refraction is of course very different through the pages of Collier and of Neal.

† Strype's *Annals*, ii. 1. There was a Lutheran party at the beginning of her reign, to which the queen may be said to have inclined, not altogether from religion, but from policy. *Id.* i. 53. Her situation was very hazardous; and in order to connect herself with sincere allies, she had thoughts of joining the

Smalcaldic league of the German princes, whose bigotry would admit none but members of the Augsburg confession. Jewell's letters to Peter Martyr, in the appendix to Burnet's third volume, and lately published more accurately, with many of other reformers, by the Parker Society, [1845,] throw considerable light on the first two years of Elizabeth's reign; and show that famous prelate to have been what afterwards would have been called a precisian or puritan. He even approved a scruple Elizabeth entertained about her title of head of the church, as appertaining only to Christ. But the unreasonableness of the discontented party, and the natural tendency of a man who has joined the side of power to deal severely with those he has left, made him afterwards their enemy.

churches.* This concession she must have made very reluctantly, for we find proofs the next year of her inclination to restore them; and the question of their lawfulness was debated, as Jewell writes word to Peter Martyr, by himself and Grindal on one side, against Parker and Cox, who had been persuaded to argue in their favour.† But the strenuous opposition of men so distinguished as Jewell, Sandys, and Grindal, of whom the first declared his intention of resigning his bishopric in case this return towards superstition should be made, compelled Elizabeth to relinquish her project.‡ The crucifix was even for a time removed from her own chapel, but replaced about 1570.§

There was, however, one other subject of dispute between the old and new religions, upon which her majesty could not be brought to adopt the protestant side of the question. This was the marriage of the clergy, to which she expressed so great an aversion, that she would never consent to repeal the statute of her sister's reign against it.|| Accordingly the bishops and clergy, though they married by connivance, or rather by an ungracious permission¶, saw, with very just dissatisfaction,

* Roods and relics accordingly were broken to pieces and burned throughout the kingdom, of which Collier makes loud complaint. This, Strype says, gave much offence to the catholics; and it was not the most obvious method of inducing them to conform.

† Burnet, iii. Appendix, 290. Strype's Parker, 46.

‡ Quantum auguror, non scribam ad te posthac episcopus. Eo enim jam res pervenit, ut aut cruces argentæ et stannæ, quas nos ubique confregimus, restituendæ sint, aut episcopatus relinquendi. Burnet, 294. I conceive that by *cruces* we are to understand crucifixes, not mere crosses; though I do not find the word, even in Du Cange, used in the former sense. Sandys writes, that he had nearly been deprived for expressing himself warmly against images. Id. 296. Other proofs of the text may be found in the same collection, as well as in Strype's Annals, and his Life of Parker. Even Parker seems, on one occasion, to have expected the queen to make such a retrograde movement in religion as would compel them all to disobey her. Life of

Parker, Appendix, 29; a very remarkable letter.

§ Strype's Parker, 310. The archbishop seems to disapprove this as inexpedient, but rather coldly; he was far from sharing the usual opinions on this subject. A puritan pamphleteer took the liberty to name the queen's chapel as "the pattern and precedent of all superstition." Strype's Annals, i. 471.

|| Burnet, ii. 395.

¶ One of the injunctions to the visitors of 1559, reciting the offence and slander to the church that had arisen by lack of discreet and sober behaviour in many ministers, both in choosing of their wives, and in living with them, directs that no priest or deacon shall marry without the allowance of the bishops, and two justices of the peace, dwelling near the woman's abode, nor without the consent of her parents or kinsfolk, or, for want of these, of her master or mistress, on pain of not being permitted to exercise the ministry, or hold any benefice; and that the marriages of bishops should be approved by the metropolitan, and also by commissioners appointed by

their children treated by the law as the offspring of concubinage.* This continued, in legal strictness, till the first year of James, when the statute of Mary was explicitly repealed; though I cannot help suspecting that clerical marriages had been tacitly recognised, even in courts of justice, long before that time. Yet it appears less probable to derive Elizabeth's prejudice in this respect from any deference to the Roman discipline, than from that strange dislike to the most lawful union between the sexes, which formed one of the singularities of her character.

Such a reluctance as the queen displayed to return in every point even to the system established under Edward, was no slight disappointment to those who thought that too little had been effected by it. They had beheld at Zurich and Geneva, the simplest, and, as they conceived, the purest form of worship. They were persuaded that the vestments still worn by the clergy, as in the days of popery, though in themselves indifferent, led to erroneous notions among the

the queen. Somers Tracts, i. 65. Burnet, ii. 398. It is reasonable to suppose, that when a host of low-bred and illiterate priests were at once released from the obligation to celibacy, many of them would abuse their liberty improvidently, or even scandalously; and this probably had increased Elizabeth's prejudice against clerical matrimony. But I do not suppose that this injunction was ever much regarded. Some time afterwards (Aug. 1561) she put forth another extraordinary injunction, that no member of a college or cathedral should have his wife living within its precincts, under pain of forfeiting all his preferments. Cecil sent this to Parker, telling him at the same time that it was with great difficulty he had prevented the queen from altogether forbidding the marriage of priests. Life of P., 107. And the archbishop himself says, in the letter above mentioned, "I was in a horror to hear such words to come from her mild nature and Christianly learned conscience, as she spake concerning God's holy ordinance and institution of matrimony."

* Sandys writes to Parker, April, 1559, "The queen's majesty will wink at it, but not stablish it by law, which is nothing else but to bastard our children."

And decisive proofs are brought by Strype, that the marriages of the clergy were not held legal, in the first part at least of the queen's reign. Elizabeth herself, after having been sumptuously entertained by the archbishop at Lambeth, took leave of Mrs. Parker with the following courtesy: "*Madam* (the style of a married lady) I may not call you; *mistress* (the appellation at that time of an unmarried woman) I am loth to call you; but however I thank you for your good cheer." This lady is styled, in deeds made while her husband was archbishop, *Parker*, alias *Harleston*; which was her maiden name. And she dying before her husband, her brother is called her heir-at-law, though she left children. But the archbishop procured letters of legitimation, in order to render them capable of inheritance. Life of Parker, p. 511. Others did the same. Annals, i. 8. Yet such letters were, I conceive, beyond the queen's power to grant, and could not have obtained any regard in a court of law.

In the diocese of Bangor it was usual for the clergy, some years after Elizabeth's accession, to pay the bishop for a licence to keep a concubine. Strype's Parker, 203.

people, and kept alive a recollection of former superstitions, which would render their return to them more easy in the event of another political revolution.* They disliked some other ceremonies for the same reason. These objections were by no means confined, as is perpetually insinuated, to a few discontented persons. Except archbishop Parker, who had remained in England during the late reign, and Cox, bishop of Ely, who had taken a strong part at Frankfort against innovation, all the most eminent churchmen, such as Jewell, Grindal, Sandys, Nowell, were in favour of leaving off the surplice and what were called the popish ceremonies.† Whether their objections are to be deemed narrow and frivolous or otherwise, it is inconsistent with veracity to dissemble, that the queen alone was the cause of retaining those observances, to which the great separation from the Anglican establishment is ascribed. Had her influence been withdrawn, surplices and square caps would have lost their steadiest friend; and several other little accommodations to the prevalent dispositions of protestants would have taken place. Of this it seems impossible to doubt, when we read the proceedings of the convocation in 1562, when a proposition to abolish most of the usages deemed objectionable was lost only by a vote, the numbers being 59 to 58.‡

In thus restraining the ardent zeal of reformation, Elizabeth may not have been guided merely by her own prejudices, without far higher motives of prudence and even of equity. It is difficult to pronounce in what proportion the two conflicting religions were blended on her coming to the throne.

* Burnet, iii. 305.

† Jewell's letters to Bullinger, in Burnet, are full of proofs of his dissatisfaction; and those who feel any doubts may easily satisfy themselves from the same collection, and from Strype as to the others. The current opinion, that these scruples were imbibed during the banishment of our reformers, must be received with great allowance. The dislike to some parts of the Anglican ritual had begun at home; it had broken out at Frankfort; it is displayed in all the early documents of Elizabeth's reign by the English divines, far more warmly than by their Swiss correspondents.

Grindal, when first named to the see of London, had his scruples about wearing the episcopal habits removed by Peter Martyr. Strype's Grindal, 29.

‡ It was proposed on this occasion to abolish all saints' days, to omit the cross in baptism, to leave kneeling at the communion to the ordinary's discretion, to take away organs, and one or two more of the ceremonies then chiefly in dispute. Burnet, iii. 303., and Append. 319. Strype, i. 297. 299. Nowell voted in the minority. It can hardly be going too far to suppose that some of the majority were attached to the old religion.

The reformed occupied most large towns, and were no doubt a more active and powerful body than their opponents. Nor did the ecclesiastical visiters of 1559 complain of any resistance, or even unwillingness, among the people.* Still the

* Jewell, one of these visiters, writes afterwards to Martyr, "Invenimus ubique animos multitudinis satis propensos ad religionem; ibi etiam, ubi omnia putabantur fore difficillima Si quid erat obstinatæ malitiæ, id totum erat in presbyteris, illis præsertim, qui aliquando stetissent à nostrâ sententiâ." Burnet, iii. Append. 289. The common people in London and elsewhere, Strype says, took an active part in demolishing images; the pleasure of destruction, I suppose, mingling with their abhorrence of idolatry. And during the conferences held in Westminster Abbey, Jan. 1559, between the catholic and protestant divines, the populace, who had been admitted as spectators, testified such disapprobation of the former, that they made it a pretext of breaking off the argument. There was indeed such a tendency to anticipate the government in reformation, as necessitated a proclamation, Dec. 28. 1558, silencing preachers on both sides.

Mr. Butler says, from several circumstances it is evident that a great majority of the nation then inclined to the Roman catholic religion. Mem. of Eng. Catholics, i. 146. But his proofs of this are extremely weak. The attachment he supposes to have existed in the laity towards their pastors may well be doubted; it could not be founded on the natural grounds of esteem; and if Rishton, the continuator of Sanders de Schismate, whom he quotes, says that one third of the nation was protestant, we may surely double the calculation of so determined a papist. As to the influence which Mr. B. alleges the court to have employed in elections for Elizabeth's first parliament, the argument would equally prove that the majority was protestant under Mary, since she had recourse to the same means. The whole tenor of historical documents in Elizabeth's reign proves that the catholics soon became a minority, and still more among the common people than the gentry. The north of England, where their strength lay, was in every respect the least important part of the kingdom. Even according to Dr. Lingard, who thinks fit to claim half the nation as catholic in the middle of

this reign, the number of recusants certified to the council under 23 Eliz. c. 1., amounted only to fifty thousand; and, if we can trust the authority of other lists, they were much fewer before the accession of James. This writer, I may observe in passing, has, through haste and thoughtlessness, misstated a passage he cites from Murden's State Papers, p. 605., and confounded the persons suspected for religion in the city of London, about the time of the Armada, with the whole number of men fit for arms; thus making the former amount to seventeen thousand and eighty-three.

Mr. Butler has taken up so paradoxical a notion on this subject, that he literally maintains the catholics to have been at least one half of the people at the epoch of the gunpowder plot. Vol. i. p. 295. We should be glad to know at what time he supposes the grand apostacy to have been consummated. Cardinal Bentivoglio gives a very different account; reckoning the real catholics, such as did not make profession of heresy, at only a thirtieth part of the whole; though he supposes that four fifths might become such, from secret inclination or general indifference, if it were once established. Opere di Bentivoglio, p. 83. edit. Paris, 1645. But I presume neither Mr. Butler nor Dr. Lingard would own these *adiaphorists*.

The latter writer, on the other hand, reckons the Hugonots of France, soon after 1560, at only one hundredth part of the nation, quoting for this Castelnau, an useful memoir writer, but no authority on a matter of calculation. The stern spirit of Coligni, *atrox animus Catonis*, rising above all misfortune, and unconquerable, except by the darkest treachery, is sufficiently admirable without reducing his party to so miserable a fraction. The Calvinists at this time are reckoned by some at one fourth, but more frequently at one tenth, of the French nation. Even in the beginning of the next century, when proscription and massacre, lukewarmness and self-interest, had thinned their ranks, they are estimated by Bentivoglio (*ubi supra*) at one fifteenth.

Romish party was extremely numerous : it comprehended the far greater portion of the beneficed clergy, and all those who, having no turn for controversy, clung with pious reverence to the rites and worship of their earliest associations. It might be thought perhaps not very repugnant to wisdom or to charity, that such persons should be won over to the reformed faith by retaining a few indifferent usages, which gratified their eyes, and took off the impression, so unpleasant to simple minds, of religious innovation. It might be urged that, should even somewhat more of superstition remain a while than rational men would approve, the mischief would be far less than to drive the people back into the arms of popery, or to expose them to the natural consequences of destroying at once all old landmarks of reverence, — a dangerous fanaticism, or a careless irreligion. I know not in what degree these considerations had weight with Elizabeth ; but they were such as it well became her to entertain.

We live however too far from the period of her accession, to pass an unqualified decision on the course of policy which it was best for the queen to pursue. The difficulties of effecting a compromise between two intolerant and exclusive sects were perhaps insuperable. In maintaining or altering a religious establishment, it may be reckoned the general duty of governments to respect the wishes of the majority. But it is also a rule of human policy to favour the more efficient and determined, which may not always be the more numerous party. I am far from being convinced that it would not have been practicable, by receding a little from that uniformity which governors delight to prescribe, to have palliated in a great measure, if not put an end for a time, to the discontent that so soon endangered the new establishment. The frivolous usages, to which so many frivolous objections were raised, such as the tippet and surplice, the sign of the cross in baptism, the ring in matrimony, the posture of kneeling at the communion, might have been left to private discretion, not possibly without some inconvenience, but with less, as I conceive, than resulted from rendering their observance indispensable. Nor should we allow ourselves to be turned aside by the common reply, that no concessions of this kind would have ultimately prevented

the disunion of the church upon more essential differences than these litigated ceremonies ; since the science of policy, like that of medicine, must content itself with devising remedies for immediate danger, and can at best only retard the progress of that intrinsic decay which seems to be the law of all things human, and through which every institution of man, like his earthly frame, must one day crumble into ruin.

The repugnance felt by a large part of the protestant clergy to the ceremonies with which Elizabeth would not consent to dispense, showed itself in irregular transgressions of the uniformity prescribed by statute. Some continued to wear the habits, others laid them aside ; the communicants received the sacrament, sitting, or standing, or kneeling, according to the minister's taste ; some baptized in the font, others in a basin ; some with the sign of the cross, others without it. The people in London and other towns, siding chiefly with the malecontents, insulted such of the clergy as observed the prescribed order.* Many of the bishops readily connived at deviations from ceremonies which they disapproved. Some, who felt little objection to their use, were against imposing them as necessary.† And this opinion, which led to very momentous inferences, began so much to prevail, that we soon find the objections to conformity more grounded on the unlawfulness of compulsory regulations in the church prescribed by the civil power, than on any special impropriety in the usages themselves. But this principle, which perhaps the scrupulous party did not yet very fully avow, was altogether incompatible with the supremacy vested in the queen, of which fairest flower of her prerogative she was abundantly tenacious. One thing was evident, that the puritan malecontents were growing every day more numerous, more determined, and more likely to win over the generality of those who sincerely favoured the protestant cause. There were but two lines to be taken ; either to relax and modify

Unwillingness of many to comply with the established ceremonies.

* Strype's Parker, 152. 153. Collier, Wells, for having made a man do penance for adultery in a square cap.
 † Strype's Parker, 157. 173.

508. In the Lansdowne Collection, vol. viii. 47., is a letter from Parker, Apr. 1565, complaining of Turner, dean of

the regulations which gave offence, or to enforce a more punctual observation of them. It seems to me far more probable that the former course would have prevented a great deal of that mischief, which the second manifestly aggravated. For in this early stage the advocate of a simpler ritual had by no means assumed the shape of an embodied faction, whom concessions, it must be owned, are not apt to satisfy, but numbered the most learned and distinguished portion of the hierarchy. Parker stood nearly alone on the other side, but alone more than an equipoise in the balance, through his high station, his judgment in matters of policy, and his knowledge of the queen's disposition. He had possibly reason to apprehend that Elizabeth, irritated by the prevalent humour for alteration, might burst entirely away from the protestant side, or stretch her supremacy to reduce the church into a slavish subjection to her caprice.* This might induce a man of his sagacity, who took a far wider view of civil affairs than his brethren, to exert himself according to her peremptory command for universal conformity. But it is not easy to reconcile the whole of his conduct to this supposition; and in the copious memorials of Strype, we find the archbishop rather exciting the queen to rigorous measures against the puritans than standing in need of her admonition.†

The unsettled state of exterior religion which has been mentioned lasted till 1565. In the beginning of that year a determination was taken by the queen, or rather perhaps the archbishop, to put a stop to all irregularities in the public service. He set forth a book called Advertisements, containing orders and regulations for the discipline of the clergy. This modest title

Conformity enforced by the archbishop against the disposition of others.

* This apprehension of Elizabeth's taking a disgust to protestantism is intimated in a letter of bishop Cox, Strype's Parker, 229.

† Parker sometimes declares himself willing to see some indulgence as to the habits and other matters; but the queen's commands being peremptory, he had thought it his duty to obey them, though forewarning her that the puritan ministers would not give way, 225. 227. This however is not consistent with other passages, where he appears to importune

the queen to proceed. Her wavering conduct, partly owing to caprice, partly to insincerity, was naturally vexatious to a man of his firm and ardent temper. Possibly he might dissemble a little in writing to Cecil, who was against driving the puritans to extremities. But, on the review of his whole behaviour, he must be reckoned, and always has been reckoned, the most severe disciplinarian of Elizabeth's first hierarchy; though more violent men came afterwards.

was taken in consequence of the queen's withholding her sanction of its appearance through Leicester's influence.* The primate's next step was to summon before the ecclesiastical commission Sampson, dean of Christchurch, and Humphrey, president of Magdalen college, Oxford, men of signal non-conformity, but at the same time of such eminent reputation that, when the law took its course against them, no other offender could hope for indulgence. On refusing to wear the customary habits, Sampson was deprived of his deanery; but the other seems to have been tolerated.† This instance of severity, as commonly happens, rather irritated than intimidated the puritan clergy, aware of their numbers, their popularity, and their powerful friends, but above all sustained by their own sincerity and earnestness. Parker had taken his resolution to proceed in the vigorous course he had begun. He obtained from the queen a proclamation, peremptorily requiring a conformity in the use of the clerical vestments and other matters of discipline. The London ministers, summoned before himself and their bishop Grindal, who did not very willingly co-operate with his metropolitan, were called upon for a promise to comply with the legal ceremonies, which thirty-seven out of ninety-eight refused to make. They were in consequence suspended from their ministry, and their livings put in sequestration. But these unfortunately, as was the case in all this reign, were the most conspicuous, both for their general character, and for their talent in preaching.‡

Whatever deviations from uniformity existed within the pale of the Anglican church, no attempt had hitherto been made to form separate assemblies; nor could it be deemed necessary, while so much indulgence had been conceded to the scrupulous clergy. But they were now reduced to determine whether the imposition of those rites they disliked would justify, or render necessary, an abandonment of their ministry. The bishops of that school had so far overcome

* Strype's Annals, 416. Life of Parker, 159. Some years after, these advertisements obtained the queen's sanction, and got the name of Articles and Ordinances. Id. 160.

† Strype's Annals, 416. 430. Life of Parker, 184. Sampson had refused a

bishopric on account of these ceremonies. Burnet, iii. 292.

‡ Life of Parker, 214. Strype says, p. 223., that the suspended ministers preached again after a little time by connivance.

their repugnance, as not only to observe the ceremonies of the church, but, in some instances, to employ compulsion towards others.* A more unexceptionable, because more disinterested, judgment was pronounced by some of the Swiss reformers to whom our own paid great respect—Beza, Gualter, and Bullinger; who, while they regretted the continuance of a few superfluous rites, and still more the severity used towards good men, dissuaded their friends from deserting their vocation on that account. Several of the most respectable opponents of the ceremonies were equally adverse to any open schism.† But the animosities springing from heated zeal, and the smart of what seemed oppression, would not suffer the English puritans generally to acquiesce in such temperate counsels. They began to form separate conventicles in London, not ostentatiously indeed, but of course without the possibility of eluding notice. It was doubtless worthy of much consideration, whether an established church-government could wink at the systematic disregard of its discipline by those who were subject to its jurisdiction and partook of its revenues. And yet there were many important considerations derived from the posture of religion and of the state, which might induce cool-headed men to doubt the expediency of too much straightening the reins. But there are few, I trust, who can hesitate to admit that the puritan clergy, after being excluded from their benefices, might still claim from a just government a peaceful toleration of their particular worship. This it was vain to expect from the queen's arbitrary spirit, the imperious humour of Parker, and that total disregard of the rights of conscience which was common to all parties in the sixteenth century. The first instance of actual

* Jewell is said to have become strict in enforcing the use of the surplice. *Annals*, 421.

† *Strype's Annals*, i. 423. ii. 316. *Life of Parker*, 243. 348. *Burnet*, iii. 310. 325. 337. *Bishops Grindal and Horn* wrote to Zurich, saying plainly, it was not their fault that the habits were not laid aside, with the cross in baptism, the use of organs, baptism by women, &c. p. 314. This last usage was much inveighed against by the Calvinists, because it involved a theological tenet differing

from their own, as to the necessity of baptism. In *Strype's Annals*, 501., we have the form of an oath taken by all midwives, to exercise their calling without sorcery or superstition, and to baptise with the proper words. It was abolished by James I.

Beza was more dissatisfied than the Helvetic divines with the state of the English church, *Annals*, i. 452. *Collier*, 503.; but dissuaded the puritans from separation, and advised them rather to comply with the ceremonies.. *Id.* 511.

punishment inflicted on protestant dissenters was in June 1567, when a company of more than one hundred were seized during their religious exercises at Plummer's Hall, which they had hired on pretence of a wedding, and fourteen or fifteen of them were sent to prison.* They behaved on their examination with a rudeness as well as self-sufficiency, that had already begun to characterise the puritan faction. But this cannot excuse the fatal error of molesting men for the exercise of their own religion.

These coercive proceedings of the archbishop were feebly seconded, or directly thwarted, by most leading men both in church and state. Grindal and Sandys, successively bishops of London and archbishops of York, were naturally reckoned at this time somewhat favourable to the non-conforming ministers, whose scruples they had partaken. Parkhurst and Pilkington, bishops of Norwich and Durham, were openly on their side.† They had still more effectual support in the queen's council. The earl of Leicester, who possessed more power than any one to sway her wavering and capricious temper, the earls of Bedford, Huntingdon, and Warwick, regarded as the steadiest protestants among the aristocracy, the wise and grave lord keeper Bacon, the sagacious Walsingham, the experienced Sadler, the zealous Knollys, considered these objects of Parker's severity, either as demanding a purer worship than had been established in the church, or at least as worthy by their virtues and services of more indulgent treatment.‡ Cecil himself, though on intimate terms with the archbishop, and concurring generally in his measures, was not far removed from the latter way of thinking, if his natural caution and extreme dread at this juncture of losing the queen's favour had permitted him more unequivocally to express it. Those whose judgment did not incline them towards the puritan notions, respected the scruples of men in whom the reformed religion could so implicitly confide. They had regard also to the condition of the church. The far greater part of its benefices were supplied by con-

* Strype's *Life of Parker*, 242. *Life of Grindal*, 114.

† Burnet, iii. 316. Strype's *Parker*, 155. et alibi.

‡ Id. 226. The church had but two or three friends, Strype says, in the council about 1572, of whom Cecil was the chief. Id. 388.

formists of very doubtful sincerity, who would resume their mass-books with more alacrity than they had cast them aside.* Such a deficiency of protestant clergy had been experienced at the queen's accession, that for several years it was a common practice to appoint laymen, usually mechanics, to read the service in vacant churches.† These were not always wholly illiterate; or if they were, it was no more than might be said of the popish clergy, the vast majority of whom were destitute of all useful knowledge, and could read little Latin.‡ Of the two universities, Oxford had become so strongly attached to the Romish side during the late reign, that, after the desertion or expulsion of the most zealous of that party had almost emptied several colleges, it still for

* Burnet says, on the authority of the visitors' reports, that out of 9400 beneficed clergymen, not more than about 200 refused to conform. This caused for some years just apprehensions of the danger into which religion was brought by their retaining their affections to the old superstition; so that," he proceeds, "if queen Elizabeth had not lived so long as she did, till all that generation was dead, and a new set of men better educated and principled were grown up and put in their rooms; and if a prince of another religion had succeeded before that time, they had probably turned about again to the old superstition as nimbly as they had done before in queen Mary's days." Vol. ii. p. 401. It would be easy to multiply testimonies out of Strype, to the papist inclinations of a great part of the clergy in the first part of this reign. They are said to have been sunk in superstition and looseness of living. *Annals*, i. 166.

† Strype's *Annals*, 138. 177. Collier, 436. 465. This seems to show that more churches were empty by the desertion of popish incumbents than the foregoing note would lead us to suppose. I believe that many went off to foreign parts from time to time, who had complied in 1559; and others were put out of their livings. The Roman Catholic writers make out a longer list than Burnet's calculation allows.

It appears from an account sent in to the privy council by Parkhurst, bishop of Norwich, in 1562, that in his diocese more than one third of the benefices were

vacant. *Annals*, i. 323. But in Ely, out of 152 cures, only 52 were served in 1560. *L. of Parker*, 72.

‡ Parker wrote in 1561 to the bishops of his province, enjoining them to send him certificates of the names and qualities of all their clergy; one column, in the form of certificate, was for learning: "And this," Strype says, "was commonly set down; Latinè aliqua verba intelligit, Latinè utcumque intelligit, Latinè pauca intelligit," &c. Sometimes, however, we find *doctus*. *L. of Parker*, 95. But if the clergy could not read the language in which their very prayers were composed, what other learning or knowledge could they have? Certainly none; and even those who had gone far enough to study the school logic and divinity, do not deserve a much higher place than the wholly uninstructed. The Greek tongue was never generally taught in the universities or public schools till the reformation, and perhaps not so soon.

Since this note was written, a letter of Gibson has been published in *Pepys' Memoirs*, vol. ii. p. 154., mentioning a catalogue he had found of the clergy in the archdeaconry of Middlesex, A. D. 1563, with their qualifications annexed. Three only are described as *docti Latinè et Græcè*; twelve are called *docti simply*; nine, *Latinè docti*: thirty-one, *Latinè mediocriter intelligentes*: forty-two, *Latinè perperam, utcumque aliquid, pauca verba, &c. intelligentes*; seventeen are *non docti or indocti*. If this was the case in London, what can we think of more remote parts?

many years abounded with adherents to the old religion.* But at Cambridge, which had been equally popish at the queen's accession, the opposite faction soon acquired the ascendant. The younger students, imbibing ardently the new creed of ecclesiastical liberty, and excited by puritan sermons, began to throw off their surplices, and to commit other breaches of discipline, from which it might be inferred that the generation to come would not be less apt for innovation than the present.†

* In the struggle made for popery at the queen's accession, the lower house of convocation sent up to the bishops five articles of faith, all strongly Roman catholic. These had previously been transmitted to the two universities, and returned with the hands of the greater part of the doctors to the first four. The fifth they scrupled, as trenching too much on the queen's temporal power. Burnet, ii. 388. iii. 269.

Strype says, the universities were so addicted to popery, that for some years few educated in them were ordained. Life of Grindal, p. 50. And Wood's Antiquities of the University of Oxford contain many proofs of its attachment to the old religion. In Exeter College, as late as 1578, there were not above four protestants out of eighty, "all the rest secret or open Roman affectionaries." These chiefly came from the west, "where popery greatly prevailed, and the gentry were bred up in that religion." Strype's Annals, ii. 539. But afterwards, Wood complains, "through the influence of Humphrey and Reynolds (the latter of whom became divinity lecturer on secretary Walsingham's foundation in 1586), the disposition of the times, and the long continuance of the earl of Leicester, the principal patron of the puritanical faction, in the place of chancellor of Oxford, the face of the university was so much altered that there was little to be seen in it of the church of England, according to the principles and positions upon which it was first reformed." Hist. of Oxford, vol. ii. p. 228. Previously, however, to this change towards puritanism, the university had not been Anglican, but popish; which Wood liked much better than the first, and nearly as well as the second.

A letter from the university of Oxford

to Elizabeth on her accession (Hearne's edition of Roper's Life of More, p. 173.) shows the accommodating character of these academies. They extol Mary as an excellent queen, but are consoled by the thought of her excellent successor. One sentence is curious: "*Cum patri, fratri, sorori, nihil fuerit republicæ carius, religione optatius, verâ gloriâ dulcius; cum in hæc familiâ hæc laudes floruerint, vehementer confidimus, &c., quæ ejusdem stirpis sis, easdem cupidissime prosecuturam.*" It was a singular train of complaisance to praise Henry's, Edward's, and Mary's, religious sentiments in the same breath; but the queen might at least learn this from it, that whether she fixed on one of their creeds, or devised a new one for herself, she was sure of the acquiescence of this ancient and learned body. A preceding letter to cardinal Pole, in which the times of Henry and Edward are treated more cavalierly, seems by the style, which is very elegant, to have been the production of the same pen.

† The fellows and scholars of St. John's College, to the number of three hundred, threw off their hoods and surplices, in 1565, without any opposition from their master, till Cecil, as chancellor of the university, took up the matter, and insisted on their conformity to the established regulations. This gave much dissatisfaction to the university; not only the more intemperate party, but many heads of colleges and grave men, among whom we are rather surprised to find the name of Whitgift, interceding with their chancellor for some mitigation as to these unpalatable observances. Strype's Annals, i. 441. Life of Parker, 194. Cambridge had however her catholics, as Oxford had her puritans, of whom Dr. Caius, founder of the college that bears

The first period in the history of puritanism includes the time from the queen's accession to 1570, during which the retention of superstitious ceremonies in the church had been the sole avowed ground of complaint. But when these obnoxious rites came to be enforced with unsparing rigour, and even those who voluntarily renounced the temporal advantages of the establishment were hunted from their private conventicles, they began to consider the national system of ecclesiastical regimen as itself in fault, and to transfer to the institution of episcopacy that dislike they felt for some of the prelates. The ostensible founder of this new school (though probably its tenets were by no means new to many of the sect) was Thomas Cartwright, the Lady Margaret's professor of divinity at Cambridge. He began about 1570 to inculcate the unlawfulness of any form of church-government, except what the apostles had instituted, namely, the presbyterian. A deserved reputation for virtue, learning, and acuteness, an ardent zeal, an inflexible self-confidence, a vigorous, rude, and arrogant style, marked him as the formidable leader of a religious faction.* In 1572 he published his celebrated Admonition to the Parliament, calling on that assembly to reform the various abuses subsisting in the church. In this treatise, such a hardy spirit of innovation was displayed, and schemes of ecclesiastical policy so novel and extraordinary were developed, that it made a most important epoch in the contest, and rendered its termination far more improbable. The hour for liberal concessions had been suffered to pass away; the archbishop's intolerant temper had taught men to question the authority that oppressed them, till the battle was no longer to be fought for a tippet and a surplice, but for the whole ecclesiastical hierarchy, interwoven as it was with the temporal constitution of England.

It had been the first measure adopted in throwing off the yoke of Rome to invest the sovereign with an absolute con-

his name, was among the most remarkable. Id. 200. The chancellors of Oxford and Cambridge, Leicester and Cecil, kept a very strict hand over them, especially the latter, who seems to have acted

as paramount visitor over every college, making them reverse any act which he disapproved. Strype, passim.

* Strype's Annals, i. 583. Life of Parker, 312. 347. Life of Whitgift, 27.

A more determined opposition, about 1570, led by Cartwright. *

Dangerous nature of his tenets.

trol over the Anglican church ; so that no part of its coercive discipline could be exercised but by his authority, nor any laws enacted for its governance without his sanction. This supremacy, indeed, both Henry VIII. and Edward VI. had carried so far, that the bishops were reduced almost to the rank of temporal officers, taking out commissions to rule their dioceses during the king's pleasure ; and Cranmer had prostrated at the feet of Henry those spiritual functions which have usually been reckoned inherent in the order of clergy. Elizabeth took some pains to soften, and almost explain away her supremacy, in order to conciliate the catholics ; while, by means of the high commission court, established by statute in the first year of her reign, she was practically asserting it with no little despotism. But the avowed opponents of this prerogative were hitherto chiefly those who looked to Rome for another head of their church. The disciples of Cartwright now learned to claim an ecclesiastical independence, as unconstrained as any that the Romish priesthood in the darkest ages had usurped. "No civil magistrate in councils or assemblies for church matters," he says in his Admonition, "can either be chief-moderator, over-ruler, judge, or determiner ; nor has he such authority as that, without his consent, it should not be lawful for ecclesiastical persons to make any church orders or ceremonies. Church matters ought ordinarily to be handled by church officers. The principal direction of them is by God's ordinance committed to the ministers of the church and to the ecclesiastical governors. As these meddle not with the making civil laws, so the civil magistrate ought not to ordain ceremonies, or determine controversies in the church, as long as they do not intrench upon his temporal authority. 'Tis the prince's province to protect and defend the councils of his clergy, to keep the peace, to see their decrees executed, and to punish the contemners of them ; but to exercise no spiritual jurisdiction."* "It must be remembered," he says in another place, "that civil magistrates must govern the church according to the rules of God prescribed in his word, and that as they are nurses, so they be servants unto

* Cartwright's Admonition, quoted in Neal's Hist. of Puritans, i. 88.

the church; and as they rule in the church, so they must remember to submit themselves unto the church, to submit their sceptres, to throw down their crowns before the church, yea, as the prophet speaketh, to lick the dust off the feet of the church.* It is difficult to believe that I am transcribing the words of a protestant writer; so much does this passage call to mind the tones of infatuated arrogance which had been heard from the lips of Gregory VII. and of those who trod in his footsteps.†

The strength of the protestant party had been derived, both in Germany and in England, far less from their superiority in argument, however decisive this might be, than from that desire which all classes, and especially the higher, had long experienced to emancipate themselves from the thralldom of ecclesiastical jurisdiction. For it is ever found, that the generality of mankind do not so much as give a hearing to novel systems in religion, till they have imbibed, from some cause or other, a secret distaste to that in which they have been educated. It was therefore rather alarming to such as had an acquaintance with ecclesiastical history, and knew the encroachments formerly made by the hierarchy throughout Europe,—encroachments perfectly distinguishable from those of the Roman see, to perceive the same pretensions urged, and the same ambition and arrogance at work, which had imposed a yoke on the necks of their fathers. With whatever plausibility it might be maintained that a connexion

* Madox's Vindication of Church of England against Neal, p. 122. This writer quotes several very extravagant passages from Cartwright, which go to prove irresistibly that he would have made no compromise short of the overthrow of the established church, p. 111, &c. "As to you, dear brethren," he said in a puritan tract of 1570, "whom God hath called into the brunt of the battle, the Lord keep you constant, that ye yield neither to toleration, neither to any other subtle persuasions of dispensations and licenses, which were to fortify their Romish practices; but, as you fight the Lord's fight, be valiant." Madox, p. 287.

† These principles had already been broached by those who called Calvin master; he had himself become a sort of prophet-king at Geneva. And Collier

quotes passages from Knox's Second Blast, inconsistent with any government, except one slavishly subservient to the church. P. 444. The non-juring historian holds out the hand of fellowship to the puritans he abhors, when they preach up ecclesiastical independence. Collier liked the royal supremacy as little as Cartwright; and in giving an account of Bancroft's attack on the non-conformists for denying it, enters upon a long discussion in favour of an absolute emancipation from the control of laymen. P. 610. He does not even approve the determination of the judges in Cawdrey's case (5 Coke's Reports), though against the non-conformists, as proceeding on a wrong principle of setting up the state above the church. P. 634.

with temporal magistrates could only corrupt the purity and shackle the liberties of a Christian church, this argument was not for them to urge who called on those magistrates to do the church's bidding, to enforce its decrees, to punish its refractory members ; and while they disdained to accept the prince's co-operation as their ally, claimed his service as their minister. The protestant dissenters since the revolution, who have almost unanimously, and, I doubt not, sincerely, declared their averseness to any religious establishment, especially as accompanied with coercive power, even in favour of their own sect, are by no means chargeable with these errors of the early puritans. But the scope of Cartwright's declaration was not to obtain a toleration for dissent, not even by abolishing the whole ecclesiastical polity, to place the different professions of religion on an equal footing, but to substitute his own model of government, the one, exclusive, unappealable standard of obedience, with all the endowments, so far as applicable to its frame, of the present church, and with all the support to its discipline that the civil power could afford.*

We are not however to conclude that every one, or even the majority, of those who might be counted on the puritan side in Elizabeth's reign, would have subscribed to these extravagant sentences of Cartwright, or desired to take away the legal supremacy of the crown.† That party acquired

* The school of Cartwright were as little disposed as the episcopalians to see the laity fatten on church property. Bancroft, in his famous sermon preached at Paul's Cross in 1588 (p. 24.) divides the puritans into the clergy factions, and the lay factions. The former, he says, contend and lay it down in their supplication to parliament in 1585, that things once dedicated to a sacred use ought so to remain for ever, and not to be converted to any private use. The lay, on the contrary, think it enough for the clergy to fare as the apostles did. Cartwright did not spare those who longed to pull down bishoprics for the sake of plundering them, and charged those who held impropriations with sin. Bancroft takes delight in quoting his bitter phrases from the Ecclesiastical Discipline.

† The old friends and protectors of

our reformers at Zurich, Bullinger and Gualter, however they had favoured the principles of the first non-conformists, write in strong disapprobation of the innovators of 1574. Strype's Annals, ii. 316. And Fox, the martyrologist, a refuser to conform, speaks, in a remarkable letter quoted by Fuller in his Church History, p. 107., of factiosa illa Puritanorum capita, saying that he is totus ab iis alienus, and unwilling perbaecchari in episcopos. The same is true of Bernard Gilpin, who disliked some of the ceremonies, and had subscribed the articles with a reservation, "so far as agreeable to the word of God;" but was wholly opposed to the new reform of church discipline. Carleton's Life of Gilpin, and Wordsworth's Ecclesiastical Biography, vol. iv. Neal has not reported the matter faithfully.

strength by the prevailing hatred and dread of popery, and by the disgust which the bishops had been unfortunate enough to excite. If the language which I have quoted from the puritans breathed a spirit of ecclesiastical usurpation that might one day become dangerous, many were of opinion that a spirit not less mischievous in the present hierarchy, under the mask of the queen's authority, was actually manifesting itself in deeds of oppression. The upper ranks among the laity, setting aside courtiers, and such as took little interest in the dispute, were chiefly divided between those attached to the ancient church and those who wished for further alterations in the new. I conceive the church of England party, that is, the party adverse to any species of ecclesiastical change, to have been the least numerous of the three during this reign; still excepting, as I have said, the neutrals, who commonly make a numerical majority, and are counted along with the dominant religion.* But by the act of the fifth of Elizabeth, Roman catholics were excluded from the house of commons; or, if some that way affected might occasionally creep into it, yet the terror of penal laws impending over their heads would make them extremely cautious of betraying their sentiments. This contributed, with

* "The puritan," says Persons the jesuit, in 1594, "is more generally favoured throughout the realm with all those which are not of the Roman religion than is the protestant, upon a certain general persuasion that his profession is the more perfect, especially in great towns, where preachers have made more impression in the artificers and burghers than in the country people. And among the protestants themselves, all those that were less interested in ecclesiastical livings, or other preferments depending on the state, are more affected commonly to the puritans, or easily are to be induced to pass that way for the same reason." Doleman's Conference about the next Succession to the Crown of England, p. 242. And again: "The puritan party at home, in England, is thought to be most vigorous of any other, that is to say, most ardent, quick, bold, resolute, and to have a great part of the best captains and soldiers on their side, which is a point of no small moment." P. 244. I do not quote these passages

out of trust in father Persons, but because they coincide with much besides that has occurred to me in reading, and especially with the parliamentary proceedings of this reign. The following observation will confirm (what may startle some readers,) that the puritans, or at least those who rather favoured them, had a majority among the protestant gentry in the queen's days. It is agreed on all hands, and is quite manifest, that they predominated in the house of commons. But that house was composed, as it has ever been, of the principal landed proprietors, and as much represented the general wish of the community when it demanded a further reform in religious matters, as on any other subject. One would imagine, by the manner in which some express themselves, that the discontented were a small faction, who by some unaccountable means, in despite of the government and the nation, formed a majority of all parliaments under Elizabeth and her two successors.

the prevalent tone of public opinion, to throw such a weight into the puritanical scale in the commons, as it required all the queen's energy to counterbalance.

In the parliament that met in April 1571, a few days only after the commencement of the session, Mr. Strickland, "a grave and ancient man of great zeal," as the reporter styles him, began the attack by a long but apparently temperate speech on the abuses of the church, tending only to the retrenchment of a few superstitions, as they were thought, in the liturgy, and to some reforms in the disposition of benefices. He proceeded to bring in a bill for the reformation of the common prayer, which was read a first time. Abuses in respect to benefices appear to have been a copious theme of scandal. The power of dispensation, which had occasioned so much clamour in former ages, instead of being abolished or even reduced into bounds at the reformation, had been transferred entire from the pope to the king and archbishop. And, after the council of Trent had effected such considerable reforms in the catholic discipline, it seemed a sort of reproach to the protestant church of England, that she retained all the dispensations, the exemptions, the pluralities, which had been deemed the peculiar corruptions of the worst times of popery.* In the reign of Edward VI., as I have already mentioned, the canon law being naturally obnoxious from its origin and character, a commission was appointed to draw up a code of ecclesiastical laws. This was accordingly compiled, but never obtained the sanction of parliament: and though some attempts were made, and especially in the commons at this very time, to bring it again before the legislature, our ecclesiastical tribunals have been always compelled to borrow a great part of their principles from the canon law: one important consequence of which may be mentioned by way of illustration; that they are incompetent to grant a divorce from the bond of marriage in cases of adultery, as

* Burnet, iii. 335. Pluralities are still the great abuse of the church of England; and the rules on this head are so complicated and unreasonable that scarce any one can remember them. It would be difficult to prove that, with a view to the interests of religion among the people, or of the clergy themselves,

taken as a body, any pluralities of benefices with cure of souls ought to remain, except of small contiguous parishes. But with a view to the interests of some hundred well-connected ecclesiastics, the difficulty is none at all. [1827.] The case is now far from the same. 1845.

had been provided in the reformation of ecclesiastical laws compiled under Edward VI. A disorderly state of the church, arising partly from the want of any fixed rules of discipline, partly from the negligence of some bishops, and simony of others, but above all, from the rude state of manners and general ignorance of the clergy, is the common theme of complaint in this period, and aggravated the increasing disaffection towards the prelacy. A bill was brought into the commons to take away the granting of licences and dispensations by the archbishop of Canterbury. But the queen's interference put a stop to this measure.*

The house of commons gave in this session a more forcible proof of its temper in ecclesiastical concerns. The articles of the English church, originally drawn up under Edward VI., after having undergone some alteration, were finally reduced to their present form by the convocation of 1562. But it seems to have been thought necessary that they should have the sanction of parliament, in order to make them binding on the clergy. Of these articles the far greater portion relate to matters of faith, concerning which no difference of opinion had as yet appeared. Some few, however, declare the lawfulness of the established form of consecrating bishops and priests, the supremacy of the crown, and the power of the church to order rites and ceremonies. These involved the main questions at issue; and the puritan opposition was strong enough to withhold the approbation of the legislature from this part of the national symbol. The act of 13 Eliz. c. 12. accordingly enacts, that every priest or minister shall subscribe to all the articles of religion which *only* concern the confession of the true christian faith, and the doctrine of the sacraments, comprised in a book entitled "Articles whereupon it was agreed," &c. That the word *only* was inserted for the sake of excluding the articles which established church authority and the actual discipline, is evident from a remarkable conversation which Mr. Wentworth, the most distinguished asserter of civil liberty in this reign, relates himself in a subsequent session (that of 1575), to have held on the subject with archbishop Parker. "I

* D'Ewes, p. 156. Parliament. Hist. i. 733, &c.

was," he says, "among others, the last parliament sent for unto the archbishop of Canterbury, for the articles of religion that then passed this house. He asked us, 'Why we did put out of the book the articles for the homilies, consecration of bishops, and such like?' 'Surely, sir,' said I, 'because we were so occupied in other matters that we had no time to examine them how they agreed with the word of God.' 'What!' said he, 'surely you mistake the matter; you will refer yourselves wholly to us therein!' 'No; by the faith I bear to God,' said I, 'we will pass nothing before we understand what it is; for that were but to make you popes: make you popes who list,' said I, 'for we will make you none.' And sure, Mr. Speaker, the speech seemed to me to be a pope-like speech, and I fear least our bishops do attribute this of the pope's canons unto themselves; *Papa non protest errare.*"* The intrepid assertion of the right of private judgment on one side, and the pretension to something like infallibility on the other, which have been for more than two centuries since so incessantly repeated, are here curiously brought into contrast. As to the reservation itself, obliquely insinuated rather than expressed in this statute, it proved of little practical importance, the bishops having always exacted a subscription to the whole thirty-nine articles.†

* D'Ewes, p. 239. Parl. Hist. 790. Strype's Life of Parker, 394.

In a debate between cardinal Carvajal, and Rockisane, the famous Calixtin archbishop of Prague, at the council of Basle, the former said he would reduce the whole argument to two syllables; Crede. The latter replied he would do the same, and confine himself to two others; Proba. Lenfant makes a very just observation on this: "Si la gravité de l'histoire le permettoit, on diroit avec le comique; C'est tout comme ici. Il y a long tems que le premier de ces mots est le langage de ce qu'on appelle l'Eglise, et que le second est le langage de ce qu'on appelle l'hérésie." Concile de Basle, p. 193.

† Several ministers were deprived, in 1572, for refusing to subscribe the articles. Strype, ii. 186. Unless these were papists, which indeed is possible, their objection must have been to the articles touching discipline; for the puritans

liked the rest very well. [The famous dispute about the first clause of the 20th article, which was idly alleged by the puritans to have been interpolated by Laud, is settled, conclusively enough, in Cardwell's Synodalia, vol. i. p. 38. 53. The questions are, 1. Whether this clause was formally accepted by convocation, and 2. Whether it was confirmed by parliament. It is not found in the manuscript, being a rough draught of the articles, bequeathed by Parker to Corpus Christi College, Cambridge, signed by all the convocation of 1562; which, notwithstanding the interlineations, must be taken as a final document, so far as their intentions prevailed. Nor is it found in the first English edition, that of 1563. It is found, however, in a Latin edition of the same year, of which one copy exists in the Bodleian library; which belonged to Selden, and is said to have been obtained by him from Laud's library; though I am not aware how

It was not to be expected that the haughty spirit of Parker, which had refused to spare the honest scruples of Sampson and Coverdale, would abate of its rigour towards the daring paradoxes of Cartwright. His disciples, in truth, from dissatisfied subjects of the church, were become her downright rebels, with whom it was hardly practicable to make any compromise that would avoid a schism, except by sacrificing the splendour and jurisdiction of an established hierarchy. The archbishop continued, therefore, to harass the puritan ministers, suppressing their books, silencing them in churches, prosecuting them in private meetings.* Sandys and Grindal, the moderate reformers of our spiritual aristocracy, not only

this is proved. To this copy is appended a parchment, with the signatures of the lower house of convocation in 1571, "but not in such a manner," says Dr. C., "as to prove that it originally belonged to the book." This would of course destroy its importance in evidence; but I most freely avow, that my own impression on inspection was different, though it is very possible that I was deceived. It seems certainly strange that the lower house of convocation should have thus attested a single copy of a printed book.

The supposition of Dr. Lamb, dean of Bristol, which Dr. Cardwell seems to adopt, is, that the queen, by her own authority, caused this clause to be inserted after the dissolution of the convocation, and, probably, to be entered on the register of that assembly, to which Laud refers, in his speech in the star-chamber, 1637, but which was burned in the fire of London. We may conjecture, that Parker had urged the adoption of it upon the convocation without success, and had therefore recourse to the supremacy of his sovereign. But, according to any principles which have been recognised in the church of England, the arbitrary nature of that ecclesiastical supremacy, so as to enact laws without consent either of convocation or of parliament, cannot be admitted; and this famous clause may be said to have wanted legal authority as a constitution of the church.

But there seems no doubt, that it wanted still more the confirmation of the temporal legislature. The statute

establishing the articles (13 Eliz. c. 12.) refers to "a book imprinted, intituled Articles, whereupon it was agreed by the archbishops and bishops of both provinces, &c." following the title of the English edition of 1563, the only one which then existed, besides the Latin of the same year. And from this we may infer that the commons either knew of no such clauses, or did not mean to confirm it; which is consonant to the temper they showed on this subject, as may be seen in the text.

In a great majority of editions subsequent to 1571, the clause was inserted; and it had doubtless obtained universal reception long before Laud. The act of uniformity, 13 & 14 Car. 2. c. 4., merely refers to 13 Eliz., and leaves the legal operation as before.

It is only to be added, that the clause contains little that need alarm any one, being in one part no more than the 34th article, and, in the other, being sufficiently secured from mis-interpretation by the context, as well as by other articles. 1845.]

* Neal, 187. Strype's Parker, 325. Parker wrote to lord Burleigh (June 1573), exciting the council to proceed against some of those men who had been called before the star-chamber. "He knew them," he said, "to be cowards"—a very great mistake—"and if they of the privy council gave over, they would hinder her majesty's government more than they were aware, and much abate the estimation of their own authorities," &c. Id. p. 421. Cartwright's Admonition was now prohibited to be sold. Ibid.

withdrew their countenance from a party who aimed at improvement by subversion, but fell, according to the unhappy temper of their age, into courses of undue severity. Not merely the preachers, to whom, as regular ministers, the rules of canonical obedience might apply, but plain citizens, for listening to their sermons, were dragged before the high commission, and imprisoned upon any refusal to conform.* Strange that these prelates should not have remembered their own magnanimous readiness to encounter suffering for conscience sake in the days of Mary, or should have fondly arrogated to their particular church that elastic force of resolution, which disdains to acknowledge tyrannous power within the sanctuary of the soul, and belongs to the martyrs of every opinion without attesting the truth of any!

The puritans meanwhile had not lost all their friends in the council, though it had become more difficult to and in some measure by the council. protect them. One powerful reason undoubtedly operated on Walsingham and other ministers of Elizabeth's court against crushing their party; namely, the precariousness of the queen's life, and the unsettled prospects of succession. They had already seen in the duke of Norfolk's conspiracy, that more than half the superior nobility had committed themselves to support the title of the queen of Scots. That title was sacred to all who professed the catholic religion, and respectable to a large proportion of the rest. But deeming, as they did, that queen a convicted adulteress and murderer, the determined enemy of their faith, and conscious that she could never forgive those who had counselled her detention and sought her death, it would have been unworthy of their prudence and magnanimity to have gone as sheep to the slaughter, and risked the destruction of protestantism under a second Mary, if the intrigues of ambitious men, the pusillanimity of the multitude, and the specious pretext of hereditary right, should favour her claims on a demise of the crown. They would have failed perhaps in attempting to resist them; but upon resistance I make no question that they had resolved. In so awful a crisis, to what could they better look than to the stern, intrepid, uncompro-

* Neal, 210.

missing spirit of puritanism ; congenial to that of the Scottish reformers, by whose aid the lords of the congregation had overthrown the ancient religion in despite of the regent Mary of Guise ? Of conforming churchmen, in general, they might well be doubtful, after the oscillations of the three preceding reigns ; but every abhorrer of ceremonies, every rejecter of prelatical authority, might be trusted as protestant to the heart's core, whose sword would be as ready as his tongue to withstand idolatry. Nor had the puritans admitted, even in theory, those extravagant notions of passive obedience which the church of England had thought fit to mingle with her homilies. While the victory was yet so uncertain, while contingencies so incalculable might renew the struggle, all politic friends of the reformation would be anxious not to strengthen the enemy by disunion in their own camp. Thus sir Francis Walsingham, who had been against enforcing the obnoxious habits, used his influence with the scrupulous not to separate from the church on account of them ; and again, when the schism had already ensued, thwarted, as far as his credit in the council extended, that harsh intolerance of the bishops which aggravated its mischiefs.*

We should reason in as confined a manner as the puritans themselves, by looking only at the captious frivolousness of their scruples, and treating their sect either as wholly contemptible or as absolutely mischievous. We do injustice to these wise counsellors of the maiden queen, when we condemn, I do not mean on the maxims only of toleration, but of civil prudence, their unwillingness to crush the non-conforming clergy by an undeviating rigour. It may justly be said that, in a religious sense, it was a greater good to possess a well-instructed pious clergy, able to contend against popery, than it was an evil to let some prejudices against mere ceremonies gain a head. The old religion was by no means, for at least the first half of Elizabeth's reign, gone out of the minds of the people. The lurking priests had great advantages from the attractive nature of their faith, and some, no doubt, from its persecution. A middle system, like the Anglican, though it was more likely to produce exterior conformity, and for that

* Strype's Annals, i. 433.

reason was, I think, judiciously introduced at the outset, did not afford such a security against relapse, nor draw over the heart so thoroughly, as one which admitted of no compromise. Thus the sign of the cross in baptism, one of the principal topics of objection, may well seem in itself a very innocent and decorous ceremony. But if the perpetual use of that sign is one of the most striking superstitions in the church of Rome, it might be urged in behalf of the puritans, that the people were less likely to treat it with contempt, when they saw its continuance, even in one instance, so strictly insisted upon. I do not pretend to say that this reasoning is right, but that it is at least plausible, and that we must go back and place ourselves, as far as we can, in those times, before we determine upon the whole of this controversy in its manifold bearings. The great object of Elizabeth's ministers, it must be kept in mind, was the preservation of the protestant religion, to which all ceremonies of the church, and even its form of discipline, were subordinate. An indifferent passiveness among the people, a humble trust in authority, however desirable in the eyes of churchmen, was not the temper which would have kept out the right heir from the throne, or quelled the generous ardour of the catholic gentry on the queen's decease.

A matter very much connected with the present subject will illustrate the different schemes of ecclesiastical policy pursued by the two parties that divided Elizabeth's council. The clergy in several dioceses set up, with encouragement from their superiors, a certain religious exercise, called prophesyings. They met at appointed times to expound and discuss together particular texts of Scripture, under the presidency of a moderator, appointed by the bishop, who finished by repeating the substance of their debate, with his own determination upon it. These discussions were in public; and it was contended that this sifting of the grounds of their faith, and habitual argumentation, would both tend to edify the people, very little acquainted as yet with their religion, and supply in some degree the deficiencies of learning among the pastors themselves. These deficiencies were indeed glaring; and it is not unlikely that the prophesyings might have had a salutary effect, if it had been possible to exclude

the prevailing spirit of the age. It must however be evident to any one who had experience of mankind, that the precise clergy, armed not only with popular topics, but with an intrinsic superiority of learning and ability to support them, would wield these assemblies at their pleasure, whatever might be the regulations devised for their control. The queen entirely disliked them, and directed Parker to put them down. He wrote accordingly to Parkhurst, bishop of Norwich, for that purpose. The bishop was unwilling to comply. And some privy-councillors interfered by a letter, enjoining him not to hinder those exercises, so long as nothing contrary to the church was taught therein. This letter was signed by sir Thomas Smith, sir Walter Mildmay, bishop Sandys, and sir Francis Knollys. It was, in effect, to reverse what the archbishop had done. Parker, however, who was not easily daunted, wrote again to Parkhurst, that, understanding he had received instructions in opposition to the queen's orders and his own, he desired to be informed what they were. This seems to have checked the councillors; for we find that the prophesyings were now put down.*

Though many will be of opinion that Parker took a statesman-like view of the interests of the church of England in discouraging these exercises, they were generally regarded as so conducive to instruction that he seems to have stood almost alone in his opposition to them. Sandys's name appears to the above-mentioned letter of the council to Parkhurst. Cox, also, was inclined to favour the prophesyings. And Grindal, who in 1575 succeeded Parker in the see ^{Grindal.} of Canterbury, bore the whole brunt of the queen's displeasure rather than obey her commands on this subject. He conceived that, by establishing strict rules with respect to the direction of those assemblies, the abuses, which had already appeared, of disorderly debate, and attacks on the discipline of the church, might be got rid of without entirely abolishing the exercise. The queen would hear of no middle course, and insisted both that the prophesyings should be discontinued, and that fewer licences for preaching should be granted. For no parish priest could without a licence preach any discourse except the

* Strype's Annals, ii. 219. 322. Life of Parker, 461.

regular homilies ; and this was one of the points of contention with the puritans.* Grindal steadily refused to comply with this injunction ; and was in consequence sequestered from the exercise of his jurisdiction for the space of about five years, till, on his making a kind of submission, the sequestration was taken off not long before his death. The queen, by circular letters to the bishops, commanded them to put an end to the prophesyings, which were never afterwards renewed. †

Whitgift, bishop of Worcester, a person of a very opposite disposition, was promoted, in 1583, to the primacy, on Grindal's decease. He had distinguished himself some years before by an answer to Cartwright's Admonition, written with much ability, but not falling short of the work it undertook to confute in rudeness and asperity. ‡ It is

* [In one of the canons, enacted by convocation in 1571, and on which rather an undue stress has been laid in late controversies, we find a restraint laid on the teaching of the clergy in their sermons, who were enjoined to preach nothing but what was agreeable to scripture, and had been collected out of scripture by the catholic fathers and ancient bishops. *Imprimis videbunt concionatores, ne quid unquam doceant pro concione, quod a populo religiosè teneri et credi velint, nisi quod consentaneum sit doctrinæ veteris aut novi testamenti, quodque ex illâ ipsâ doctrinâ Catholici patres et veteres episcopi collegerint.* This appears to have been directed, in the first place, against those who made use of scholastic authorities, and the doctors of the last four or five ages, to whom the church of Rome was fond of appealing ; and, secondly, against those who, with little learning or judgment, set up their own interpretations of scripture. Against both these it seemed wise to guard, by directing preachers to the early fathers, whose authority was at least better than that of Romish schoolmen, or modern sciolists. It is to be remembered, that the exegetical part of divinity was not in the state in which it is at present. Most of the writers to whom a modern preacher has recourse were unborn. But that the contemporary reformers were not held in low estimation as guides in scriptural interpretation, appears by the injunction given

some years afterwards, that every clergyman should provide himself with a copy of Bullinger's decades. The authority given in the above canon to the fathers was certainly not a presumptive one ; and, such as it was, it was given to each individually, not to the whole body, on any notion of what has been called catholic consent, since how was a poor English preacher to ascertain this ? The real question as to the authority of the fathers in our church, is not whether they are not copiously quoted, but whether our theologians surrendered their own opinion, or that of their side, in deference to such authority when it made against them. 1845.]

† Strype's Life of Grindal, 219. 230. 272. The archbishop's letter to the queen, declaring his unwillingness to obey her requisition, is in a far bolder strain than the prelates were wont to use in this reign, and perhaps contributed to the severity she showed towards him. Grindal was a very honest, conscientious man, but too little of a courtier or statesman for the place he filled. He was on the point of resigning the archbishopric when he died ; there had at one time been some thoughts of depriving him.

‡ Strype's Whitgift, 27. et alibi. He did not disdain to reflect on Cartwright for his poverty, the consequence of a scrupulous adherence to his principles. But the controversial writers of every side in the sixteenth century display a

seldom good policy to confer such eminent stations in the church on the gladiators of theological controversy; who from vanity and resentment, as well as the course of their studies, will always be prone to exaggerate the importance of the disputes wherein they have been engaged, and to turn whatever authority the laws or the influence of their place may give them against their adversaries. This was fully illustrated by the conduct of archbishop Whitgift, whose elevation the wisest of Elizabeth's counsellors had ample reason to regret. In a few months after his promotion, he gave an earnest of the rigour he had determined to adopt, by promulgating articles for the observance of discipline. One of these prohibited all preaching, reading, or catechising in private houses, whereto any not of the same family should resort, "seeing the same was never permitted as lawful under any christian magistrate." But that which excited the loudest complaints was the subscription to three points, the queen's supremacy, the lawfulness of the common prayer and ordination service, and the truth of the whole thirty-nine articles, exacted from every minister of the church.* These indeed were so far from novelties, that it might seem rather supererogatory to demand them (if in fact the law required subscription to all the articles); yet it is highly probable that many had hitherto eluded the legal subscriptions, and that others had conceived their scruples after having conformed to the prescribed order. The archbishop's peremptory requisition passed, perhaps justly, for an illegal stretch of power.† It encountered the resistance of men pertinaciously attached to their own tenets, and ready to suffer the privations of poverty rather than yield a simulated obedience. To suffer however in silence has at no time been a virtue with our protestant dissenters. The kingdom resounded with the clamour of those who were suspended or deprived of their benefices, and of their numerous abettors.‡ They appealed from

His conduct
in enforcing
conformity.

want of decency and humanity which even our anonymous libellers have hardly matched. Whitgift was not of much learning, if it be true, as the editors of the *Biographia Britannica* intimate, that he had no acquaintance with the Greek language. This must seem strange to

those who have an exaggerated notion of the scholarship of that age.

* Strype's *Whitgift*, 115.

† Neal, 266. Birch's *Memoirs of Elizabeth*, vol. i. p. 42, 47, &c.

‡ According to a paper in the appendix to Strype's *Life of Whitgift*, p. 60.,

the archbishop to the privy council. The gentry of Kent and other counties strongly interposed in their behalf. They had powerful friends at court, especially Knollys, who wrote a warm letter to the archbishop.* But, secure of the queen's support, who was now chiefly under the influence of sir Christopher Hatton, a decided enemy to the puritans, Whitgift relented not a jot of his resolution, and went far greater lengths than Parker had ever ventured, or perhaps had desired, to proceed.

The act of supremacy, while it restored all ecclesiastical jurisdiction to the crown, empowered the queen to execute it by commissioners appointed under the great seal, in such manner and for such time as she should direct; whose power should extend to visit, correct, and amend all heresies, schisms, abuses, and offences whatever, which fall under the cognizance and are subject to the correction of spiritual authority. Several temporary commissions had sat under this act with continually augmented powers, before that appointed in 1583, wherein the jurisdiction of this anomalous court almost reached its zenith. It consisted of forty-four commissioners, twelve of whom were bishops, many more privy-councillors, and the rest either clergymen or civilians. This commission, after reciting the acts of supremacy, uniformity, and two others, directs them to inquire from time to time, as well by the oaths of twelve good and lawful men, as by wit-

High com-
mission
court.

the number of conformable ministers in eleven dioceses, not including those of London and Norwich, the strongholds of puritanism, was 786, that of non-compliers, 49. But Neal says that 233 ministers were suspended in only six counties, 64 of whom in Norfolk, 60 in Suffolk, 38 in Essex, p. 268. The puritans formed so much the more learned and diligent part of the clergy, that a great scarcity of preachers was experienced throughout this reign, in consequence of silencing so many of the former. Thus in Cornwall, about the year 1578, out of 140 clergymen, not one was capable of preaching. Neal, p. 245. And, in general, the number of those who could not preach, but only read the service, was to the others nearly as four to one; the preachers being a majority only in London. Id. p. 320.

This may be deemed by some an instance of Neal's prejudice. But that historian is not so ill-informed as they suppose; and the fact is highly probable. Let it be remembered that there existed few books of divinity in English; that all books were, comparatively to the value of money, far dearer than at present; that the majority of the clergy were nearly illiterate, and many of them addicted to drunkenness and low vices; above all, that they had no means of supplying their deficiencies by preaching the discourses of others; and we shall see little cause for doubting Neal's statement, though founded on a puritan document.

* Life of Whitgift, 137. et alibi. Annals, iii. 183.

nesses and all other means they can devise, of all offences, contempts, or misdemeanors done and committed contrary to the tenor of the said several acts and statutes; and also to inquire of all heretical opinions, seditious books, contempts, conspiracies, false rumours or talks, slanderous words and sayings, &c., contrary to the aforesaid laws. Power is given to any three commissioners, of whom one must be a bishop, to punish all persons absent from church, according to the act of uniformity, or to visit and reform heresies and schisms according to law; to deprive all beneficed persons holding any doctrine contrary to the thirty-nine articles; to punish incests, adulteries, and all offences of the kind; to examine all suspected persons on their oaths, and to punish all who should refuse to appear or to obey their orders, by spiritual censure, or by discretionary fine or imprisonment; to alter and amend the statutes of colleges, cathedrals, schools, and other foundations, and to tender the oath of supremacy according to the act of parliament.*

Master of such tremendous machinery, the archbishop proceeded to call into action one of its powers, contained for the first time in the present commission, by tendering what was technically styled the oath *ex officio*, to such of the clergy as were surmised to harbour a spirit of puritanical disaffection. This procedure, which was wholly founded on the canon law, consisted in a series of interrogations, so comprehensive as to embrace the whole scope of clerical uniformity, yet so precise and minute as to leave no room for evasion, to which the suspected party was bound to answer upon oath.† So

* Neal, 274. Strype's Annals, iii. 180.

The germ of the high commission court seems to have been a commission granted by Mary (Feb. 1557), to certain bishops and others to inquire after all heresies, punish persons misbehaving at church, and such as refused to come thither, either by means of presentments by witness, or any other politic way they could devise; with full power to proceed as their discretions and consciences should direct them; and to use all such means as they could invent, for the searching of the premises, to call witnesses, and force them to make oath of such things as might discover what they sought after. Bur-

net, ii. 347. But the primary model was the inquisition itself.

It was questioned whether the power of deprivation for not reading the common prayer, granted to the high commissioners, were legal; the act of uniformity having annexed a much smaller penalty. But it was held by the judges in the case of Cawdrey (5 Coke's Reports), that the act did not take away the ecclesiastical jurisdiction and supremacy which had ever appertained to the crown, and by virtue of which it might erect courts with as full spiritual jurisdiction as the archbishops and bishops exercised.

† Strype's Whitgift, 135.; and Appendix, 49.

repugnant was this to the rules of our English law, and to the principles of natural equity, that no species of ecclesiastical tyranny seems to have excited so much indignation. Lord Burleigh, who, though at first rather friendly to Whitgift, was soon disgusted by his intolerant and arbitrary behaviour, wrote in strong terms of remonstrance against these articles of examination, as "so curiously penned, so full of branches and circumstances, as he thought the inquisitors of Spain used not so many questions to comprehend and to trap their preys." The primate replied by alleging reasons in behalf of the mode of examination, but very frivolous, and such as a man determined to persevere in an unwarrantable course of action may commonly find.* They had little effect on the calm and sagacious mind of the treasurer, who continued to express his dissatisfaction, both individually and as one of the privy council.† But the extensive jurisdiction improvidently granted to the ecclesiastical commissioners, and which the queen was not at all likely to recall, placed Whitgift beyond the control of the temporal administration.

The archbishop, however, did not stand alone in this impracticable endeavour to overcome the stubborn sectaries by dint of hard usage. Several other bishops were engaged in the same uncharitable course ‡; but especially Aylmer of London, who has left a worse name in this respect than any prelate of Elizabeth's reign.§ The violence of Aylmer's temper was not redeemed by many virtues; it is impossible to exonerate his character from the imputations of covetousness and of plundering the revenues of his see; faults very prevalent among the bishops of that period. The privy council wrote sometimes to expostulate with Aylmer, in a tone which could hardly have been employed towards a man in his station who had not forfeited the general esteem. Thus, upon occasion of one Benison, whom he had imprisoned

* Strype's Whitgift, 157. 160.

† Id. 163. 166, et alibi. Birch's Memoirs, i. 62. There was said to be a scheme on foot, about 1590, to make all persons in office subscribe a declaration that episcopacy was lawful by the word of God, which Burleigh prevented.

‡ Neal, 325. 385.

§ Id. 290. Strype's Life of Aylmer, p. 59, &c. His biographer is here, as in all his writings, too partial to condemn, but too honest to conceal.

without cause, we find a letter signed by Burleigh, Leicester, Walsingham, and even Hatton, besides several others, urging the bishop to give the man a sum of money, since he would recover damages at law, which might hurt his lordship's credit. Aylmer, however, who was of a stout disposition, especially when his purse was interested, objected strongly to this suggestion, offering rather to confer on Benison a small living, or to let him take his action at law. The result does not appear; but probably the bishop did not yield.* He had worse success in an information laid against him for felling his woods, which ended not only in an injunction, but a sharp reprimand from Cecil in the star-chamber.†

What lord Burleigh thought of these proceedings may be seen in the memorial to the queen on matters of religion and state, from which I have, in the last chapter, made an extract to show the tolerance of his disposition with respect to catholics. Protesting that he was not in the least addicted to the preciser sort of preachers, he declares himself "bold to think that the bishops, in these dangerous times, take a very ill and unadvised course in driving them from their cures;" first, because it must discredit the reputation of her majesty's power, when foreign princes should perceive that even among her protestant subjects, in whom consisted all her force, strength, and power, there was so great a heart-burning and division; and secondly, "because," he says, "though they were over-squeamish and nice in their opinions, and more scrupulous than they need; yet with their careful catechising and diligent preaching, they bring forth that fruit which your most excellent majesty is to desire and wish; namely, the lessening and diminishing the papistical numbers."‡ But this great minister's knowledge of the queen's temper, and excessive anxiety to retain her favour, made him sometimes fearful to act according to his own judgment. "It is well

* Neal, 294.

† Strype's Aylmer, 71. When he grew old, and reflected that a large sum of money would be due from his family, for dilapidations of the palace at Fulham, &c., he literally proposed to sell his bishopric to Bancroft. *Id.* 169. The other however waited for his death, and

had above 4000*l.* awarded to him; but the crafty old man having laid out his money in land, this sum was never paid. Bancroft tried to get an act of parliament in order to render the real estate liable, but without success; page 194.

‡ Somers Tracts, i. 166.

known," lord Bacon says of him, in a treatise published in 1591, "that as to her majesty, there was never a counsellor of his lordship's long continuance that was so applicable to her majesty's princely resolutions, endeavouring always after faithful propositions and remonstrances, and these in the best words and the most grateful manner, to rest upon such conclusions as her majesty in her own wisdom determineth, and them to execute to the best; so far hath he been from contestation, or drawing her majesty into any of his own courses."* Statesmen who betray this unfortunate infirmity of clinging too fondly to power, become the slaves of the princes they serve. Burleigh used to complain of the harshness with which the queen treated him.† And though, more lucky than most of his class, he kept the white staff of treasurer down to his death, he was reduced in his latter years to court a rising favourite more submissively than became his own dignity.‡ From such a disposition we could not expect any decided resistance to those measures of severity towards the puritans which fell in so entirely with Elizabeth's temper.

There is no middle course, in dealing with religious sectaries, between the persecution that exterminates, and the toleration that satisfies. They were wise in their generation, the Loisas and Valdes of Spain, who kindled the fires of the inquisition, and quenched the rising spirit of protestantism in the blood of a Seso and a Cazalla. But, sustained by the favouring voice of his associates, and still more by that firm persuasion which bigots never know how to appreciate in their adversaries, a puritan minister set at nought the vexatious and arrogant tribunal before which he was summoned. Exasperated, not overawed, the sectaries threw off what little respect they had hitherto paid to the hierarchy. They had learned, in the earlier controversies of the reformation, the use, or, more truly, the abuse, of that powerful lever of human bosoms, the press. He who in Saxony had sounded the first trumpet-peal against the battlements of Rome, had

* Bacon's Works, i. 532.

† Birch's Memoirs, ii. 146.

‡ Id. ib. Burleigh does not shine much in these memoirs; but most of the

letters they contain are from the two Bacons, then engaged in the Essex faction, though nephews of the treasurer.

often turned aside from his graver labours to excite the rude passions of the populace by low ribaldry and exaggerated invective; nor had the English reformers ever scrupled to win proselytes by the same arts. What had been accounted holy zeal in the mitred Bale and martyred Latimer, might plead some apology from example in the aggrieved puritan. Pamphlets, chiefly anonymous, were rapidly circulated throughout the kingdom, inveighing against the prelacy. Of these libels the most famous went under the name of Martin Mar-prelate, a vizored knight of those lists, behind whose shield a host of sturdy puritans were supposed to fight. These were printed at a moveable press, shifted to different parts of the country as the pursuit grew hot, and contained little serious argument, but the unwarrantable invectives of angry men, who stuck at no calumny to blacken their enemies.* If these insults upon authority are apt sometimes to shock us even now, when long usage has rendered such licentiousness of seditious and profligate libellers almost our daily food, what must they have seemed in the reign of Elizabeth, when the press had no acknowledged liberty, and while the accustomed tone in addressing those in power was little better than servile adulation?

A law had been enacted some years before, levelled at the books dispersed by the seminary priests, which rendered the publication of seditious libels against the queen's government a capital felony.† This act, by one of those strained constructions which the judges were commonly ready to put upon any political crime, was brought to bear on some of these puritanical writings. The authors of Martin Mar-prelate could not be traced with certainty; but strong suspicions having fallen on one Penry, a young Welshman, he was tried some time after for another pamphlet, containing sharp reflections on the queen herself, and received sentence

* The first of Martin Mar-prelate's libels were published in 1588. In the month of November of that year the archbishop is directed by a letter from the council to search for and commit to prison the authors and printers. Strype's Whitgift, 288. These pamphlets are scarce; but a few extracts from them

may be found in Strype and other authors. The abusive language of the puritan pamphleteers had begun several years before. Strype's Annals, ii. 193. See the trial of Sir Richard Knightley of Northamptonshire for dispersing puritanical libels. State Trials, i. 1263.

† 23 Eliz. c. 2.

of death, which it was thought proper to carry into execution.* Udal, a puritan minister, fell into the grasp of the same statute for an alleged libel on the bishops, which had surely a very indirect reference to the queen's administration. His trial, like most other political trials of the age, disgraces the name of English justice. It consisted mainly in a pitiful attempt by the court to entrap him into a confession that the imputed libel was of his writing, as to which their proof was deficient. Though he avoided this snare, the jury did not fail to obey the directions they received to convict him. So far from being concerned in Martin's writings, Udal professed his disapprobation of them and his ignorance of the author. This sentence appeared too iniquitous to be executed, even in the eyes of Whitgift, who interceded for his life; but he died of the effects of confinement.†

If the libellous pen of Martin Mar-prelate was a thorn to the rulers of the church, they had still more cause to take alarm at an overt measure of revolution which the discontented party began to effect about the year 1590. They set

* Penry's protestation at his death is in a style of the most affecting and simple eloquence. *Life of Whitgift*, 409. and Appendix, 176. It is a striking contrast to the coarse abuse for which he suffered. The authors of Martin Mar-prelate were never fully discovered; but Penry seems not to deny his concern in it.

† *State Trials*, 1271. It may be remarked on this as on other occasions, that Udal's trial is evidently published by himself; and a defendant, especially in a political proceeding, is apt to give a partial colour to his own case. *Life of Whitgift*, 314. *Annals of Reformation*, iv. 21. *Fuller's Church History*, 122. Neal, 340. This writer says:—"Among the divines who *suffered death* for the libels above mentioned, was the rev. Mr. Udal." This is no doubt a splenetic mode of speaking. But Warburton, in his short notes on Neal's history, treats it as a wilful and audacious attempt to impose on the reader; as if the ensuing pages did not let him into all the circumstances. I will here observe that Warburton, in his self-conceit, has paid a much higher

compliment to Neal than he intended, speaking of his own comments as a "full confutation (I quote from memory) of that historian's false facts and misrepresentations." But when we look at these, we find a good deal of wit and some pointed remarks, but hardly any thing that can be deemed a material correction of facts.

Neal's *History of the Puritans* is almost wholly compiled, as far as this reign is concerned, from Strype, and from a manuscript written by some puritan about the time. It was answered by Madox, afterwards bishop of Worcester, in a *Vindication of the Church of England*, published anonymously in 1733. Neal replied with tolerable success; but Madox's book is still an useful corrective. Both however were, like most controversialists, prejudiced men, loving the interests of their respective factions better than truth, and not very scrupulous about misrepresenting an adversary. But Neal had got rid of the intolerant spirit of the puritans, while Madox labours to justify every act of Whitgift and Parker.

up, by common agreement, their own platform of government by synods and classes; the former being a sort of general assemblies, the latter held in particular shires or dioceses, agreeably to the presbyterian model established in Scotland. In these meetings debates were had, and determinations usually made, sufficiently unfavourable to the established system. The ministers composing them subscribed to the puritan book of discipline. These associations had been formed in several counties, but chiefly in those of Northampton and Warwick, under the direction of Cartwright, the legislator of their republic, who possessed, by the earl of Leicester's patronage, the mastership of an hospital in the latter town.* It would be unjust to censure the archbishop for interfering to protect the discipline of his church against these innovators, had but the means adopted for that purpose been more consonant to equity. Cartwright with several of his sect were summoned before the ecclesiastical commission; where refusing to inculcate themselves by taking the oath *ex officio*, they were committed to the Fleet. This punishment not satisfying the rigid churchmen, and the authority of the ecclesiastical commission being incompetent to inflict any heavier judgment, it was thought fit the next year to remove the proceedings into the court of star-chamber. The judges, on being consulted, gave it as their opinion, that since far less crimes had been punished by condemnation to the galleys or perpetual banishment, the latter would be fittest for their offence. But several of the council had more tender regards to sincere, though intractable men; and in the end they were admitted to bail upon a promise to be quiet, after answering some interrogatories respecting the queen's supremacy, and other points, with civility and an evident wish to avoid offence.† It may be observed that Cartwright explicitly declared his disapprobation of the libels under the name of Martin Mar-prelate.‡ Every political party, however honourable may be its objects and character, is liable to be disgraced by the association of such unscrupulous zealots. But, though it is an uncandid sophism

Attempt to
set up a
Presbyter-
ian system.

* Life of Whitgift, 328.

‡ Id. Append. 135. Annals, iv. 52.

† Id., 336. 360. 366. Append. 142

to charge the leaders with the excesses they profess to disapprove in their followers, it must be confessed that few chiefs of faction have had the virtue to condemn with sufficient energy the misrepresentations which are intended for their benefit.

It was imputed to the puritan faction with more or less of truth, that, not content with the subversion of episcopacy and of the whole ecclesiastical polity established in the kingdom, they maintained principles that would essentially affect its civil institutions. Their denial indeed of the queen's supremacy, carried to such lengths as I have shown above, might justly be considered as a derogation of her temporal sovereignty. Many of them asserted the obligation of the judicial law of Moses, at least in criminal cases; and deduced from this the duty of putting idolaters, (that is, papists,) adulterers, witches and demoniacs, sabbath-breakers, and several other classes of offenders, to death.* They claimed to their ecclesiastical assemblies the right of determining "all matters wherein breach of charity may be, and all matters of doctrine and manners, so far as appertaineth to conscience." They took away the temporal right of patronage to churches, leaving the choice of ministers to general suffrage.† There are even passages in Cartwright's Admonition, which intimate that the commonwealth ought to be fashioned after the model of the church.‡ But these it would not be candid to press against the more explicit declarations of all the puritans in favour of a limited monarchy, though they grounded its legitimacy on the republican principles of popular consent.§ And with respect to the former opinions, they appear to have been by no means common to the whole puritan body; some

* This predilection for the Mosaic polity was not uncommon among the reformers. Collier quotes passages from Martin Bucer as strong as could well be found in the puritan writings P. 303.

† Life of Whitgift, p. 61. 333. and Append. 138. Annals, iv. 140. As I have not seen the original works in which these tenets are said to be promulgated, I cannot vouch for the fairness of the representation made by hostile pens, though I conceive it to be not very far from the truth.

‡ Ibid. Madox's Vindication of the Ch. of Eng. against Neal, p. 212. Strype's Annals, iv. 142.

The large views of civil government entertained by the puritans were sometimes imputed to them as a crime by their more courtly adversaries, who reproached them with the writings of Buchanan and Languet. Life of Whitgift, 258. Annals, iv. 142.

of the deprived and imprisoned ministers even acknowledging the queen's supremacy in as full a manner as the law conferred it on her, and as she professed to claim it.*

The pretensions advanced by the school of Cartwright did not seem the less dangerous to those who cast their eyes upon what was passing in Scotland, where they received a practical illustration. In that kingdom, a form of polity very nearly conforming to the puritanical platform had become established at the reformation in 1560; except that the office of bishop or superintendent still continued, but with no paramount, far less arbitrary dominion, and subject even to the provincial synod, much more to the general assembly of the Scottish church. Even this very limited episcopacy was abolished in 1592. The presbyterian clergy, individually and collectively, displayed the intrepid, haughty, and untractable spirit of the English puritans. Though Elizabeth had from policy abetted the Scottish clergy in their attacks upon the civil administration, this connexion itself had probably given her such an insight into their temper as well as their influence, that she must have shuddered at the thought of seeing a republican assembly substituted for those faithful satraps, her bishops, so ready to do her bidding, and so patient under the hard usage she sometimes bestowed on them.

These prelates did not however obtain so much support from the house of commons as from their sovereign. In that assembly a determined band of puritans frequently carried the victory against the courtiers. Every session exhibited proofs of their dissatisfaction with the state of the church. The crown's influence

House of commons
averse to
episcopal
authority.

* See a declaration to this effect, at which no one could cavil, in Strype's Annals, iv. 85. The puritans, or at least some of their friends, retaliated this charge of denying the queen's supremacy on their adversaries. Sir Francis Knollys strongly opposed the claims of episcopacy as a divine institution, which had been covertly insinuated by Bancroft, on the ground of its incompatibility with the prerogative, and urged lord Burleigh to make the bishops acknowledge they had no superiority over the clergy, except by statute, as the only means to save her

majesty from the extreme danger into which she was brought by the machinations of the pope and king of Spain. Life of Whitgift, p. 350. 361. 389. He wrote afterwards to lord Burleigh in 1591, that if he might not speak his mind freely against the power of the bishops, and prove it unlawful, by the laws of this realm, and not by the canon law, he hoped to be allowed to become a private man. This bold letter he desires to have shown to the queen. Lansdowne Catalogue, vol. lxviii. 84.

would have been too weak without stretches of its prerogative. The commons in 1575 received a message forbidding them to meddle with religious concerns. For five years afterwards the queen did not convoke parliament, of which her dislike to their puritanical temper might in all probability be the chief reason. But, when they met again in 1580, the same topic of ecclesiastical grievances, which had by no means abated during the interval, was revived. The commons appointed a committee, formed only of the principal officers of the crown who sat in the house, to confer with some of the bishops, according to the irregular and imperfect course of parliamentary proceedings in that age, "touching the griefs of this house for some things very requisite to be reformed in the church, as the great number of unlearned and unable ministers, the great abuse of excommunications for every matter of small moment, the commutation of penances, and the great multitude of dispensations and pluralities, and other things very hurtful to the church."* The committee reported that they found some of the bishops desirous of a remedy for the abuses they confessed, and of joining in a petition for that purpose to her majesty; which had accordingly been done, and a gracious answer, promising all convenient reformation, but laying the blame of remissness upon some prelates, had been received. This the house took with great thankfulness. It was exactly the course which pleased Elizabeth, who had no regard for her bishops, and a real anxiety that her ecclesiastical as well as temporal government should be well administered, provided her subjects would intrust the sole care of it to herself, or limit their interference to modest petitioning.

A new parliament having been assembled, soon after Whitgift on his elevation to the primacy had begun to enforce an universal conformity, the lower house drew up a petition in sixteen articles, to which they requested the lords' concurrence, complaining of the oath *ex officio*, the subscription to the three new articles, the abuses of excommunication, licences for non-residence, and other ecclesiastical grievances. The lords replied coolly, that they conceived many of those ar-

* D'Ewes, 302. Strype's Whitgift, 92. Append. 32.

ticles, which the commons had proposed, to be unnecessary, and that others of them were already provided for; and that the uniformity of the common prayer, the use of which the commons had requested to leave in certain respects to the minister's discretion, had been established by parliament. The two archbishops, Whitgift and Sandys, made a more particular answer to each article of the petition, in the name of their brethren.* But, in order to show some willingness towards reformation, they proposed themselves in convocation a few regulations for redress of abuses, none of which, however, on this occasion, though they received the royal assent, were submitted to the legislature †; the queen in fact maintaining an insuperable jealousy of all intermeddling on the part of parliament with her exclusive supremacy over the church. Excluded by Elizabeth's jealousy from entertaining these religious innovations, which would probably have met no unfavourable reception from a free parliament, the commons vented their ill-will towards the dominant hierarchy in complaints of ecclesiastical grievances, and measures to redress them; as to which, even with the low notions of parliamentary right prevailing at court, it was impossible to deny their competence. Several bills were introduced this session of 1584-5 into the lower house, which, though they had little chance of receiving the queen's assent, manifest the sense of that assembly, and in all likelihood of their constituents. One of these imported that bishops should be sworn in one of the courts of justice to do nothing in their office contrary to the common law. Another went to restrain pluralities, as to which the prelates would very reluctantly admit of any limitation.‡ A bill of the same nature passed the commons in 1589, though not without some opposition. The clergy took so great alarm at this measure, that the convocation addressed the queen in vehement language against it; and the archbishop throwing all the weight of his advice and authority into the same scale, the bill expired in the upper house.§ A similar proposition in the session of 1601 seems to have miscarried in the com-

* D'Ewes, 339. et post. Strype's Whitgift, 176, &c. Append. 70.

† Strype's Annals, iii. 228.

‡ Strype's Annals, iii. 186. 192. Compare Append. 35.

§ Strype's Whitgift, 279. Annals, i. 543.

mons.* In the next chapter will be found other instances of the commons' reforming temper in ecclesiastical concerns, and the queen's determined assertion of her supremacy.

The oath *ex officio*, binding the taker to answer all questions that should be put to him, inasmuch as it contravened the generous maxim of English law, that no one is obliged to criminate himself, provoked very just animadversion. Morice, attorney of the court of wards, not only attacked its legality with arguments of no slight force, but introduced a bill to take it away. This was on the whole well received by the house; and sir Francis Knollys, the stanch enemy of episcopacy, though in high office, spoke in its favour. But the queen put a stop to the proceeding, and Morice lay some time in prison for his boldness. The civilians, of whom several sat in the lower house, defended a mode of procedure that had been borrowed from their own jurisprudence. This revived the ancient animosity between them and the common lawyers. The latter had always manifested a great jealousy of the spiritual jurisdiction, and had early learned to restrain its exorbitances by writs of prohibition from the temporal courts. Whitgift, as tenacious of power as the most ambitious of his predecessors, murmured like them at this subordination, for such it evidently was, to a lay tribunal.† But the judges, who found as much gratification in exerting their power as the bishops, paid little regard to the remonstrances of the latter. We find the law reports of this and the succeeding reign full of cases of prohibitions. Nor did other abuses imputed to these obnoxious judicatures fail to provoke censure, such as the unreasonable fees of their officers, and the usage of granting licences, and commuting penances for money.‡ The ecclesiastical courts indeed have

* Parl. Hist. 921.

† Strype's Whitgift, 521. 537. App. 130. The archbishop could not disguise his dislike to the lawyers. "The temporal lawyer," he says in a letter to Cecil, "*whose learning is no learning any where but here at home, being born to nothing, doth by his labour and travel in that barbarous knowledge purchase to himself and his heirs for ever a thousand pounds per annum, and oftentimes much more,*

whereof there are at this day many examples." P. 215.

‡ Strype's Whitgift and D'Ewes, *passim*. In a convocation held during Grindal's sequestration (1580), proposals for reforming certain abuses in the spiritual courts were considered; but nothing was done in it. Strype's Grindal, p. 259. and Append., p. 97. And in 1594, a commission to inquire into abuses in the spiritual courts was issued; but whether this were

generally been reckoned more dilatory, vexatious, and expensive than those of the common law. But in the present age that part of their jurisdiction, which, though coercive, is professedly spiritual, and wherein the greatest abuses have been alleged to exist, has gone very much into disuse. In matrimonial and testamentary causes, their course of proceeding may not be open to any censure, so far as the essential administration of justice is concerned; though in the latter of these, a most inconvenient division of jurisdictions, following not only the unequal boundaries of episcopal dioceses, but the various peculiars or exempt districts which the church of England has continued to retain, is productive of a good deal of trouble and needless expense. [1827.]

Notwithstanding the tendency towards puritanism which the house of commons generally displayed, the court succeeded in procuring an act, which eventually Independents liable to severe laws. pressed with very great severity upon that class. This passed in 1593, and enacted the penalty of imprisonment against any person above the age of sixteen, who should forbear for the space of a month to repair to some church, until he should make such open submission and declaration of conformity as the act appoints. Those who refused to submit to these conditions were to abjure the realm, and if they should return without the queen's license, to suffer death as felons.* As this, on the one hand, like so many former statutes, helped to crush the unfortunate adherents to the Romish faith, so too did it bear an obvious application to such protestant sectaries as had professedly separated from the Anglican church. But it is here worthy of remark, that the puritan ministers throughout this reign disclaimed the imputation of schism, and acknowledged the lawfulness of continuing in the established church, while they demanded a further reformation of her discipline.† The real separatists, who were also a nu-

intended *bonâ fide* or not, it produced no reformation. Strype's Whitgift, 419.

* 35 Eliz. c. 1. Parl. Hist. 863.

† Neal asserts in his summary of the controversy, as it stood in this reign, that the puritans did not object to the office of bishop, provided he was only the head of the presbyters, and acted in conjunction with them, p. 398. But this was

in effect to demand every thing. For if the office could be so far lowered in eminence, there were many waiting to clip the temporal revenues and dignity in proportion.

In another passage, Neal states clearly, if not quite fairly, the main points of difference between the church and non-conforming parties under Elizabeth,

merous body, were denominated Brownists or Barrowists, from the names of their founders, afterwards lost in the more general appellation of Independents. These went far beyond the puritans in their aversion to the legal ministry, and were deemed in consequence still more proper subjects for persecution. Multitudes of them fled to Holland from the rigour of the bishops in enforcing this statute.* But two of this persuasion, Barrow and Greenwood, experienced a still severer fate. They were indicted on that perilous law of the 23d of the queen, mentioned in the last chapter, for spreading seditious writings, and executed at Bury. They died, Neal tells us, with such expressions of piety and loyalty, that Elizabeth regretted the consent she had given to their deaths.†

But, while these scenes of pride and persecution on one hand, and of sectarian insolence on the other, were deforming the bosom of the English church, she found a defender of her institutions in one who mingled in these vulgar controversies like a knight of romance among caitiff brawlers, with arms of finer temper and worthy to be proved in a nobler field. Richard Hooker, master of the Temple, published the first four books of his Ecclesiastical Polity in 1594; the fifth three years afterwards; and, dying in 1600, left behind three which did not see the light till 1647. This eminent work may justly be reckoned to mark an era in our literature: for if passages

Hooker's
Ecclesiasti-
cal Polity.
Its cha-
racter.

p. 147. He concludes with the following remark, which is very true. "Both parties agreed too well in asserting the necessity of an uniformity of public worship, and of calling in the sword of the magistrate for the support and defence of the several principles, which they made an ill use of in their turns, as they could grasp the power into their hands. The standard of uniformity, according to the bishops, was the queen's supremacy and the laws of the land; according to the puritans, the decrees of provincial and national synods, allowed and enforced by the civil magistrate; but neither party were for admitting that liberty of conscience and freedom of profession which is every man's right, as far as is consistent with the peace of the government he lives under."

* Neal, 253. 386.

† Strype's Whitgift, 414. Neal, 373. Several years before, in 1583, two men called anabaptists, Thacker and Copping, were hanged at the same place on the same statute for denying the queen's ecclesiastical supremacy; the proof of which was their dispersion of Brown's tracts, wherein that was only owned in civil cases. Strype's Annals, iii. 186. This was according to the invariable practice of Tudor times; an oppressive and sanguinary statute was first made; and next, as occasion might serve, a construction was put on it contrary to all common sense, in order to take away men's lives.

of much good sense and even of a vigorous eloquence are scattered in several earlier writers in prose, yet none of these, except perhaps Latimer and Ascham, and sir Philip Sidney in his *Arcadia*, can be said to have acquired enough reputation to be generally known even by name, much less are read in the present day; and it is indeed not a little remarkable that England, until near the end of the sixteenth century, had given few proofs in literature of that intellectual power which was about to develop itself with such unmatched energy in Shakspeare and Bacon. We cannot indeed place Hooker (but whom dare we to place?) by the side of these master-spirits; yet he has abundant claims to be counted among the luminaries of English literature. He not only opened the mine, but explored the depths, of our native eloquence. So stately and graceful is the march of his periods, so various the fall of his musical cadences upon the ear, so rich in images, so condensed in sentences, so grave and noble his diction, so little is there of vulgarity in his racy idiom, of pedantry in his learned phrase, that I know not whether any later writer has more admirably displayed the capacities of our language, or produced passages more worthy of comparison with the splendid monuments of antiquity. If we compare the first book of the *Ecclesiastical Polity* with what bears perhaps most resemblance to it of any thing extant, the treatise of Cicero *de Legibus*, it will appear somewhat perhaps inferior, through the imperfection of our language, which with all its force and dignity does not equal the Latin in either of these qualities, and certainly more tedious and diffuse in some of its reasonings, but by no means less high-toned in sentiment, or less bright in fancy, and far more comprehensive and profound in the foundations of its philosophy.

The advocates of a presbyterian church had always thought it sufficient to prove that it was conformable to the apostolical scheme as deduced merely from the scriptures. A pious reverence for the sacred writings, which they made almost their exclusive study, had degenerated into very narrow views on the great themes of natural religion and the moral law, as deducible from reason and sentiment. These, as most of the various families of their descendants continue

to do, they greatly slighted, or even treated as the mere chimeras of heathen philosophy. If they looked to the Mosaic law as the standard of criminal jurisprudence, if they sought precedents from scripture for all matters of temporal policy, much more would they deem the practice of the apostles an unerring and immutable rule for the discipline of the Christian church.* To encounter these adversaries, Hooker took a far more original course than the ordinary controvertists, who fought their battles with conflicting interpretations of scriptural texts or passages from the fathers. He inquired into the nature and foundation of law itself, as the rule of operation to all created beings, yielding thereto obedience by unconscious necessity, or sensitive appetite, or reasonable choice; reviewing especially those laws that regulate human agency, as they arise out of moral relations, common to our species, or the institutions of politic societies, or the intercommunity of independent nations; and having thoroughly established the fundamental distinction between laws natural and positive, eternal and temporary, immutable and variable, he came with all this strength of moral philosophy to discriminate by the same criterion the various rules and precepts contained in the scriptures. It was a kind of maxim among the puritans, that scripture was so much the exclusive rule of human actions, that whatever, in matters at least concerning religion, could not be found to have its authority, was unlawful. Hooker devoted the whole second book of his work to the refutation of this principle. He proceeded afterwards to attack its application more particularly to the episcopal scheme of church government, and to the various ceremonies or usages which those sectaries treated as either absolutely superstitious, or at least as impositions without authority. It was maintained by this great writer, not only that ritual observances are variable according to the discretion of ecclesiastical

* "The discipline of Christ's church," said Cartwright, "that is necessary for all times, is delivered by Christ, and set down in the Holy Scriptures. Therefore the true and lawful discipline is to be fetched from thence, and from thence alone. And that which resteth upon any other foundation ought to be esteemed unlawful and counterfeit." Whitgift, in

his answer to Cartwright's Admonition, rested the controversy in the main, as Hooker did, on the indifferency of church discipline and ceremony. It was not till afterwards that the defenders of the established order found out that one claim of divine right was best met by another.

rulers, but that no certain form of polity is set down in scripture as generally indispensable for a Christian church. Far, however, from conceding to his antagonists the fact which they assumed, he contended for episcopacy as an apostolical institution, and always preferable, when circumstances would allow its preservation, to the more democratical model of the Calvinistic congregations. "If we did seek," he says, "to maintain that which most advantageth our own cause, the very best way for us and the strongest against them were to hold, even as they do, that in scripture there must needs be found some particular form of church polity which God hath instituted, and which for that very cause belongeth to all churches at all times. But with any such partial eye to respect ourselves, and by cunning to make those things seem the truest, which are the fittest to serve our purpose, is a thing which we neither like nor mean to follow."

The richness of Hooker's eloquence is chiefly displayed in his first book; beyond which perhaps few who want a taste for ecclesiastical reading are likely to proceed. The second and third, however, though less brilliant, are not inferior in the force and comprehensiveness of reasoning. The eighth and last returns to the subject of civil government, and expands, with remarkable liberality, the principles he had laid down as to its nature in the first book. Those that intervene are mostly confined to a more minute discussion of the questions mooted between the church and puritans; and in these, as far as I have looked into them, though Hooker's argument is always vigorous and logical, and he seems to be exempt from that abusive insolence to which polemical writers were then even more prone than at present, yet he has not altogether the terseness or lucidity, which long habits of literary warfare, and perhaps a natural turn of mind, have given to some expert dialecticians. In respect of language, the three posthumous books, partly from having never received the author's last touches, and partly, perhaps, from his weariness of the labour, are beyond comparison less elegantly written than the preceding.

The better parts of the Ecclesiastical Polity bear a resemblance to the philosophical writings of antiquity, in their defects as well as their excellencies. Hooker is often too

vague in the use of general terms, too inconsiderate in the admission of principles, too apt to acquiesce in the scholastic pseudo-philosophy, and indeed in all received tenets; he is comprehensive rather than sagacious, and more fitted to sift the truth from the stores of accumulated learning than to seize it by an original impulse of his own mind; somewhat also impeded, like many other great men of that and the succeeding century, by too much acquaintance with books, and too much deference for their authors. It may be justly objected to some passages, that they elevate ecclesiastical authority, even in matters of belief, with an exaggeration not easily reconciled to the protestant right of private judgment, and even of dangerous consequence in those times; as when he inclines to give a decisive voice in theological controversies to general councils; not indeed on the principles of the church of Rome, but on such as must end in the same conclusion, the high probability that the aggregate judgment of many grave and learned men should be well founded.* Nor would it be difficult to point out several other subjects, such as religious toleration, as to which he did not emancipate himself from the trammels of prejudice. But, whatever may be the imperfections of his Ecclesiastical Polity, they are far more than compensated by its eloquence and its reasoning, and above all by that deep pervading sense of the relation between man and his Creator, as the groundwork of all eternal law, which rendered the first book of this work a rampart, on the one hand, against the puritan school who

* "If the natural strength of men's wit may by experience and study attain unto such ripeness in the knowledge of things human, that men in this respect may presume to build somewhat upon their judgment; what reason have we to think but that even in matters divine, the like wits, furnished with necessary helps, exercised in scripture with like diligence, and assisted with the grace of Almighty God, may grow unto so much perfection of knowledge, that men shall have just cause, when any thing pertinent unto faith and religion is doubted of, the more willingly to incline their minds towards that which the sentence of so grave, wise, and learned in that faculty

shall judge most sound? For the controversy is of the weight of such men's judgment," &c. But Hooker's mistake was to exaggerate the weight of such men's judgment; and not to allow enough for their passions and infirmities, the imperfection of their knowledge, their connivance with power, their attachment to names and persons, and all the other drawbacks to ecclesiastical authority.

It is well known that the preface to the Ecclesiastical Polity was one of the two books to which James II. ascribed his return into the fold of Rome; and it is not difficult to perceive by what course of reasoning on the positions it contains this was effected.

shunned the light of nature as a deceitful meteor; and on the other, against that immoral philosophy which, displayed in the dark precepts of Machiavel, or lurking in the desultory sallies of Montaigne, and not always rejected by writers of more apparent seriousness, threatened to destroy the sense of intrinsic distinctions in the quality of actions, and to convert the maxims of state-craft and dissembling policy into the rule of life and manners.

Nothing perhaps is more striking to a reader of the Ecclesiastical Polity than the constant and even excessive predilection of Hooker for those liberal principles of civil government, which are sometimes so just and always so attractive. Upon these subjects, his theory absolutely coincides with that of Locke. The origin of government, both in right and in fact, he explicitly derives from a primary contract; "without which consent, there were no reason that one should take upon him to be lord or judge over another; because, although there be, according to the opinion of some very great and judicious men, a kind of natural right in the noble, wise, and virtuous, to govern them which are of servile disposition; nevertheless, for manifestation of this their right, and men's more peaceable contentment on both sides, the assent of them who are to be governed seemeth necessary." "The lawful power," he observes elsewhere, "of making laws to command whole politic societies of men, belongeth so properly unto the same entire societies, that for any prince or potentate of what kind soever upon earth to exercise the same of himself, and not either by express commission immediately and personally received from God, or else by authority received at first from their consent upon whose persons they impose laws, it is no better than mere tyranny. Laws they are not, therefore, which public approbation hath not made so. But approbation not only they give, who personally declare their assent by voice, sign, or act; but also when others do it in their names, by right originally, at the least, derived from them. As in parliaments, councils, and the like assemblies, although we be not personally ourselves present, notwithstanding our assent is by reason of other agents there in our behalf. And what we do by others, no reason but that it should stand as our

deed, no less effectually to bind us, than if ourselves had done it in person." And in another place still more peremptorily: "Of this thing no man doubteth, namely, that in all societies, companies, and corporations, what severally each shall be bound unto, it must be with all their assents ratified. Against all equity it were that a man should suffer detriment at the hands of men, for not observing that which he never did either by himself or others mediately or immediately agree unto."

These notions respecting the basis of political society, so far unlike what prevailed among the next generation of churchmen, are chiefly developed and dwelt upon in Hooker's concluding book, the eighth; and gave rise to a rumour, very sedulously propagated soon after the time of its publication, and still sometimes repeated, that the posthumous portion of his work had been interpolated or altered by the puritans.* For this surmise, however, I am persuaded that there is no foundation. The three latter books are doubtless imperfect, and it is possible that verbal changes may have been made by their transcribers or editors; but the testimony that has been brought forward to throw a doubt over their

* In the life of Hooker prefixed to the edition I use, fol. 1671, I find an assertion of Dr. Barnard, chaplain to Usher, that he had seen a manuscript of the last books of Hooker, containing many things omitted in the printed volume. One passage is quoted, and seems in Hooker's style. But the question is rather with respect to interpolations than omissions. And of the former I see no evidence or likelihood. If it be true, as is alleged, that different manuscripts of the three last books did not agree, if even these disagreements were the result of fraud, why should we conclude that they were corrupted by the puritans rather than the church? In Zouch's edition of Walton's Life of Hooker, the reader will find a long and ill-digested note on this subject, the result of which has been to convince me, that there is no reason to believe any other than verbal changes to have been made in the loose draught which the author left, but that whatever changes were made, it does not appear that the manuscript

was ever in the hands of the puritans. The strongest probability however of their authenticity is from internal evidence. [But it has been proved by Mr. Keble, the last editor of the Ecclesiastical Polity, that the sixth book, as we now possess it, though written by Hooker, did not belong to this work, and consequently that the real sixth book has been lost. 1841.]

A late writer has produced a somewhat ridiculous proof of the carelessness with which all editions of the Ecclesiastical Polity have been printed; a sentence having slipped into the text of the seventh book, which makes nonsense, and which he very probably conjectures to have been a marginal memorandum of the author for his own use on revising the manuscript. M'Crie's Life of Melvil, vol. i. p. 471. [But it seems on the whole a more plausible conjecture, that the memorandum was by one of those who, after Hooker's death, had the manuscript to revise. 1841.]

authenticity consists in those vague and self-contradictory stories, which gossiping compilers of literary anecdote can easily accumulate ; while the intrinsic evidence arising from the work itself, on which, in this branch of criticism, I am apt chiefly to rely, seems altogether to repel every suspicion. For not only the principles of civil government, presented in a more expanded form by Hooker in the eighth book, are precisely what he laid down in the first ; but there is a peculiar chain of consecutive reasoning running through it, wherein it would be difficult to point out any passages that could be rejected without dismembering the context. It was his business in this part of the Ecclesiastical Polity, to vindicate the queen's supremacy over the church : and this he has done by identifying the church with the commonwealth ; no one, according to him, being a member of the one who was not also a member of the other. But as the constitution of the Christian church, so far as the laity partook in its government, by choice of pastors or otherwise, was undeniably democratical, he laboured to show, through the medium of the original compact of civil society, that the sovereign had received this, as well as all other powers, at the hands of the people. "Laws being made among us," he affirms, "are not by any of us so taken or interpreted, as if they did receive their force from power which the prince doth communicate unto the parliament, or unto any other court under him, but from power which the whole body of the realm being naturally possessed with, hath by free and deliberate assent derived unto him that ruleth over them so far forth as hath been declared ; so that our laws made concerning religion do take originally their essence from the power of the whole realm and church of England."

In this system of Hooker and Locke, for it will be obvious to the reader that their principles were the same, there is much, if I am not mistaken, to disapprove. That no man can be justly bound by laws which his own assent has not ratified, appears to me a position incompatible with the existence of society in its literal sense, or illusory in the sophistical interpretations by which it is usual to evade its meaning. It will be more satisfactory and important to re-

mark the views which this great writer entertained of our own constitution, to which he frequently and fearlessly appeals, as the standing illustration of a government restrained by law. "I cannot choose," he says, "but commend highly their wisdom, by whom the foundation of the commonwealth hath been laid; wherein though no manner of person or cause be unsubject unto the king's power, yet so is the power of the king over all, and in all limited, that unto all his proceedings the law itself is a rule. The axioms of our regal government are these: 'Lex facit regem' — the king's grant of any favour made contrary to the law is void; — 'Rex nihil potest nisi quod jure potest' — what power the king hath, he hath it by law; the bounds and limits of it are known, the entire community giveth general order by law, how all things publicly are to be done; and the king, as the head thereof, the highest in authority over all, causeth, according to the same law, every particular to be framed and ordered thereby. The whole body politic maketh laws, which laws give power unto the king; and the king having bound himself to use according to law that power, it so falleth out, that the execution of the one is accomplished by the other." These doctrines of limited monarchy recur perpetually in the eighth book; and though Hooker, as may be supposed, does not enter upon the perilous question of resistance, and even intimates that he does not see how the people can limit the extent of power once granted, unless where it escheats to them, yet he positively lays it down, that usurpers of power, that is, lawful rulers arrogating more than the law gives to them, cannot in conscience bind any man to obedience.

It would perhaps have been a deviation from my subject to enlarge so much on these political principles in a writer of any later age, when they had been openly sustained in the councils of the nation. But as the reigns of the Tudor family were so inauspicious to liberty that some have been apt to imagine its recollection to have been almost effaced, it becomes of more importance to show that absolute monarchy was, in the eyes of so eminent an author as Hooker, both pernicious in itself, and contrary to the fundamental laws of the English commonwealth. Nor would such sentiments, we may surely presume,

have been avowed by a man of singular humility, and whom we might charge with somewhat of an excessive deference to authority, unless they had obtained more currency, both among divines and lawyers, than the complaisance of courtiers in these two professions might lead us to conclude; Hooker being not prone to deal in paradoxes, nor to borrow from his adversaries that sturdy republicanism of the school of Geneva which had been their scandal. I cannot indeed but suspect that his whig principles, in the last book, are announced with a temerity that would have startled his superiors; and that its authenticity, however called in question, has been better preserved by the circumstance of a posthumous publication than if he had lived to give it to the world. Whitgift would probably have induced him to suppress a few passages incompatible with the servile theories already in vogue. It is far more usual that an author's genuine sentiments are perverted by means of his friends and patrons than of his adversaries.

The prelates of the English church, while they inflicted so many severities on others, had not always cause to exult in their own condition. From the time when Henry taught his courtiers to revel in the spoil of monasteries, there had been a perpetual appetite for ecclesiastical possessions. Endowed by a prodigal superstition with pomp and wealth beyond all reasonable measure, and far beyond what the new system of religion appeared to prescribe, the church of England still excited the covetousness of the powerful, and the scandal of the austere.* I have mentioned in another place how the bishoprics were impoverished in the first reformation under Edward VI. The catholic bishops who followed made haste to plunder, from a consciousness that the goods of their church were speedily to pass into the hands of heretics.† Hence the alienation of their estates had gone so far that in the beginning of Elizabeth's

Spoliation of church revenues.

* The puritans objected to the title of lord bishop. Sampson wrote a peevish letter to Grindal on this, and received a very good answer. Strype's Parker, Append. 178. Parker, in a letter to Cecil, defends it on the best ground; that the bishops hold their lands by barony, and therefore the giving them the

title of lords was no irregularity, and nothing more than a consequence of the tenure. Collier, 544. This will not cover our modern colonial bishops, on some of whom the same title has, without any good reason, been conferred.

† Strype's Annals, i. 159.

reign statutes were made, disabling ecclesiastical proprietors from granting away their lands, except on leases for three lives, or twenty-one years.* But an unfortunate reservation was introduced in favour of the crown. The queen, therefore, and her courtiers, who obtained grants from her, continued to prey upon their succulent victim. Few of her council imitated the noble disinterestedness of Walsingham, who spent his own estate in her service, and left not sufficient to pay his debts. The documents of that age contain ample proofs of their rapacity. Thus Cecil surrounded his mansion-house at Burleigh with estates once belonging to the see of Peterborough. Thus Hatton built his house in Holborn on the bishop of Ely's garden. Cox, on making resistance to this spoliation, received a singular epistle from the queen.† This bishop, in consequence of such vexations, was desirous of retiring from the see before his death. After that event, Elizabeth kept it vacant eighteen years. During this period we have a petition to her from lord keeper Puckering, that she would confer it on Scambler, bishop of Norwich, then eighty-eight years old, and notorious for simony, in order that he might give him a lease of part of the lands.‡ These transactions denote the mercenary and rapacious spirit which leavened almost all Elizabeth's courtiers.

The bishops of this reign do not appear, with some distinguished exceptions, to have reflected so much honour on the established church as those who attach a superstitious reverence to the age of the reformation are apt to conceive. In the plunder that went forward, they took good care of themselves. Charges against them of simony, corruption, covetousness, and especially destruction of their church estates for the be-

* 1 Elix. c. 19.; 13 Eliz. c. 10. Blackstone's Commentaries, vol. ii. c. 28. The exception in favour of the crown was repealed in the first year of James.

† It was couched in the following terms:—

“ Proud Prelate,

“ You know what you were before I made you what you are: if you do not immediately comply with my request, by G— I will unfrock you.

“ ELIZABETH.”

Poor Cox wrote a very good letter before this, printed in Strype's Annals, vol. ii. Append. 84. The names of Hatton Garden and Ely Place (*Mantua vae miseræ nimium vicina Cremonæ*) still bear witness to the encroaching lord keeper, and the elbowed bishop.

‡ Strype, iv. 246. See also p. 15. of the same volume. By an act in the first year of James, c. 3., conveyances of bishops' lands to the crown are made void; a concession much to the king's honour.

nefit of their families, are very common, — sometimes no doubt unjust, but too frequent to be absolutely without foundation.* The council often wrote to them, as well as concerning them, with a sort of asperity which would astonish one of their successors. And the queen never restrained herself in treating them on any provocation with a good deal of rudeness, of which I have just mentioned an egregious example.† In her speech to parliament on closing the session of 1584, when many complaints against the rulers of the church had rung in her ears, she told the bishops that if they did not amend what was wrong, she meant to depose them.‡ For there seems to have been no question in that age but that this might be done by virtue of the crown's supremacy.

The church of England was not left by Elizabeth in circumstances that demanded applause for the policy of her rulers. After forty years of constantly aggravated molestation of the nonconforming clergy, their numbers were become greater, their popularity more deeply rooted, their enmity to the established order more irreconcilable. It was doubtless a problem of no slight difficulty, by what means so obstinate and opiniated a class of sectaries could have been managed; nor are we, perhaps, at this distance of time, altogether competent to decide upon the fittest course of policy in that

* Harrington's *State of the Church*, in *Nugæ Antiquæ*, vol. ii. *passim*; Wilkins's *Concilia*, iv. 256.; Strype's *Annals*, iii. 620., et alibi; *Life of Parker*, 454.; of *Whitgift*, 220.; of *Aylmer*, *passim*. Observe the preamble of 13 Eliz. c. 10. It must be admitted, on the other hand, that the gentry, when popishly or puritanically affected, were apt to behave exceedingly ill towards the bishops. At Lambeth and Fulham they were pretty safe; but at a distance they found it hard to struggle with the rudeness and iniquity of the territorial aristocracy; as Sandys twice experienced.

† Birch's *Memoirs*, i. 48. Elizabeth seems to have fancied herself entitled by her supremacy to dispose of bishops as she pleased, though they did not hold commissions *durante bene placito*, as in her brother's time. Thus she suspended

Fletcher, bishop of London, of her own authority, only for marrying "a fine lady and a widow." Strype's *Whitgift*, 458. And Aylmer, having preached too vehemently against female vanity in dress, which came home to the queen's conscience, she told her ladies that if the bishop held more discourse on such matters, she would fit him for heaven; but he should walk thither without a staff, and leave his mantle behind him. Harrington's *State of the Church*, in *Nugæ Antiquæ*, i. 170.; see, too, p. 217. It will of course not appear surprising that Hutton, archbishop of York, an exceedingly honest prelate, having preached a bold sermon before the queen, urging her to settle the succession, and pointing strongly towards Scotland, received a sharp message, p. 250.

‡ D'Ewes, 328.

respect.* But it is manifest that the obstinacy of bold and sincere men is not to be quelled by any punishments that do not exterminate them, and that they were not likely to entertain a less conceit of their own reason when they found no arguments so much relied on to refute it as that of force. Statesmen invariably take a better view of such questions than churchmen; and we may well believe that Cecil and Walsingham judged more sagaciously than Whitgift and Aylmer. The best apology that can be made for Elizabeth's tenaciousness of those ceremonies which produced this fatal contention I have already suggested, without much express authority from the records of that age; namely, the justice and expediency of winning over the catholics to conformity, by retaining as much as possible of their accustomed rites. But in the latter period of the queen's reign, this policy had lost a great deal of its application; or rather the same principle of policy would have dictated numerous concessions in order to satisfy the people. It appears by no means unlikely that, by reforming the abuses and corruption of the spiritual courts, by abandoning a part of their jurisdiction, so heterogeneous and so unduly obtained, by abrogating obnoxious and at best frivolous ceremonies, by restraining pluralities of benefices, by ceasing to discountenance the most diligent ministers, and by more temper and disinterestedness in their own behaviour, the bishops would have palliated, to an indefinite degree, that dissatisfaction with the established scheme of polity, which its want of resemblance to that of other protestant churches must more or less have produced. Such a reformation would at least have contented those reasonable and moderate persons, who occupy sometimes a more extensive ground between contending factions than the zealots of either are willing to believe or acknowledge.

I am very sensible that such freedom as I have used in this chapter cannot be pleasing to such as have sworn allegiance to either the Anglican or the puritan party; and that even candid and liberal minds may be

General
remarks.

* Collier says, p. 586., on Heylin's authority, that Walsingham offered the puritans, about 1583, in the queen's name, to give up the ceremony of kneeling at the communion, the cross in baptism, and

the surplice; but that they answered, "*ne ungulam quidem esse relinquendam.*" But I am not aware of any better testimony to the fact; and it is by no means agreeable to the queen's general conduct.

inclined to suspect that I have not sufficiently admitted the excesses of one side to furnish an excuse for those of the other. Such readers I would gladly refer to lord Bacon's Advertisement touching the Controversies of the Church of England; a treatise written under Elizabeth, in that tone of dispassionate philosophy which the precepts of Burleigh sown in his own deep and fertile mind had taught him to apply. This treatise, to which I did not turn my attention in writing the present chapter, appears to coincide in every respect with the views it displays. If he censures the pride and obstinacy of the puritan teachers, their indecent and libellous style of writing, their affected imitation of foreign churches, their extravagance of receding from every thing formerly practised, he animadverts with no less plainness on the faults of the episcopal party, on the bad example of some prelates, on their peevish opposition to every improvement, their unjust accusations, their contempt of foreign churches, their persecuting spirit.*

Yet that we may not deprive this great queen's administration, in what concerned her dealings with the two religious parties opposed to the established church, of what vindication may best be offered for it, I will refer the reader to a letter of sir Francis Walsingham, written to a person in France, after the year 1580.†

Letter of
Walsingham
in defence of
the queen's
government.

* Bacon, ii. 375. See also another paper concerning the pacification of the church, written under James, p. 387. "The wrongs," he says, "of those which are possessed of the government of the church towards the other, may hardly be dissembled or excused," p. 382. Yet Bacon was never charged with affection for the puritans. In truth, Elizabeth and James were personally the great support of the high church interest; it had few real friends among their counsellors.

† Burnet, ii. 418. Cabala, part ii. 38. (4to. edition). Walsingham grounds the queen's proceedings upon two principles: the one, that "consciences are not to be forced, but to be won and reduced by force of truth, with the aid of time, and use of all good means of instruction and persuasion;" the other, that "cases of conscience, when they exceed their bounds, and grow to be matter of faction, lose their nature; and that sovereign princes ought distinctly to punish their

practices and contempt, though coloured with the pretence of conscience and religion." Bacon has repeated the same words, as well as some more of Walsingham's letter, in his observations on the libel on lord Burleigh, i. 522. And Mr. Southey (Book of the Church, ii. 291.) seems to adopt them as his own.

Upon this it may be observed; first, that they take for granted the fundamental sophism of religious intolerance, namely, that the civil magistrate, or the church he supports, is not only in the right, but so clearly in the right, that no honest man, if he takes time and pains to consider the subject, can help acknowledging it: secondly, that, according to the principles of Christianity as admitted on each side, it does not rest in an esoteric persuasion, but requires an exterior profession, evinced both by social worship, and by certain positive rites; and that the marks of this profession, according to the form best adapted to their respective

It is a very able apology for her government; and if the reader should detect, as he doubtless may, somewhat of sophistry in reasoning, and of mis-statement in matter of fact, he will ascribe both one and the other to the narrow spirit of the age with respect to civil and religious freedom, or to the circumstances of the writer, an advocate whose sovereign was his client.

ways of thinking, were as incumbent upon the catholic and puritan, as they had been upon the primitive church: nor were they more chargeable with faction, or with exceeding the bounds of conscience, when they persisted in the use of them, notwithstanding any prohibitory statute, than the early Christians.

The generality of statesmen, and churchmen themselves not unfrequently, have argued upon the principles of what, in the seventeenth century, was called Hobbism, towards which the Erastian system, which is that of the church of England,

though excellent in some points of view, had a tendency to gravitate; namely, that civil and religious allegiance are so necessarily connected, that it is the subject's duty to follow the dictates of the magistrate in both alike. And this received some countenance from the false and mischievous position of Hooker, that the church and commonwealth are but different denominations of the same society. Warburton has sufficiently exposed the sophistry of this theory; though I do not think him equally successful in what he substitutes for it.

CHAPTER V.

ON THE CIVIL GOVERNMENT OF ELIZABETH.

General Remarks — Defective Security of the Subject's Liberty — Trials for Treason and other political Offences unjustly conducted — Illegal Commitments — Remonstrance of Judges against them — Proclamations unwarranted by Law — Restrictions on Printing — Martial Law — Loans of Money not quite voluntary — Character of Lord Burleigh's Administration — Disposition of the House of Commons — Addresses concerning the Succession — Difference on this between the Queen and Commons in 1566 — Session of 1571 — Influence of the Puritans in Parliament — Speech of Mr. Wentworth in 1576 — The Commons continue to seek Redress of ecclesiastical Grievances — Also of Monopolies, especially in the Session of 1601 — Influence of the Crown in Parliament — Debate on Election of non-resident Burgesses — Assertion of Privileges by Commons — Case of Ferrers, under Henry VIII. — Other Cases of Privilege — Privilege of determining contested Elections claimed by the House — The English Constitution not admitted to be an absolute Monarchy — Pretensions of the Crown.

THE subject of the two last chapters, I mean the policy adopted by Elizabeth for restricting the two religious parties which from opposite quarters resisted the exercise of her ecclesiastical prerogatives, has already afforded us many illustrations of what may more strictly be reckoned the constitutional history of her reign. The tone and temper of her administration have been displayed in a vigilant execution of severe statutes, especially towards the catholics, and sometimes in stretches of power beyond the law. And as Elizabeth had no domestic enemies or refractory subjects who did not range under one or other of these two sects, and little disagreement with her people on any other grounds, the ecclesiastical history of this period is the best preparation for our enquiry into the civil government. In the present chapter I shall first offer a short view of the practical exercise of government in this reign, and then proceed to show how the queen's high assumptions of prerogative were encountered by a resistance in parliament, not quite uniform, but insensibly becoming more vigorous.

General
remarks.

Elizabeth ascended the throne with all the advantages of a very extended authority. Though the jurisdiction actually exerted by the court of star-chamber could not be vindicated according to statute law, it had been so well established as to pass without many audible murmurs. Her progenitors had intimidated the nobility; and if she had something to fear at one season from this order, the fate of the duke of Norfolk and of the rebellious earls in the north put an end for ever to all apprehension from the feudal influence of the aristocracy. There seems no reason to believe that she attempted a more absolute power than her predecessors; the wisdom of her counsellors, on the contrary, led them generally to shun the more violent measures of the late reigns; but she certainly acted upon many of the precedents they had bequeathed her, with little consideration of their legality. Her own remarkable talents, her masculine intrepidity, her readiness of wit and royal deportment, which the bravest men unaffectedly dreaded, her temper of mind, above all, at once fiery and inscrutably dissembling, would in any circumstances have ensured her more real sovereignty than weak monarchs, however nominally absolute, can ever enjoy or retain. To these personal qualities was added the cooperation of some of the most diligent and circumspect, as well as the most sagacious counsellors that any prince has employed; men as unlikely to loose from their grasp the least portion of that authority which they found themselves to possess, as to excite popular odium by an unusual or misplaced exertion of it. The most eminent instances, as I have remarked, of a high-strained prerogative in her reign, have some relation to ecclesiastical concerns; and herein the temper of the predominant religion was such as to account no measures harsh or arbitrary that were adopted towards its conquered, but still formidable, enemy. Yet when the royal supremacy was to be maintained against a different foe by less violent acts of power, it revived the smouldering embers of English liberty. The stern and exasperated puritans became the depositaries of that sacred fire; and this manifests a second connexion between the temporal and ecclesiastical history of the present reign.

Civil liberty, in this kingdom, has two direct guarantees;

the open administration of justice according to known laws truly interpreted, and fair constructions of evidence; and the right of parliament, without let or interruption, to enquire into, and obtain the redress of, public grievances. Of these, the first is by far the most indispensable; nor can the subjects of any state be reckoned to enjoy a real freedom, where this condition is not found both in its judicial institutions and in their constant exercise. In this, much more than in positive law, our ancient constitution, both under the Plantagenet and Tudor line, had ever been failing; and it is because one set of writers have looked merely to the letter of our statutes or other authorities, while another have been almost exclusively struck by the instances of arbitrary government they found on record, that such incompatible systems have been laid down with equal positiveness on the character of that constitution.

I have found it impossible not to anticipate, in more places than one, some of those glaring transgressions of natural as well as positive law, that rendered our courts of justice in cases of treason little better than the caverns of murderers. Whoever was arraigned at their bar was almost certain to meet a virulent prosecutor, a judge hardly distinguishable from the prosecutor except by his ermine, and a passive pusillanimous jury. Those who are acquainted only with our modern decent and dignified procedure, can form little conception of the irregularity of ancient trials; the perpetual interrogation of the prisoner, which gives most of us so much offence at this day in the tribunals of a neighbouring kingdom; and the want of all evidence except written, perhaps unattested, examinations or confessions. Habington, one of the conspirators against Elizabeth's life in 1586, complained that two witnesses had not been brought against him, conformably to the statute of Edward VI. But Anderson the chief justice told him, that as he was indicted on the act of Edward III., that provision was not in force.* In the case of captain Lee, a partisan of Essex and Southampton, the court appear to have denied the right of peremptory challenge.† Nor was more equal measure dealt to the noblest prisoners by their

Trials for treason and other political offences unjustly conducted.

* State Trials, i. 1148.

† Id. i. 1256.

equals. The earl of Arundel was convicted of imagining the queen's death, on evidence which at the utmost would only have supported an indictment for reconciliation to the church of Rome.*

The integrity of judges is put to the proof as much by prosecutions for seditious writings as by charges of treason. I have before mentioned the conviction of Udal and Penry, for a felony created by the 23d of Elizabeth; the former of which, especially, must strike every reader of the trial as one of the gross judicial iniquities of this reign. But, before this sanguinary statute was enacted, a punishment of uncommon severity had been inflicted upon one Stubbe, a puritan lawyer, for a pamphlet against the queen's intended marriage with the duke of Anjou. It will be in the recollection of most of my readers that, in the year 1579, Elizabeth exposed herself to much censure and ridicule, and inspired the justest alarm in her most faithful subjects, by entertaining, at the age of forty-six, the proposals of this young scion of the house of Valois. Her council, though several of them in their deliberations had much inclined against the preposterous alliance, yet in the end, displaying the compliance usual with the servants of self-willed princes, agreed, "conceiving," as they say, "her earnest disposition for this her marriage," to further it with all their power. Sir Philip Sidney with more real loyalty wrote her a spirited remonstrance, which she had the magnanimity never to resent.† But she

* State Trials, i. 1403.

† Murden, 337. Dr. Lingard has fully established, what indeed no one could reasonably have disputed, Elizabeth's passion for Anjou; and says very truly, "the writers who set all this down to policy cannot have consulted the original documents," p. 149. It was altogether repugnant to sound policy. Persons, the jesuit, indeed says, in his famous libel, Leicester's Commonwealth, written not long after this time, that it would have been "honourable, convenient, profitable, and needful;" which every honest Englishman would interpret by the rule of contraries. Sussex wrote indeed to the queen in favour of the marriage (Lodge, ii. 177.); and Cecil undoubtedly professed to favour it; but this must have been out of obsequious-

ness to the queen. It was a habit of this minister to set down briefly the arguments on both sides of a question, sometimes in parallel columns, sometimes successively; a method which would seem too formal in our age, but tending to give himself and others a clearer view of the case. He has done this twice in the present instance; Murden, 322. 331.; and it is evident that he does not, and cannot, answer his own objections to the match. When the council waited on her with this resolution in favour of the marriage, she spoke sharply to those whom she believed to be against it. Yet the treaty went on for two years; her coquetry in this strange delay breeding her, as Walsingham wrote from Paris, "greater dishonour than I dare commit to paper." Strype's Annals, iii. 2. That

poured her indignation on Stubbe, who, not entitled to use a private address, had ventured to arouse a popular cry in his “Gaping Gulph, in which England will be swallowed up by the French Marriage.” This pamphlet is very far from being, what some have ignorantly or unjustly called it, a virulent libel ; but is written in a sensible manner, and with unfeigned loyalty and affection towards the queen. But, besides the main offence of addressing the people on state affairs, he had, in the simplicity of his heart, thrown out many allusions proper to hurt her pride, such as dwelling too long on the influence her husband would acquire over her, and imploring that she would ask her physicians whether to bear children at her years would not be highly dangerous to her life. Stubbe, for writing this pamphlet, received sentence to have his right hand cut off. When the penalty was inflicted, taking off his hat with his left, he exclaimed, “Long live Queen Elizabeth !” Burleigh, who knew that his fidelity had borne so rude a test, employed him afterwards in answering some of the popish libellers.*

There is no room for wonder at any verdict that could be returned by a jury, when we consider what means the government possessed of securing it. The sheriff returned a panel, either according to express directions, of which we have proofs, or to what he judged himself of the crown’s intention and interest.† If a verdict had gone against the prosecution in a matter of moment, the jurors must have laid their account with appearing before the star-chamber ; lucky, if they should escape, on humble retraction, with sharp words, instead of enormous fines and indefinite imprisonment. The control of this arbitrary tribunal bound down and rendered impotent all the minor jurisdictions. That primæval institution, those inquests by twelve true men, the unadulterated voice of the people, responsible alone to God and their conscience, which should have been heard in the sanctuaries of justice, as fountains springing fresh from the lap of earth, became, like waters constrained in their course by art, stag-

she ultimately broke it off, must be ascribed to the suspiciousness and irresolution of her character, which, acting for once conjointly with her good understanding, overcame a disgraceful inclination.

* Strype, iii. 480. Stubbe always signed himself Scæva, in these left-handed productions.

† Lodge, ii. 412. ; iii. 49.

nant and impure. Until this weight that hung upon the constitution should be taken off, there was literally no prospect of enjoying with security those civil privileges which it held forth.*

It cannot be too frequently repeated, that no power of arbitrary detention has ever been known to our constitution since the charter obtained at Runnymede. The writ

Illegal
commit-
ments.

of habeas corpus has always been a matter of right. But, as may naturally be imagined, no right of the subject, in his relation to the crown, was preserved with greater difficulty. Not only the privy-council in general arrogated to itself a power of discretionary imprisonment, into which no inferior court was to enquire, but commitments by a single councillor appear to have been frequent. These abuses gave rise to a remarkable complaint of the judges, which, though an authentic recognition of the privilege of personal freedom against such irregular and oppressive acts of individual ministers, must be admitted to leave by far too great latitude to the executive government, and to surrender, at least by implication from rather obscure language, a great part of the liberties which many statutes had confirmed.† This is contained in a passage from chief justice Anderson's Reports. But as there is an original manuscript in the British Museum, differing in some material points from the print, I shall follow it in preference.‡

“To the Rt: hon: our very good lords sir Chr. Hatton, of the honourable order of the garter knight, and chancellor of England, and Sir W. Cecill of the hon: order of the garter knight, lord Burleigh, lord high treasurer of England, — We her majesty's justices,

Remon-
strance of
judges
against
them.

* Several volumes of the Harleian MSS. illustrate the course of government under Elizabeth. The copious analysis in the catalogue, by Humphrey Wanley and others, which I have in general found accurate, will, for most purposes, be sufficient. See particularly vol. 703. A letter, inter alia, in this (folio 1.), from lord Hunsdon and Walsingham to the sheriff of Sussex, directs him not to assist the creditors of John Ashburnham in molesting him, “till such time as our determination touching the premises shall be known,” Ashburnham being to attend

the council to prefer his complaint. See also vols. 6995, 6996, 6997, and many others. The Lansdowne catalogue will furnish other evidences.

† Anderson's Reports, i. 297. It may be found also in the *Biographia Britannica*, and the *Biographical Dictionary*, art. Anderson.

‡ Lansdowne MSS. lviii. 87. The Harleian MS. 6846. is a mere transcript from Anderson's Reports, and consequently of no value. There is another in the same collection, at which I have not looked.

of both benches, and barons of the exchequer, do desire your lordships that by your good means such order may be taken that her highness's subjects may not be committed or detained in prison, by commandment of any nobleman or counsellor, against the laws of the realm, to the grievous charges and oppression of her majesty's said subjects : Or else help us to have access to her majesty, to be suitors unto her highness for the same ; for divers have been imprisoned for suing ordinary actions, and suits at the common law, until they will leave the same, or against their wills put their matter to order, although some time it be after judgment and accusation.

“ Item : Others have been committed and detained in prison upon such commandment against the law ; and upon the queen's writ in that behalf, no cause sufficient hath been certified or returned.

“ Item : Some of the parties so committed and detained in prison after they have, by the queen's writ, been lawfully discharged in court, have been eftsoones recommitted to prison in secret places, and not in common and ordinary known prisons, as the Marshalsea, Fleet, King's Bench, Gatehouse, nor the custodie of any sheriff, so as upon complaint made for their delivery, the queen's court cannot learn to whom to award her majesty's writ, without which justice cannot be done.

“ Item : Divers serjeants of London and officers have been many times committed to prison for lawful execution of her majesty's writs out of the King's Bench, Common Pleas, and other courts, to their great charges and oppression, whereby they are put in such fear as they dare not execute the queen's process.

“ Item : Divers have been sent for by pursuivants for private causes, some of them dwelling far distant from London, and compelled to pay to the pursuivants great sums of money against the law, and have been committed to prison till they would release the lawful benefit of their suits, judgments, or executions for remedie, in which behalf we are almost daily called upon to minister justice according to law, whereunto we are bound by our office and oath.

“ And whereas it pleased your lordships to will divers of

us to set down when a prisoner sent to custody by her majesty, her council, or some one or two of them, is to be detained in prison, and not to be delivered by her majesty's courts or judges :

“ We think that, if any person shall be committed by her majesty's special commandment, or by order from the council-board, or for treason touching her majesty's person [a word of five letters follows, illegible to me], which causes being generally returned into any court, is good cause for the same court to leave the person committed in custody.

“ But if any person shall be committed for any other cause, then the same ought specially to be returned.”

This paper bears the original signatures of eleven judges. It has no date, but is indorsed 5 June, 1591. In the printed report, it is said to have been delivered in Easter term 34 Eliz., that is, in 1592. The chancellor Hatton, whose name is mentioned, died in November 1591 ; so that, if there is no mistake, this must have been delivered a second time, after undergoing the revision of the judges. And in fact the differences are far too material to have proceeded from accidental carelessness in transcription. The latter copy is fuller, and on the whole more perspicuous, than the manuscript I have followed ; but in one or two places it will be better understood by comparison with it.

It was a natural consequence, not more of the high notions entertained of prerogative than of the very irregular and infrequent meeting of parliament, that an extensive and somewhat indefinite authority should be arrogated to proclamations of the king in council. Temporary ordinances, bordering at least on legislative authority, grow out of the varying exigencies of civil society, and will by very necessity be put up with in silence, wherever the constitution of the commonwealth does not, directly or in effect, provide for frequent assemblies of the body in whom the right of making or consenting to laws has been vested. Since the English constitution has reached its zenith, we have endeavoured to provide a remedy by statute for every possible mischief or inconvenience ; and if this has swollen our code to an enormous redundance, till, in the labyrinth of written law, we almost feel again the uncer-

Proclama-
tions un-
warranted
by law.

tainties of arbitrary power, it has at least put an end to such exertions of prerogative as fell at once on the persons and properties of whole classes. It seems by the proclamations issued under Elizabeth, that the crown claimed a sort of supplemental right of legislation, to perfect and carry into effect what the spirit of existing laws might require, as well as a paramount supremacy, called sometimes the king's absolute or sovereign power, which sanctioned commands beyond the legal prerogative, for the sake of public safety, whenever the council might judge that to be in hazard. Thus we find anabaptists, without distinction of natives or aliens, banished the realm; Irishmen commanded to depart into Ireland; the culture of woad*, and the exportation of corn, money, and various commodities, prohibited; the excess of apparel restrained. A proclamation in 1580 forbids the erection of houses within three miles of London, on account of the too great increase of the city, under the penalty of imprisonment and forfeiture of the materials.† This is repeated at other times, and lastly (I mean during her reign) in 1602, with additional restrictions‡. Some proclamations in this reign hold out menaces, which the common law could never have executed on the disobedient. To trade with the French king's rebels, or to export victuals into the Spanish dominions (the latter of which might possibly be construed into assisting the queen's enemies) incurred the penalty of treason. And persons having in their possession goods taken on the high seas, which had not paid customs, are enjoined to give them up, on pain of being punished as felons and pirates.§ Notwithstanding these instances, it cannot perhaps be said on the whole that Elizabeth stretched her authority very outrageously in this respect. Many of her proclamations, which may at first sight appear illegal, are warrantable by statutes

* Hume says, "that the queen had taken a dislike to the smell of this useful plant." But this reason, if it existed, would hardly have induced her to prohibit its cultivation throughout the kingdom. The real motive appears in several letters of the Lansdowne collection. By the domestic culture of woad, the customs on its importation were reduced; and this led to a project of levying a sort

of excise upon it at home. Catalogue of Lansdowne MSS. xlix. 32—60. The same principle has since caused the prohibition of sowing tobacco.

† Camden, 476.

‡ Rymer, xvi. 448.

§ Many of these proclamations are scattered through Rymer; and the whole have been collected in a volume.

then in force, or by ancient precedents. Thus the council is empowered by an act 28 H. 8. c. 14. to fix the prices of wines; and abstinence from flesh in Lent, as well as on Fridays and Saturdays, (a common subject of Elizabeth's proclamations,) is enjoined by several statutes of Edward VI. and of her own.* And it has been argued by some, not at all inclined to diminish any popular rights, that the king did possess a prerogative by common law of restraining the export of corn and other commodities.†

It is natural to suppose that a government thus arbitrary and vigilant must have looked with extreme jealousy on the diffusion of free enquiry through the press. The trades of printing and bookselling, in fact, though not absolutely licensed, were always subject to a sort of peculiar superintendence. Besides protecting the copyright of authors‡, the council frequently issued proclamations to restrain the importation of books, or to regulate their sale.§ It was penal to utter, or so much as to possess, even the most learned works on the catholic side; or if some connivance was usual in favour of educated men, the utmost strictness was used in suppressing that light infantry of literature, the smart and vigorous pamphlets with which the two parties arrayed against the church assaulted her opposite flanks.|| Stowe, the well-known chronicler of England, who lay under suspicion of an attachment to popery, had his library searched by warrant, and his unlawful books taken away; several of which were but materials for his history.¶

* By a proclamation in 1560, butchers killing flesh in Lent are made subject to a specific penalty of 20*l.*; which was levied upon one man. Strype's Annals, i. 235. This seems to have been illegal.

† Lord Camden, in 1766. Hargrave, in preface to Hale de Jure Coronæ, in Law Tracts, vol. i.

‡ We find an exclusive privilege granted in 1563 to Thomas Cooper, afterwards bishop of Winchester, to print his Thesaurus, or Latin dictionary, for twelve years. Rymer, xv. 620.; and to Richard Wright to print his translation of Tacitus during his natural life; any one infringing this privilege to forfeit 40*s.* for every printed copy. Id. xvi. 97.

§ Strype's Parker, 221. By the 51st

of the queen's injunctions, in 1559, no one might print any book or paper whatsoever unless the same be first licensed by the council or ordinary.

|| A proclamation, dated Feb. 1589, against seditious and schismatical books and writings, commands all persons who shall have in their custody any such libels against the order and government of the church of England, or the rites and ceremonies used in it, to bring and deliver up the same with convenient speed to their ordinary. Life of Whitgift, Appendix, 126. This has probably been one cause of the extreme scarcity of the puritanical pamphlets.

¶ Strype's Grindal, 124., and Append. 49., where a list of these books is given.

Whitgift, in this, as in every other respect, aggravated the rigour of preceding times. At his instigation, the star-chamber, 1585, published ordinances for the regulation of the press. The preface to these recites "enormities and abuses of disorderly persons professing the art of printing and selling books" to have more and more increased in spite of the ordinances made against them, which it attributes to the inadequacy of the penalties hitherto inflicted. Every printer therefore is enjoined to certify his presses to the Stationers' Company, on pain of having them defaced, and suffering a year's imprisonment. None to print at all, under similar penalties, except in London, and one in each of the two universities. No printer who has only set up his trade within six months to exercise it any longer, nor any to begin it in future, until the excessive multitude of printers be diminished, and brought to such a number as the archbishop of Canterbury and bishop of London for the time being shall think convenient; but, whenever any addition to the number of master printers shall be required, the Stationers' Company shall select proper persons to use that calling with the approbation of the ecclesiastical commissioners. None to print any book, matter, or thing whatsoever, until it shall have been first seen, perused, and allowed by the archbishop of Canterbury, or bishop of London, except the queen's printer, to be appointed for some special service, or law-printers, who shall require the licence only of the chief justices. Every one selling books printed contrary to the intent of this ordinance, to suffer three months' imprisonment. The Stationers' Company empowered to search houses and shops of printers and booksellers, and to seize all books printed in contravention of this ordinance, to destroy and deface the presses, and to arrest and bring before the council those who shall have offended therein.*

* Strype's Whitgift, 222., and Appendix, 94. The archbishop exercised his power over the press, as may be supposed, with little moderation. Not confining himself to the suppression of books favouring the two parties adverse to the church, he permitted nothing to appear that interfered in the least with his own notions. Thus we find him seizing an edition of some works of Hugh Broughton,

an eminent Hebrew scholar. This learned divine differed from Whitgift about Christ's descent to hell. It is amusing to read that ultimately the primate came over to Broughton's opinion: which, if it prove some degree of candour, is also a glaring evidence of the advantages of that free inquiry he had sought to suppress. P. 384. 431.

The forms of English law, however inadequate to defend the subject in state prosecutions, imposed a degree of seeming restraint on the crown, and wounded that pride which is commonly a yet stronger sentiment than the lust of power with princes and their counsellors. It was possible that juries might absolve a prisoner; it was always necessary that they should be the arbiters of his fate. Delays too were interposed by the regular process; not such, perhaps, as the life of man should require, yet enough to weaken the terrors of summary punishment. Kings love to display the divinity with which their flatterers invest them, in nothing so much as the instantaneous execution of their will: and to stand revealed, as it were, in the storm and thunderbolt, when their power breaks through the operation of secondary causes, and awes a prostrate nation without the intervention of law. There may indeed be times of pressing danger, when the conservation of all demands the sacrifice of the legal rights of a few; there may be circumstances that not only justify, but compel, the temporary abandonment of constitutional forms. It has been usual for all governments, during an actual rebellion, to proclaim martial law, or the suspension of civil jurisdiction. And this anomaly, I must admit, is very far from being less indispensable at such unhappy seasons, in countries where the ordinary mode of trial is by jury, than where the right of decision resides in the judge. But it is of high importance to watch with extreme jealousy the disposition, towards which most governments are prone, to introduce too soon, to extend too far, to retain too long, so perilous a remedy. In the fourteenth and fifteenth centuries, the court of the constable and marshal, whose jurisdiction was considered as of a military nature, and whose proceedings were not according to the course of the common law, sometimes tried offenders by what was called martial law, but only, I believe, either during, or not long after, a serious rebellion. This tribunal fell into disuse under the Tudors. But Mary had executed some of those taken in Wyatt's insurrection without regular process, though their leader had his trial by a jury. Elizabeth, always hasty in passion and quick to punish, would have resorted to this summary course on a slighter occasion. One Peter Burchell, a fanatical puritan, and perhaps insane, conceiving

that sir Christopher Hatton was an enemy to true religion, determined to assassinate him. But by mistake he wounded instead a famous seaman, captain Hawkins. For this ordinary crime, the queen could hardly be prevented from directing him to be tried instantly by martial law. Her council, however, (and this it is important to observe,) resisted this illegal proposition with spirit and success.* We have indeed a proclamation some years afterwards, declaring that such as brought into the kingdom or dispersed papal bulls, or traitorous libels against the queen, should with all severity be proceeded against by her majesty's lieutenants or their deputies, by martial law, and suffer such pains and penalties as they should inflict; and that none of her said lieutenants or their deputies be any wise impeached, in body, lands, or goods, at any time hereafter, for any thing to be done or executed in the punishment of any such offender, according to the said martial law, and the tenour of this proclamation, any law or statute to the contrary in any wise notwithstanding.† This measure, though by no means constitutional, finds an apology in the circumstances of the time. It bears date the 1st of July, 1588, when within the lapse of a few days the vast armament of Spain might effect a landing upon our coasts; and prospectively to a crisis, when the nation, struggling for life against an invader's grasp, could not afford the protection of law to domestic traitors. But it is an unhappy consequence of all deviations from the even course of law, that the forced acts of over-ruling necessity come to be distorted into precedents to serve the purposes of arbitrary power. Martial law. No other measure of Elizabeth's reign can be compared, in point of violence and illegality, to a commission in July 1595, directed to sir Thomas Wilford; whereby, upon no

* Camden, 449. Strype's Annals, ii. 288. The queen had been told, it seems, of what was done in Wyatt's business, a case not at all parallel; though there was no sufficient necessity even in that instance to justify the proceeding by martial law. But bad precedents always beget "progeniem vitiosiore." There was a difficulty how to punish Burchell capitally, which probably suggested to the queen this strange expedient.

It is said, which is full as strange, that the bishops were about to pass sentence on him for heresy, in having asserted that a papist might lawfully be killed. He put an end, however, to this dilemma, by cleaving the skull of one of the keepers in the Tower, and was hanged in a common way.

† Strype's Annals, iii. 570. Life of Whitgift, Append. 126.

other allegation than that there had been of late "sundry great unlawful assemblies of a number of base people in riotous sort, both in the city of London and the suburbs, for the suppression whereof, (for that the insolency of many desperate offenders is such, that they care not for any ordinary punishment by imprisonment,) it was found necessary to have some such notable rebellious persons to be speedily suppressed by execution to death, according to the justice of martial law," he is appointed provost-marshal, with authority, on notice by the magistrates, to attach and seize such notable rebellious and incorrigible offenders, and in the presence of the magistrates to execute them openly on the gallows. The commission empowers him also "to repair to all common highways near to the city, which any vagrant persons do haunt, and, with the assistance of justices and constables, to apprehend all such vagrant and suspected persons, and them to deliver to the said justices, by them to be committed and examined of the causes of their wandering, and finding them notoriously culpable in their unlawful manner of life, as incorrigible, and so certified by the said justices, to cause to be executed upon the gallows or gibbet some of them that are so found most notorious and incorrigible offenders; and some such also of them as have manifestly broken the peace, since they have been adjudged and condemned to death for former offences, and had the queen's pardon for the same." *

This peremptory style of superseding the common law was a stretch of prerogative without an adequate parallel, so far as I know, in any former period. It is to be remarked, that no tumults had taken place of any political character or of serious importance, some riotous apprentices only having committed a few disorders.† But rather more than usual suspicion had been excited about the same time by the intrigues of the jesuits in favour of Spain, and the queen's advanced age had begun to renew men's doubts as to the succession. The rapid increase of London gave evident uneasiness, as the proclamations against new buildings show, to a very cautious administration, environed by bold and inveterate enemies, and entirely destitute of regular troops to withstand a sudden insurrection. Circumstances of which

* Rymer, xvi. 279.

† Carte, 693., from Stowe.

we are ignorant, I do not question, gave rise to this extraordinary commission. The executive government in modern times has been invested with a degree of coercive power to maintain obedience, of which our ancestors, in the most arbitrary reigns, had no practical experience. If we reflect upon the multitude of statutes enacted since the days of Elizabeth in order to restrain and suppress disorder, and above all on the prompt and certain aid that a disciplined army affords to our civil authorities, we may be inclined to think that it was rather the weakness than the vigour of her government which led to its inquisitorial watchfulness and harsh measures of prevention: We find in an earlier part of her reign an act of state somewhat of the same character, though not perhaps illegal. Letters were written to the sheriffs and justices of divers counties in 1569, directing them to apprehend, on a certain night, all vagabonds and idle persons having no master, nor means of living, and either to commit them to prison, or pass them to their proper homes. This was repeated several times; and no less than 13,000 persons were thus apprehended, chiefly in the north, which, as Strype says, very much broke the rebellion attempted in that year.*

Amidst so many infringements of the freedom of commerce, and with so precarious an enjoyment of personal liberty, the English subject continued to pride himself in his immunity from taxation without consent of parliament. This privilege he had asserted, though not with constant success, against the rapacity of Henry VII. and the violence of his son. Nor was it ever disputed in theory by Elizabeth. She retained, indeed, notwithstanding the complaints of the merchants at her accession, a custom upon cloths, arbitrarily imposed by her sister, and laid one herself upon sweet wines. But she made no attempt at levying internal taxes, except that the clergy were called upon, in 1586, for an aid not granted in convocation, but assessed by the archdeacon according to the value of their benefices; to which they naturally showed no little reluctance.† By dint of singular

* Strype's Annals, i. 535.

† Strype, iii. Append. 147. This was exacted in order to raise men for service

in the Low Countries. But the beneficed clergy were always bound to furnish horses and armour, or their value, for the

frugality she continued to steer the true course, so as to keep her popularity undiminished and her prerogative unimpaired; asking very little of her subjects' money in parliaments, and being hence enabled both to have long breathing times between their sessions, and to meet them without coaxing or wrangling; till, in the latter years of her reign, a foreign war and a rebellion in Ireland, joined to a rapid depreciation in the value of money, rendered her demands somewhat higher. But she did not abstain from the ancient practice of sending privy-seals to borrow money of the wealthy. These were not considered as illegal, though plainly forbidden by the statute of Richard III.; for it was the fashion to set aside the authority of that act, as having been passed by an usurper. It is impossible to doubt that such loans were so far obtained by compulsion, that any gentleman or citizen of sufficient ability refusing compliance would have discovered that it were far better to part with his money than to incur the council's displeasure. We have indeed a letter from a lord mayor to the council, informing them that he had committed to prison some citizens for refusing to pay the money demanded of them.* But the queen seems to have been punctual in their speedy repayment

Loans of money not quite voluntary.

defence of the kingdom in peril of invasion or rebellion. An instance of their being called on for such a contingent occurred in 1569. *Strype's Parker*, 273.; and *Rymer* will supply many others in earlier times.

The magistrates of Cheshire and Lancashire had imposed a charge of eightpence a week on each parish of those counties for the maintenance of recusants in custody. This, though very nearly borne out by the letter of a recent statute, 14th Eliz. c. 5., was conceived by the inhabitants to be against law. We have, in *Strype's Annals*, vol. iii. Append. 56., a letter from the privy-council, directing the charge to be taken off. It is only worth noticing, as it illustrates the jealousy which the people entertained of any thing approaching to taxation without consent of parliament, and the caution of the ministry in not pushing any exertion of prerogative farther than would readily be endured.

* *Murden*, 632. That some degree of intimidation was occasionally made use

of, may be inferred from the following letter of sir Henry Cholmley to the mayor and aldermen of Chester, in 1597. He informs them of letters received by him from the council, "whereby I am commanded in all haste to require you that you and every of you send in your several sums of money unto Torpley (Tarporly) on Friday next the 23d December, or else that you and every of you give me meeting there, the said day and place, to enter severally into bond to her highness for your appearance forthwith before their lordships, to show cause wherefore you and every of you should refuse to pay her majesty loan according to her highness several privy-seals by you received, letting you wit that I am now directed by other letters from their lordships to pay over the said money to the use of her majesty, and to send and certify the said bonds so taken; which praying you heartily to consider of as the last direction of the service, I heartily bid you farewell." *Harl. MSS.* 2173. 10.

according to stipulation; a virtue somewhat unusual with royal debtors. Thus we find a proclamation in 1571, that such as had lent the queen money in the last summer should receive repayment in November and December.* Such loans were but an anticipation of her regular revenue, and no great hardship on rich merchants; who, if they got no interest for their money, were recompensed with knighthoods and gracious words. And as Elizabeth incurred no debt till near the conclusion of her reign, it is probable that she never had borrowed more than she was sure to repay.

A letter quoted by Hume from lord Burleigh's papers, though not written by him, as the historian asserts, and somewhat obscure in its purport, appears to warrant the conclusion that he had revolved in his mind some project of raising money by a general contribution or benevolence from persons of ability, without purpose of repayment. This was also amidst the difficulties of the year 1569, when Cecil perhaps might be afraid of meeting parliament, on account of the factions leagued against himself. But as nothing further was done in this matter, we must presume that he perceived the impracticability of so unconstitutional a scheme.†

* Strype, ii. 102. In Haynes, p. 518., is the form of a circular letter or privy-seal, as it was called from passing that office, sent in 1569, a year of great difficulty, to those of whose aid the queen stood in need. It contains a promise of repayment at the expiration of twelve months. A similar application was made through the lord-lieutenants in their several counties, to the wealthy and well-disposed, in 1588, immediately after the destruction of the Armada. The loans are asked only for the space of a year, "as heretofore has been yielded unto her majesty in times of less need and danger, and yet always fully repaid." Strype, iii. 535. Large sums of money are said to have been demanded of the citizens of London in 1599. Carte, 675. It is perhaps to this year that we may refer a curious fact mentioned in Mr. Justice Hutton's judgment in the case of ship-money. "In the time of Queen Elizabeth (he says), who was a gracious and a glorious queen, yet in the end of her reign,

whether through covetousness, or by reason of the wars that came upon her, I know not by what counsel she desired benevolence, the statute of 2d Richard III. was pressed, yet it went so far, that by commission and direction money was gathered in every inn of court; and I myself for my part paid twenty shillings. But when the queen was informed by her judges that this kind of proceeding was against law, she gave directions to pay all such sums as were collected back; and so I (as all the rest of our house, and as I think of other houses too) had my twenty shillings repaid me again; and privy councillors were sent down to all parts, to tell them that it was for the defence of the realm, and it should be repaid them again." State Trials, iii. 1199.

† Haynes, 518. Hume has exaggerated this, like other facts, in his very able, but partial, sketch of the constitution in Elizabeth's reign.

Those whose curiosity has led them to somewhat more acquaintance with the details of English history under Elizabeth than the pages of Camden or Hume will afford, cannot but have been struck with the perpetual interference of men in power with matters of private concern. I am far from pretending to know how far the solicitations for a prime minister's aid and influence may extend at present. Yet one may think that he would hardly be employed, like Cecil, where he had no personal connexion, in reconciling family quarrels, interceding with a landlord for his tenant, or persuading a rich citizen to bestow his daughter on a young lord. We are sure, at least, that he would not use the air of authority upon such occasions. The vast collection of lord Burleigh's letters in the Museum is full of such petty matters, too insignificant, for the most part, to be mentioned even by Strype.* They exhibit, however, collectively, a curious view of the manner in which England was managed, as if it had been the household and estate of a nobleman under a strict and prying steward. We are told that the relaxation of this minister's mind was to study the state of England and the pedigrees of its nobility and gentry: of these last he drew whole books with his own hands; so that he was better versed in descents and families than most of the heralds, and would often surprise persons of distinction at his table by appearing better acquainted with their manors, parks, and woods, than themselves.† Such knowledge was not sought by the crafty Cecil for mere diversion's sake. It was a main part of his system to keep alive in the English gentry a persuasion that his eye was upon them. No minister was ever more exempt from that false security which

* The following are a few specimens, copied from the Lansdowne catalogue. "Sir Antony Cooke to sir William Cecil, that he would move Mr. Peters to recommend Mr. Edward Stanhope to a certain young lady of Mr. P.'s acquaintance, whom Mr. Stanhope was desirous to marry." Jan. 25. 1563. lxxi. 73. "Sir John Mason to sir William Cecil, that he fears his young landlord, Spelman, has intentions of turning him out of his house, which will be disagreeable; hopes therefore sir William C. will speak in his behalf." Feb. 4. 1566. Id. 74. "Lord

Stafford to lord Burleigh, to further a match between a certain rich citizen's daughter and his son; he requests lord B. to appoint the father to meet him (lord Stafford) some day at his house, "where I will in few words make him so reasonable an offer as I trust he will not disallow." lxxviii. 20. Lady Zouch to lord Burleigh, for his friendly interposition to reconcile lord Zouch her husband, who had forsaken her through jealousy." 1593. lxxiv. 72.

† Biographia Britannica, art. *CECIL*.

is the usual weakness of a court. His failing was rather a bias towards suspicion and timidity ; there were times, at least, in which his strength of mind seems to have almost deserted him, through sense of the perils of his sovereign and country. But those perils appear less to us, who know how the vessel outrode them, than they could do to one harassed by continual informations of those numerous spies whom he employed both at home and abroad. The one word of Burleigh's policy was prevention ; and this was dictated by a consciousness of wanting an armed force or money to support it, as well as by some uncertainty as to the public spirit, in respect at least of religion. But a government that directs its chief attention to prevent offences against itself, is in its very nature incompatible with that absence of restraint, that immunity from suspicion, in which civil liberty, as a tangible possession, may be said to consist. It appears probable, that Elizabeth's administration carried too far, even as a matter of policy, this precautionary system upon which they founded the penal code against popery ; and we may surely point to a contrast very advantageous to our modern constitution, in the lenient treatment which the Jacobite faction experienced from the princes of the house of Hanover. She reigned however in a period of real difficulty and danger. At such seasons, few ministers will abstain from arbitrary actions, except those who are not strong enough to practise them.

I have traced, in another work, the acquisition by the house of commons of a practical right to inquire into and advise upon the public administration of affairs, during the reigns of Edward III., Richard II., and the princes of the line of Lancaster. This energy of parliament was quelled by the civil wars of the fifteenth century ; and, whatever may have passed in debates within its walls that have not been preserved, did not often display itself in any overt act under the first Tudors. To grant subsidies which could not be raised by any other course, to propose statutes which were not binding without their consent, to consider of public grievances, and procure their redress, either by law or petition to the crown, were their acknowledged constitutional privileges, which no sovereign or minister ever pretended to deny. For this end liberty of speech

Disposition
of the house
of commons.

and free access to the royal person were claimed by the speaker as customary privileges (though not quite, in his modern language, as undoubted rights,) at the commencement of every parliament. But the house of commons in Elizabeth's reign contained men of a bold and steady patriotism, well read in the laws and records of old time, sensible to the dangers of their country and abuses of government, and conscious that it was their privilege and their duty to watch over the common weal. This led to several conflicts between the crown and parliament; wherein, if the former often asserted the victory, the latter sometimes kept the field and was left on the whole a gainer at the close of the campaign.

It would surely be erroneous to conceive, that many acts of government in the four preceding reigns had not appeared at the time arbitrary and unconstitutional. If indeed we are not mistaken in judging them according to the ancient law, they must have been viewed in the same light by contemporaries, who were full as able to try them by that standard. But, to repeat what I have once before said, the extant documents from which we draw our knowledge of constitutional history under those reigns are so scanty, that instances even of a successful parliamentary resistance to measures of the crown may have left no memorial. The debates of parliament are not preserved, and very little is to be gained from such histories as the age produced. The complete barrenness indeed of Elizabeth's chroniclers, Holingshed and Thin, as to every parliamentary or constitutional information, speaks of itself the jealous tone of her administration. Camden, writing to the next generation, though far from an ingenuous historian, is somewhat less under restraint. This forced silence of history is much more to be suspected after the use of printing and the reformation, than in the ages when monks compiled annals in their convents, reckless of the censure of courts, because independent of their permission. Grosser ignorance of public transactions is undoubtedly found in the chronicles of the middle ages; but far less of that deliberate mendacity, or of that insidious suppression, by which fear, and flattery, and hatred, and the thirst of gain, have, since the invention of printing,

corrupted so much of historical literature throughout Europe. We begin, however, to find in Elizabeth's reign, more copious and unquestionable documents for parliamentary history. The regular journals indeed are partly lost; nor would those which remain give us a sufficient insight into the spirit of parliament, without the aid of other sources. But a volume called sir Simon D'Ewes's journal, part of which is copied from a manuscript of Heywood Townsend, a member of all parliaments from 1580 to 1601, contains minutes of the most interesting debates as well as transactions, and for the first time renders us acquainted with the names of those who swayed an English house of commons.*

There was no peril more alarming to this kingdom during the queen's reign than the precariousness of her life,—a thread whereon its tranquillity, if not its religion and independence, was suspended. Hence the commons felt it an imperious duty not only to recommend her to marry, but, when this was delayed, to solicit that some limitations of the crown might be enacted, in failure of her issue. The former request she evaded without ever manifesting much displeasure, though not sparing a hint that it was a little beyond the province of parliament. Upon the last occasion, indeed, that it was preferred, namely, by the speaker in 1575, she gave what from any other woman must have appeared an assent, and almost a promise. But about declaring the succession she was always very sensible. Through a policy not perhaps entirely selfish, and certainly not erroneous on selfish principles, she was determined never to pronounce among the possible competitors for the throne. Least of all could she brook the intermeddling of parliament in such a concern. The commons first took up this business in 1562, when there had begun to be much debate in the nation about the opposite titles of the queen of Scots and lady Catherine Grey: and especially in consequence of a dangerous sickness the queen had just experienced, and which is said to have been the cause of summoning parliament. Their language is wary, praying her only by "proclamation of certainty already provided, if any

Addresses
concerning
the succes-
sion.

* Townsend's manuscript has been separately published; but I do not find that D'Ewes has omitted any thing of consequence.

such be," alluding to the will of Henry VIII., "or else by limitations of certainty, if none be, to provide a most gracious remedy in this great necessity;"* offering at the same time to concur in provisions to guarantee her personal safety against any one who might be limited in remainder. Elizabeth gave them a tolerably courteous answer, though not without some intimation of her dislike to this address.† But at their next meeting, which was not till 1566, the hope of her own marriage having grown fainter, and the circumstances of the kingdom still more powerfully demanding some security, both houses of parliament united, with a boldness of which there had perhaps been no example for more than a hundred years, to overcome her repugnance. Some of her own council among the peers are said to have asserted in their places that the queen ought to be obliged to take a husband, or that a successor should be declared by parliament against her will. She was charged with a disregard to the state and to posterity. She would prove, in the uncourtly phrase of some sturdy members of the lower house, a step-mother to her country, as being seemingly desirous that England, which lived as it were in her, should rather expire with than survive her; that kings can only gain the affections of their subjects by providing for their welfare both while they live and after their deaths; nor did any but princes hated by their subjects, or faint-hearted women, ever stand in fear of their successors.‡ But this great princess wanted not skill and courage to resist this unusual importunity of parliament. The peers, who had forgotten their customary respectfulness, were excluded the presence-chamber till they made their submission. She prevailed on the commons, through her ministers who sat there, to join a request for her marriage with the more unpalatable alternative of naming her successor; and when this request was presented, gave them fair words,

Difference on this between the queen and commons in 1566.

* D'Ewes, p. 82. Strype, i. 258.; from which latter passage it seems that Cecil was rather adverse to the proposal.

† D'Ewes, p. 85. The speech which Hume, on D'Ewes's authority, has put into the queen's mouth at the end of this session is but an imperfect copy or

abridgment of one which she made in 1566; as D'Ewes himself afterwards confesses. Her real answer to the speaker in 1563 is in Harrington's *Nugæ Antiquæ*, vol. i. p. 80.

‡ Camden, p. 400.

and a sort of assurance that their desires should by some means be fulfilled.* When they continued to dwell on the same topic in their speeches, she sent messages through her ministers, and at length a positive injunction through the speaker, that they should proceed no further in the business. The house, however, was not in a temper for such ready acquiescence as it sometimes displayed. Paul Wentworth, a bold and plain-spoken man, moved to know whether the queen's command and inhibition that they should no longer dispute of the matter of succession, were not against their liberties and privileges. This caused, as we are told, long debates; which do not appear to have terminated in any resolution.† But, more probably having passed than we know at present, the queen, whose haughty temper and tenaciousness of prerogative were always within check of her discretion, several days after announced through the speaker, that she revoked her two former commandments; "which revocation," says the journal, "was taken by the house most joyfully, with hearty prayer and thanks for the same." At the dissolution of this parliament, which was perhaps determined upon in consequence of their steadiness, Elizabeth alluded, in addressing them, with no small bitterness to what had occurred.‡

This is the most serious disagreement on record between the crown and the commons since the days of Richard II. and Henry IV. Doubtless the queen's indignation was excited by the nature of the subject her parliament ventured to discuss, still more than by her general disapprobation of their interference in matters of state. It was an endeavour to penetrate the great secret of her reign, in preserving which she conceived her peace, dignity, and personal safety to be bound up. There were, in her opinion, as she intimates in her speech at closing the session, some underhand movers of this intrigue (whether of the Scots or Suffolk faction does not appear), who were more to blame than even the speakers in parliament. And if, as Cecil seems justly to have thought,

* The courtiers told the house that the queen intended to marry, in order to divert them from their request that they would name her successor. Strype, vol. i. p. 494.

† D'Ewes, p. 128.

‡ Id. p. 116. Journals, 8th Oct., 25th Nov., 2d Jan.

no limitations of the crown could at that time have been effected without much peril and inconvenience, we may find some apology for her warmth about their precipitation in a business, which, even according to our present constitutional usage, it would naturally be for the government to bring forward. It is to be collected from Wentworth's motion, that to deliberate on subjects affecting the commonwealth was reckoned, by at least a large part of the house of commons, one of their ancient privileges and liberties. This was not one which Elizabeth, however she had yielded for the moment in revoking her prohibition, ever designed to concede to them. Such was her frugality, that, although she had remitted a subsidy granted in this session, alleging the very honourable reason that, knowing it to have been voted in expectation of some settlement of the succession, she would not accept it when that implied condition had not been fulfilled, she was able to pass five years without again convoking her people. A parliament met in April 1571, when the lord keeper Bacon*, in answer to the speaker's customary request for freedom of speech in the commons, said that "her majesty having experience of late of some disorder and certain offences, which, though they were not punished, yet were they offences still, and so must be accounted, they would therefore do well to meddle with no matters of state, but such as should be propounded unto them, and to occupy themselves in other matters concerning the commonwealth."

The commons so far attended to this intimation, that no proceedings about the succession appear to have taken place in this parliament, except such as were calculated to gratify the queen. We may perhaps except a bill attainting the queen of Scots, which was rejected in the upper house. But they entered for the first time on a new topic, which did not cease for the rest of this reign to furnish matter of contention with their sovereign. The party called puritan, including such as charged abuses on the actual government of the church, as well as those who objected to part of its lawful discipline, had, not a little in consequence of the absolute exclusion of the catholic gentry, obtained a

Session of
1571.

Influence of
the puritans
in parlia-
ment.

* D'Ewes, p. 141.

very considerable strength in the commons. But the queen valued her ecclesiastical supremacy more than any part of her prerogative. Next to the succession of the crown, it was the point she could least endure to be touched. The house had indeed resolved, upon reading a bill the first time for reformation of the common prayer, that petition be made to the queen's majesty for her license to proceed in it, before it should be farther dealt in. But Strickland, who had proposed it, was sent for to the council, and restrained from appearing again in his place, though put under no confinement. This was noticed as an infringement of their liberties. The ministers endeavoured to excuse his detention, as not intended to lead to any severity, nor occasioned by any thing spoken in that house, but on account of his introducing a bill against the prerogative of the queen, which was not to be tolerated. And instances were quoted of animadversion on speeches made in parliament. But Mr. Yelverton maintained that all matters not treasonable, nor too much to the derogation of the imperial crown, were tolerable there, where all things came to be considered, and where there was such fulness of power as even the right of the crown was to be determined, which it would be high treason to deny. Princes were to have their prerogatives, but yet to be confined within reasonable limits. The queen could not of herself make laws, neither could she break them. This was the true voice of English liberty, not so new to men's ears as Hume has imagined, though many there were who would not forfeit the court's favour by uttering it. Such speeches as the historian has quoted of sir Humphry Gilbert, and many such may be found in the proceedings of this reign, are rather directed to intimidate the house by exaggerating their inability to contend with the crown, than to prove the law of the land to be against them. In the present affair of Strickland, it became so evident that the commons would at least address the queen to restore him, that she adopted the course her usual prudence indicated, and permitted his return to his house. But she took the reformation of ecclesiastical abuses out of their hands, sending word that she would have some articles for that purpose executed by the bishops under her royal supremacy, and not dealt in by parliament. This did not prevent

the commons from proceeding to send up some bills in the upper house, where, as was natural to expect, they fell to the ground.*

This session is also remarkable for the first marked complaints against some notorious abuses, which defaced the civil government of Elizabeth.† A member having rather prematurely suggested the offer of a subsidy, several complaints were made of irregular and oppressive practices, and Mr. Bell said, that licenses granted by the crown and other abuses galled the people, intimating also, that the subsidy should be accompanied by a redress of grievances.‡ This occasion of introducing the subject, though strictly constitutional, was likely to cause displeasure. The speaker informed them a few days after of a message from the queen to spend little time in motions, and make no long speeches.§ And Bell, it appears, having been sent for by the council, came into the house “with such an amazed countenance, that it daunted all the rest,” who for many days durst not enter on any matter of importance.|| It became the common whisper, that no one must speak against licenses, lest the queen and council should be angry. And at the close of the session, the lord keeper severely reprimanded those audacious, arrogant, and presumptuous members, who had called her majesty’s grants and prerogatives in question, meddling with matters neither pertaining to them, nor within the capacity of their understanding.¶

The parliament of 1572 seemed to give evidence of their inheriting the spirit of the last by choosing Mr. Bell for their speaker.** But very little of it appeared in their proceedings. In their first short session, chiefly occupied by the business of the queen of Scots, the most remarkable circumstances

* D’Ewes, 156, &c. There is no mention of Strickland’s business in the journal.

† Something of this sort seems to have occurred in the session of 1566, as may be inferred from the lord keeper’s reproof to the speaker, for calling her majesty’s letters patent in question. Id. 115.

‡ Id. 158. Journals, 7 Apr.

§ Journals, 9 and 10 Apr.

|| D’Ewes, 159.

¶ D’Ewes, 151.

** Bell, I suppose, had reconciled himself to the court, which would have approved no speaker chosen without its recommendation. There was always an understanding between this servant of the house and the government. Proofs or presumptions of this are not unfrequent. In Strype’s Annals, vol. iv. p. 124. we find instructions for the speaker’s speech in 1592, drawn up by lord Burleigh, as might very likely be the case on other occasions.

are the following. The commons were desirous of absolutely excluding Mary from inheriting the crown, and even of taking away her life, and had prepared bills with this intent. But Elizabeth, constant to her mysterious policy, made one of her ministers inform them that she would neither have the queen of Scots enabled nor disabled to succeed, and willed that the bill respecting her should be drawn by her council : and that, in the mean time, the house should not enter on any speeches or arguments on that matter.* Another circumstance worthy of note in this session is a signification, through the speaker, of her majesty's pleasure that no bills concerning religion should be received, unless they should be first considered and approved by the clergy, and requiring to see certain bills touching rites and ceremonies that had been read in the house. The bills were accordingly ordered to be delivered to her, with a humble prayer that, if she should dislike them, she would not conceive an ill opinion of the house, or of the parties by whom they were preferred.†

The submissiveness of this parliament was doubtless owing to the queen's vigorous dealings with the last. At their next meeting, which was not till February 1575-6, Peter Wentworth, brother, I believe, of Speech of Mr. Wentworth in 1576. the person of that name before mentioned, broke out, in a speech of uncommon boldness, against her arbitrary encroachments on their privileges. The liberty of free speech, he said, had in the two last sessions been so many ways infringed, that they were in danger, while they contented themselves with the name, of losing and foregoing the thing. It was common for a rumour to spread through that house, "the queen likes or dislikes such a matter ; beware what you do." Messages were even sometimes brought down, either commanding or inhibiting, very injurious to the liberty of debate. He instanced that in the last session, restraining the house from dealing in matters of religion ; against which and against the prelates he inveighed with great acrimony. With still greater indignation he spoke of the queen's refusal to assent to the attainder of Mary, and after surprising the house by the bold words, "none is without fault, no not our noble queen, but has committed great and dangerous faults to her-

* D'Ewes, 219.

† Id. 213, 214.

self," went on to tax her with ingratitude and unkindness to her subjects, in a strain perfectly free indeed from disaffection, but of more rude censure than any kings would put up with.*

This direct attack upon the sovereign in matters relating to her public administration, seems no doubt unparliamentary; though neither the rules of parliament in this respect, nor even the constitutional principle, were so strictly understood as at present. But it was part of Elizabeth's character to render herself extremely prominent, and, as it were, responsible in public esteem, for every important measure of her government. It was difficult to consider a queen as acting merely by the advice of ministers, who protested in parliament that they had laboured in vain to bend her heart to their councils. The doctrine that some one must be responsible for every act of the crown was yet perfectly unknown; and Elizabeth would have been the last to adopt a system so inglorious to monarchy. But Wentworth had gone to a length which alarmed the house of commons. They judged it expedient to prevent an unpleasant interference by sequestering their member, and appointing a committee of all the privy councillors in the house to examine him. Wentworth declined their authority, till they assured him that they sat as members of the commons, and not as councillors. After a long examination, in which he not only behaved with intrepidity, but, according to his own statement, reduced them to confess the truth of all he advanced, they made a report to the house, who committed him to the Tower. He had lain there a month, when the queen sent word that she remitted her displeasure towards him, and referred his enlargement to the house, who released him upon a reprimand from the speaker, and an acknowledgment of his fault upon his knees.† In this commitment of Wentworth, it can hardly be said that there was any thing, as to the main point, by which the house sacrificed its acknowledged privileges. In later instances, and even in the reign of George the First, members have been committed for much less indecent reflections on the sovereign. The queen had no reason upon the whole to

* D'Ewes, 236.

† Id. 260.

be ill-pleased with this parliament, nor was she in haste to dissolve it, though there was a long intermission of its sessions. The next was in 1581, when the chancellor, on confirming a new speaker, did not fail to admonish him that the house of commons should not intermeddle in any thing touching her majesty's person or estate, or church government. They were supposed to disobey this injunction, and fell under the queen's displeasure, by appointing a public fast on their own authority, though to be enforced on none but themselves. This trifling resolution, which showed indeed a little of the puritan spirit, passed for an encroachment on the supremacy, and was only expiated by a humble apology.* It is not till the month of February 1587-8, that the zeal for ecclesiastical reformation overcame in some measure the terrors of power, but with no better success than before. A Mr. Cope offered to the house, we are informed, a bill and a book, the former annulling all laws respecting ecclesiastical government then in force, and establishing a certain new form of common prayer contained in the latter. The speaker interposed to prevent this bill from being read, on the ground that her majesty had commanded them not to meddle in this matter. Several members however spoke in favour of hearing it read, and the day passed in debate on this subject. Before they met again, the queen sent for the speaker, who delivered up to her the bill and book. Next time that the house sat, Mr. Wentworth insisted that some questions of his proposing should be read. These queries were to the following purport: "Whether this council was not a place for any member of the same, freely and without control, by bill or speech, to utter any of the griefs of this commonwealth? Whether there be any council that can make, add, or diminish from the laws of the realm, but only this council of parliament? Whether it be not against the orders of this council to make any secret or matter of weight, which is here in hand, known to the prince or any other, without consent of the house? Whether the speaker may overrule the house in any matter or cause in question? Whether the prince and state can continue and stand, and be maintained without this

* D'Ewes, 282.

council of parliament, not altering the government of the state?" These questions serjeant Pickering, the speaker, instead of reading them to the house, showed to a courtier, through whose means Wentworth was committed to the Tower. Mr. Cope, and those who had spoken in favour of his motion, underwent the same fate; and notwithstanding some notice taken of it in the house, it does not appear that they were set at liberty before its dissolution, which ensued in three weeks.* Yet the commons were so set on displaying an ineffectual hankering after reform, that they appointed a committee to address the queen for a learned ministry.

At the beginning of the next parliament, which met in 1588-9, the speaker received an admonition that the house were not to extend their privileges to any irreverent or misbecoming speech. In this session Mr. Dampont, we are informed by D'Ewes†, moved neither for making of any new laws, nor for abrogating of any old ones, but for a due course of proceeding in laws already established, but executed by some ecclesiastical governors contrary both to their purport and the intent of the legislature, which he proposed to bring into discussion. So cautious a motion saved its author from the punishment which had attended Mr. Cope for his more radical reform; but the secretary of state, reminding the house of the queen's express inhibition from dealing with ecclesiastical causes, declared to them by the chancellor at the commencement of the session (in a speech which does not appear), prevented them from taking any further notice of Mr. Dampont's motion. They narrowly escaped Elizabeth's displeasure in attacking some civil abuses. Sir Edward Hobby brought in a bill to prevent certain exactions made for their own profit by the officers of the exchequer. Two days after he complained, that he had been very sharply rebuked by some great personage, not a member of the house, for his speech on that occasion. But instead of testifying indignation at this breach of their privileges, neither he nor the house thought of any further redress than by exculpating him to this great personage, apparently one of the

* D'Ewes, 410.

† P. 438. Townsend calls this gen-

tleman Davenport, which no doubt was his true name.

The commons continue to seek redress of ecclesiastical grievances.

ministers, and admonishing their members not to repeat elsewhere any thing uttered in their debates.* For the bill itself, as well as one intended to restrain the flagrant abuses of purveyance, they both were passed to the lords. But the queen sent a message to the upper house, expressing her dislike of them, as meddling with abuses, which, if they existed, she was both able and willing to repress; and this having been formally communicated to the commons, they appointed a committee to search for precedents in order to satisfy her majesty about their proceedings. They received afterwards a gracious answer to their address, the queen declaring her willingness to afford a remedy for the alleged grievances.†

Elizabeth, whose reputation for consistency, which haughty princes overvalue, was engaged in protecting the established hierarchy, must have experienced not a little vexation at the perpetual recurrence of complaints which the unpopularity of that order drew from every parliament. The speaker of that summoned in 1593 received for answer to his request of liberty of speech, that it was granted, "but not to speak every one what he listeth, or what cometh into his brain to utter; their privilege was aye or no. Wherefore, Mr. Speaker," continues the lord keeper Pickering, himself speaker in the parliament of 1588, "her majesty's pleasure is, that if you perceive any idle heads which will not stick to hazard their own estates, which will meddle with reforming the church and transforming the commonwealth, and do exhibit such bills to such purpose, that you receive them not, until they be viewed and considered by those, who it is fitter should consider of such things, and can better judge of them." It seems not improbable that this admonition, which indeed is in no unusual style for this reign, was suggested by the expectation of some displeasing debate. For we read that the very first day of the session, though the commons had adjourned on account of the speaker's illness, the unconquerable Peter Wentworth, with another member, presented a petition to the lord keeper, desiring the lords of the upper house to join with them of the lower in imploring her majesty to entail the succession of the crown,

* D'Ewes, 433.

† Id. 440. et post.

for which they had already prepared a bill. This step, which may seem to us rather arrogant and unparliamentary, drew down, as they must have expected, the queen's indignation. They were summoned before the council, and committed to different prisons.* A few days afterwards a bill for reforming the abuses of ecclesiastical courts was presented by Morice, attorney of the court of wards, and underwent some discussion in the house.† But the queen sent for the speaker, and expressly commanded that no bill touching matters of state or reformation of causes ecclesiastical should be exhibited; and if any such should be offered, enjoining him on his allegiance not to read it.‡ It was the custom at that time for the speaker to read and expound to the house all the bills that any member offered. Morice himself was committed to safe custody, from which he wrote a spirited letter to lord Burleigh, expressing his sorrow for having offended the queen, but at the same time his resolution "to strive," he says, "while his life should last, for freedom of conscience, public justice, and the liberties of his country."§ Some days after a motion was made that, as some places might complain of paying subsidies, their representatives not having been consulted nor been present when they were granted, the house should address the queen to set their members at liberty. But the ministers opposed this, as likely to hurt those whose good was sought, her majesty being more likely to release them if left to her own gracious disposition. It does not appear however that she did so during the session, which lasted above a month.|| We read, on the contrary, in an undoubted authority, namely, a letter of Antony Bacon to his mother, that "divers gentlemen who were of the parliament, and thought to have returned into the country after the end thereof, were stayed by her majesty's commandment, for being privy, as it is thought, and consenting to Mr. Wentworth's motion."¶ Some difficulty was made by this house of commons about their grant of subsidies, which was uncommonly large, though rather in

* D'Ewes, 470.

† Id. 474. Townsend, 60.

‡ Id. 62.

§ See the letter in Lodge's Illustrations, vol. iii. 34. Townsend says he

was committed to sir John Fortescue's keeping, a gentler sort of imprisonment, p. 61.

|| D'Ewes, 470.

¶ Birch's Memoirs of Elizabeth, i. 96.

appearance than truth, so great had been the depreciation of silver for some years past.*

The admonitions not to abuse freedom of speech, which had become almost as much matter of course as the request for it, were repeated in the ensuing parliaments of 1597 and 1601. Nothing more remarkable occurs in the former of these sessions than an address to the queen against the enormous abuse of monopolies.

Also of monopolies, especially in the session of 1601.

The crown either possessed or assumed the prerogative of regulating almost all matters of commerce at its discretion. Patents to deal exclusively in particular articles, generally of foreign growth, but reaching in some instances to such important necessities of life as salt, leather, and coal, had been lavishly granted to the courtiers, with little direct advantage to the revenue. They sold them to companies of merchants, who of course enhanced the price to the utmost ability of the purchaser. This business seems to have been purposely protracted by the ministers and the speaker, who, in this reign, was usually in the court's interests, till the last day of the session; when, in answer to his mention of it, the lord keeper said that the queen "hoped her dutiful and loving subjects would not take away her prerogative, which is the choicest flower in her garden, and the principal and head pearl in her crown and diadem; but would rather leave that to her disposition, promising to examine all patents, and to abide the touchstone of the law."† This answer, though less stern than had been usual, was merely evasive: and in the session of 1601, a bolder and more successful attack was made on the administration than this reign had witnessed. The grievance of monopolies had gone on continually increasing; scarce any article was exempt from these oppressive patents. When the list of them was read over in the house, a member exclaimed, "Is not bread among the number?" The house seemed amazed: "Nay," said he, "if no remedy is found for these, bread will be there before the next parliament." Every tongue seemed

* Strype has published, from lord Burleigh's manuscripts, a speech made in the parliament of 1589, against the subsidy then proposed. *Annals*, vol. iii. Append. 238. Not a word about this

occurs in D'Ewes's Journal; and I mention it as an additional proof how little we can rely on negative inferences as to proceedings in parliament at this period.

† D'Ewes, 547.

now unloosed; each as if emulously descanting on the injuries of the place he represented. It was vain for the courtiers to withstand this torrent. Raleigh, no small gainer himself by some monopolies, after making what excuse he could, offered to give them up. Robert Cecil the secretary, and Bacon, talked loudly of the prerogative, and endeavoured at least to persuade the house that it would be fitter to proceed by petition to the queen than by a bill. But it was properly answered, that nothing had been gained by petitioning in the last parliament. After four days of eager debate, and more heat than had ever been witnessed, this ferment was suddenly appeased by one of those well-timed concessions by which skilful princes spare themselves the mortification of being overcome. Elizabeth sent down a message that she would revoke all grants that should be found injurious by fair trial at law: and Cecil rendered the somewhat ambiguous generality of this expression more satisfactory by an assurance that the existing patents should all be repealed, and no more be granted. This victory filled the commons with joy, perhaps the more from being rather unexpected.* They addressed the queen with rapturous and hyperbolical acknowledgments, to which she answered in an affectionate strain, glancing only with an oblique irony at some of those movers in the debate, whom in her earlier and more vigorous years she would have keenly reprimanded. She repeated this a little more plainly at the close of the session, but still with commendation of the body of the commons. So altered a tone must be ascribed partly to the growing spirit she perceived in her subjects, but partly also to those cares which clouded with listless melancholy the last scenes of her illustrious life.†

* Their joy and gratitude were rather premature, for her majesty did not revoke all of them; as appears by Rymer, xvi. 540., and Carte, iii. 712. A list of them, dated May, 1603, Lodge, iii. 159., seems to imply that they were still existing.

† D'Ewes, 619. 644. &c.

The speeches made in this parliament are reported more fully than usual by Heywood Townsend, from whose journal those of most importance have been transcribed by D'Ewes. Hume has given considerable extracts, for the sole pur-

pose of inferring from this very debate on monopolies, that the royal prerogative was, according to the opinion of the house of commons itself, hardly subject to any kind of restraint. But the passages he selects are so unfairly taken, (some of them being the mere language of courtiers, others separated from the context, in order to distort their meaning,) that no one who compares them with the original can acquit him of extreme prejudice. The adulatory strain in which it was usual to speak of the

The discontent that vented itself against monopolies was not a little excited by the increasing demands which Elizabeth was compelled to make upon the commons in all her latter parliaments. Though it was declared in the preamble to the subsidy bill of 1593, that "these large and unusual grants, made to a most excellent princess on a most pressing and extraordinary occasion, should not at any time hereafter be drawn into a precedent," yet an equal sum was obtained in 1597, and one still greater in 1601. But money was always reluctantly given, and the queen's early frugality had accustomed her subjects to very low taxes; so that the debates on the supply in 1601, as handed down to us by Townsend, exhibit a lurking ill humour, which would find a better occasion to break forth.

The house of commons, upon a review of Elizabeth's reign, was very far, on the one hand, from exercising those constitutional rights which have long since belonged to it, or even those which by ancient

Influence
of the
crown in
Parliament.

sovereign often covered a strong disposition to keep down his authority. Thus when a Mr. Davies says in this debate: "God hath given that power to absolute princes, which he attributes to himself—*Dixi quod dii estis*;" it would have been seen, if Hume had quoted the following sentence, that he infers from hence, that justice being a divine attribute, the king can do nothing that is unjust, and consequently cannot grant licences to the injury of his subjects. Strong language was no doubt used in respect of the prerogative. But it is erroneous to assert, with Hume, that it came equally from the courtiers and country gentlemen, and was admitted by both. It will chiefly be found in the speeches of secretary Cecil, the official defender of prerogative, and of some lawyers. Hume, after quoting an extravagant speech ascribed to serjeant Heyle, that "all we have is her majesty's, and she may lawfully at any time take it from us; yea, she hath as much right to all our lands and goods as to any revenue of her crown," observes that Heyle was an eminent lawyer, a man of character. That Heyle was high in his profession is beyond doubt; but in that age, as has since, though from the change of times less grossly, continued to be the case, the most distin-

guished lawyers notoriously considered the court and country as plaintiff and defendant in a great suit, and themselves as their retained advocates. It is not likely however that Heyle should have used the exact words imputed to him. He made, no doubt, a strong speech for prerogative, but so grossly to transcend all limits of truth and decency seems even beyond a lawyer seeking office. Townsend and D'Ewes write with a sort of sarcastic humour, which is not always to be taken according to the letter. D'Ewes, 433. Townsend, 205.

Hume proceeds to tell us, that it was asserted this session, that the speaker might either admit or reject bills in the house; and remarks, that the very proposal of it is a proof at what a low ebb liberty was at that time in England. There cannot be a more complete mistake. No such assertion was made; but a member suggested that the speaker might, as the consuls in the Roman senate used, appoint the order in which bills should be read; at which speech, it is added, some hissed. D'Ewes, 677. The present regularity of parliamentary forms, so justly valued by the house, was yet unknown; and the members called confusedly for the business they wished to have brought forward.

precedent they might have claimed as their own; yet, on the other hand, was not quite so servile and submissive an assembly as an artful historian has represented it. If many of its members were but creatures of power, if the majority was often too readily intimidated, if the bold and honest, but not very judicious, Wentworths were but feebly supported, when their impatience hurried them beyond their colleagues, there was still a considerable party, sometimes carrying the house along with them, who with patient resolution and inflexible aim recurred in every session to the assertion of that one great privilege which their sovereign contested, the right of parliament to enquire into and suggest a remedy for every public mischief or danger. It may be remarked, that the ministers, such as Knollys, Hatton, and Robert Cecil, not only sat among the commons, but took a very leading part in their discussions: a proof that the influence of argument could no more be dispensed with than that of power. This, as I conceive, will never be the case in any kingdom where the assembly of the estates is quite subservient to the crown. Nor should we put out of consideration the manner in which the commons were composed. Sixty-two members were added at different times by Elizabeth to the representation; as well from places which had in earlier times discontinued their franchise, as from those to which it was first granted; * a very large proportion of them petty

* Parl. Hist. 958. In the session of 1571, a committee was appointed to confer with the attorney and solicitor general about the return of burgesses from nine places which had not been represented in the last parliament. But in the end it was "ordered, by Mr. Attorney's assent, that the burgesses shall remain according to their returns; for that the validity of the charters of their towns is elsewhere to be examined, if cause be." D'Ewes, p. 156. 159.

D'Ewes observes that it was very common in former times, in order to avoid the charge of paying wages to their burgesses, that a borough which had fallen into poverty or decay, either got licence of the sovereign for the time being to be discharged from electing members, or discontinued it of themselves; but that of late the members for

the most part bearing their own charges, many of those towns which had thus discontinued their privilege renewed it, both in Elizabeth's reign and that of James, p. 80. This could only have been, it is hardly necessary to say, by obtaining writs out of chancery for that purpose. As to the payment of wages, the words of D'Ewes intimate that it was not entirely disused. In the session of 1586, the borough of Grautham complained that Arthur Hall (whose name now appears for the last time) had sued them for wages due to him as their representative in the preceding parliament; alleging that, as well by reason of his negligent attendance and some other offences by him committed in some of its sessions, as of his promise not to require any such wages, they ought not to be charged; and a committee having been

boroughs, evidently under the influence of the crown or peerage. This had been the policy of her brother and sister, in order to counterbalance the country gentlemen, and find room for those dependants who had no natural interest to return them to parliament. The ministry took much pains with elections, of which many proofs remain.* The house accordingly was filled with placemen, civilians, and common lawyers grasping at preferment. The slavish tone of these persons, as we collect from the minutes of D'Ewes, is strikingly contrasted with the manliness of independent gentlemen. And as the house was by no means very fully attended, the divisions, a few of which are recorded, running from 200 to 250 in the aggregate, it may be perceived that the court, whose followers were at hand, would maintain a

appointed to enquire into this, reported that they had requested Mr. Hall to remit his claim for wages, which he had freely done. D'Ewes, p. 417.

* Strype mentions letters from the council to Mildmay, sheriff of Essex, in 1559, about the choice of knights. *Annals*, vol. i. p. 32. And other instances of interference may be found in the Lansdowne and Harleian collections. Thus we read that a Mr. Copley used to nominate burgesses for Gattou, "for that there were no burgesses in the borough." The present proprietor being a minor in custody of the court of wards, lord Burleigh directs the sheriff of Surrey to make no return without instructions from himself; and afterwards orders him to cancel the name of Francis Bacon in his indenture, he being returned for another place, and to substitute Edward Brown. Harl. MSS. ncciii. 16.

I will introduce in this place, though not belonging to the present reign, a proof that Henry VIII. did not trust altogether to the intimidating effects of his despotism for the obedience of parliament, and that his ministers looked to the management of elections, as their successors have always done. Sir Robert Sadler writes to some one, whose name does not appear, to inform him that the duke of Norfolk had spoken to the king, who was well content he should be a burgess of Oxford; and that he should "order himself in the said *room* according to such instructions as the said duke of

Norfolk should give him from the king:" if he is not elected at Oxford, the writer will recommend him to some of "my lord's towns of his bishopric of Winchester." Cotton MSS. Cleopatra E. iv. 178. Thus we see that the practice of our government has always been alike; and we may add the same of the nobility, who interfered with elections full as continually, and far more openly, than in modern times. The difference is, that a secretary of the treasury, or peer's agent, does that with some precaution of secrecy, which the council board, or peer himself, under the Tudors, did by express letters to the returning officer; and that the operating motive is the prospect of a good place in the excise or customs for compliance, rather than that of lying some months in the Fleet for disobedience.

A late writer has asserted, as an undoubted fact, which "historic truth requires to be mentioned," that for the first parliament of Elizabeth, "five candidates were nominated by the court for each borough, and three for each county; and by the authority of the sheriffs, the members were chosen from among the candidates." Butler's *Book of the Roman Catholic Church*, p. 225. I never met with any tolerable authority for this, and believe it to be a mere fabrication; not certainly of Mr. Butler, who is utterly incapable of a wilful deviation from truth, but of some of those whom he too implicitly follows.

formidable influence. But this influence, however pernicious to the integrity of parliament, is distinguishable from that exertion of almost absolute prerogative, which Hume has assumed as the sole spring of Elizabeth's government, and would never be employed till some deficiency of strength was experienced in the other.

D'Ewes has preserved a somewhat remarkable debate on a bill presented in the session of 1571, in order to render valid elections of non-resident burgesses. According to the tenor of the king's writ, confirmed by an act passed under Henry V., every city and borough was required to elect none but members of their own community. To this provision, as a seat in the commons' house grew more an object of general ambition, while many boroughs fell into comparative decay, less and less attention had been paid; till, the greater part of the borough representatives having become strangers, it was deemed by some expedient to repeal the ancient statute, and give a sanction to the innovation that time had wrought; while others contended in favour of the original usage, and seemed anxious to restore its vigour. It was alleged, on the one hand, by Mr. Norton, that the bill would take away all pretence for sending unfit men, as was too often seen, and remove any objection that might be started to the sufficiency of the present parliament, wherein, for the most part against positive law, strangers to their several boroughs had been chosen: that persons able and fit for so great an employment ought to be preferred without regard to their inhabitancy; since a man could not be presumed to be the wiser for being a resident burgess: and that the whole body of the realm, and the service of the same, was rather to be respected than any private regard of place or person. This is a remarkable, and perhaps the earliest assertion, of an important constitutional principle, that each member of the house of commons is deputed to serve, not only for his constituents, but for the whole kingdom; a principle which marks the distinction between a modern English parliament and such deputations of the estates as were assembled in several continental kingdoms; a principle to which the house of commons is indebted for its weight and dignity, as well as its beneficial efficiency, and

Debate on
election of
non-resident
burgesses.

which none but the servile worshippers of the populace are ever found to gainsay. It is obvious that such a principle could never obtain currency, or even be advanced on any plausible ground, until the law for the election of resident burgesses had gone into disuse.

Those who defended the existing law, forgetting, as is often the case with the defenders of existing laws, that it had lost its practical efficacy, urged that the inferior ranks using manual and mechanical arts ought, like the rest, to be regarded and consulted with on matters which concerned them, and of which strangers could less judge. "We," said a member, "who have never seen Berwick or St. Michael's Mount, can but blindly guess of them, albeit we look on the maps that come from thence, or see letters of instruction sent; some one whom observation, experience, and due consideration of that country hath taught, can more perfectly open what shall in question thereof grow, and more effectually reason thereupon, than the skilfullest otherwise whatsoever." But the greatest mischief resulting from an abandonment of their old constitution would be the interference of noblemen with elections: lords' letters, it was said, would from henceforth bear the sway; instances of which, so late as the days of Mary, were alleged, though no one cared to allude particularly to anything of a more recent date. Some proposed to impose a fine of forty pounds on any borough making its election on a peer's nomination. The bill was committed by a majority; but as no further entry appears in the Journals, we may infer it to have dropped.*

It may be mentioned, as not unconnected with this subject, that in the same session a fine was imposed on the borough of Westbury for receiving a bribe of four pounds from Thomas Long, "being a very simple man and of small capacity to serve in that place;" and the mayor was ordered to repay the money. Long, however, does not seem to have been expelled. This is the earliest precedent on record for the punishment of bribery in elections.†

We shall find an additional proof that the house of commons under the Tudor princes, and especially Elizabeth, was not so feeble and insignificant an assembly

Assertion of
privileges by
commons.

* D'Ewes, 168.

† Journals, p. 88.

as has been often insinuated, if we look at their frequent assertion and gradual acquisition of those peculiar authorities and immunities which constitute what is called privilege of parliament. Of these the first, in order of time if not of importance, was their exemption from arrest on civil process during their session. Several instances occurred under the Plantagenet dynasty, where this privilege was claimed and admitted; but generally by means of a distinct act of parliament, or at least by a writ of privilege out of chancery.

Case of Ferrers under Henry VIII. The house of commons for the first time took upon themselves to avenge their own injury in 1543, when the remarkable case of George Ferrers occurred. This is related in detail by Holingshed, and is perhaps the only piece of constitutional information we owe to him. Without repeating all the circumstances, it will be sufficient here to mention, that the commons sent their serjeant with his mace to demand the release of Ferrers, a burgher who had been arrested on his way to the house; that the gaolers and sheriffs of London having not only refused compliance, but ill-treated the serjeant, they compelled them, as well as the sheriffs of London, and even the plaintiff who had sued the writ against Ferrers, to appear at the bar of the house, and committed them to prison; and that the king, in the presence of the judges, confirmed in the strongest manner this assertion of privilege by the commons. It was however, so far at least as our knowledge extends, a very important novelty in constitutional practice; not a trace occurring in any former instance on record, either of a party being delivered from arrest at the mere demand of the serjeant, or of any one being committed to prison by the sole authority of the house of commons. With respect to the first, "the chancellor," says Holingshed, "offered to grant them a writ of privilege, which they of the commons' house refused, being of a clear opinion that all commandments and other acts proceeding from the nether house were to be done and executed by their serjeant without writ, only by show of his mace, which was his warrant." It might naturally seem to follow from this position, if it were conceded, that the house had the same power of attachment for contempt, that is, of committing to prison persons refusing obedience to

lawful process, which our law attributes to all courts of justice, as essential to the discharge of their duties. The king's behaviour is worthy of notice: while he dexterously endeavours to insinuate that the offence was rather against him than the commons, Ferrers happening to be in his service, he displays that cunning flattery towards them in their moment of exasperation, which his daughter knew so well how to employ.*

Such important powers were not likely to be thrown away, though their exertion might not always be thought expedient. The commons had sometimes recourse Other cases of privilege. to a writ of privilege in order to release their members under arrest, and did not repeat the proceeding in Ferrers's case till that of Smalley, a member's servant, in 1575, whom they sent their serjeant to deliver. And this was only "after sundry reasons, arguments, and disputations," as the journal informs us; and, what is more, after rescinding a previous resolution that they could find no precedents for setting at liberty any one in arrest, except by writ of privilege.† It is to be observed, that the privilege of immunity extended to the menial servants of members, till taken away by the statute of George III. Several persons however were, at different times under Mary and Elizabeth, committed by the house to the Tower, or to the custody of their own serjeant, for assaults on their members.‡ Smalley himself above mentioned, it having been discovered that he had fraudulently procured this arrest, in order to get rid of the debt, was committed for a month, and ordered to pay the plaintiff one hundred pounds, which was possibly the amount of

* Holingshed, vol. iii. p. 824. (4to. edit.). Hatsell's Precedents, v. i. p. 53. Mr. Hatsell inclines too much, in my opinion, to depreciate the authority of this case, imagining that it was rather as the king's servant, than as a member of the house, that Ferrers was delivered. But, though Henry artfully endeavours to rest it chiefly on this ground, it appears to me that the commons claim the privilege as belonging to themselves, without the least reference to this circumstance. If they did not always assert it afterwards, this negative presumption is very weak, when we consider how common it was to overlook or recede

from precedents, before the constitution had been reduced into a system. Carte, vol. iii. p. 164., endeavours to discredit the case of Ferrers as an absolute fable; and certainly points out some inaccuracy as to dates; but it is highly improbable that the whole should be an invention. He returns to the subject afterwards, p. 541., and, with a folly almost inconceivable even in a Jacobite, supposes the puritans to have fabricated the tale, and prevailed on Holingshed to insert it in his history.

† Journals, Feb. 22d and 27th.

‡ Hatsell, 73. 92. 119.

what he owed.* One, also, who had served a subpœna out of the star-chamber on a member in the session of 1584, was not only put in confinement, but obliged to pay the party's expenses before they would discharge him, making his humble submission on his knees.† This is the more remarkable, inasmuch as the chancellor had but just before made answer to a committee deputed "to signify to him how by the ancient liberties of the house, the members thereof are privileged from being served with subpœnas," that "he thought the house had no such privilege, nor would he allow any precedents for it, unless they had also been ratified in the court of chancery."‡ They continued to enforce this summary mode of redress with no objection, so far as appears, of any other authority, till, by the end of the queen's reign, it had become their established law of privilege that "no subpœna or summons for the attendance of a member in any other court ought to be served, without leave obtained or information given to the house; and that the persons who procured or served such process were guilty of a breach of privilege, and were punishable by commitment or otherwise, by the order of the house."§ The great importance of such a privilege was the security it furnished, when fully claimed and acted upon, against those irregular detentions and examinations by the council, and which, in despite of the promised liberty of speech, had, as we have seen, oppressed some of their most distinguished members. But it must be owned that by thus suspending all civil and private suits against themselves, the commons gave too much encouragement to needy and worthless men who sought their walls as a place of sanctuary.

This power of punishment, as it were for contempt, assumed in respect of those who molested members of the commons by legal process, was still more naturally applicable to offences against established order committed by any of themselves. In the earliest record that is extant of their daily proceedings, the Commons' Journal of the first parliament of Edward VI., we find, on the 21st January, 1547-8, a short entry of an order that John Storie, one of the burgesses, shall be committed to the custody of the serjeant.

* Hatsell, 90.

† Id. 97.

‡ Id. 96.

§ Id. 119.

The order is repeated the next day ; on the next, articles of accusation are read against Storie. It is ordered on the following day that he shall be committed prisoner to the Tower. His wife soon after presents a petition, which is ordered to be delivered to the Protector. On the 20th of February, letters from Storie in the Tower are read. These probably were not deemed satisfactory, for it is not till the 2d of March that we have an entry of a letter from Mr. Storie in the Tower with his submission. And an order immediately follows, that “the king’s privy council in the nether house shall humbly declare unto the lord protector’s grace, that the resolution of the house is, that Mr. Storie be enlarged and at liberty, out of prison ; and to require the king’s majesty to forgive him his offences in this case towards his majesty and his council.”

Storie was a zealous enemy of the reformation, and suffered death for treason under Elizabeth. His temper appears to have been ungovernable ; even in Mary’s reign he fell a second time under the censure of the house for disrespect to the speaker. It is highly probable that his offence in the present instance was some ebullition of virulence against the changes in religion ; for the first entry concerning him immediately follows the third reading of the bill that established the English liturgy. It is also manifest that he had to atone for language disrespectful to the Protector’s government, as well as to the house. But it is worthy of notice, that the commons by their single authority commit their burgess first to their own officer, and next to the Tower ; and that upon his submission they inform the Protector of their resolution to discharge him out of custody, recommending him to forgiveness as to his offence against the council, which, as they must have been aware, the privilege of parliament as to words spoken within its walls (if we are right in supposing such to have been the case) would extend to cover. It would be very unreasonable to conclude that this is the first instance of a member’s commitment by order of the house, the earlier journals not being in existence. Nothing indicates that the course taken was unprecedented. Yet on the other hand we can as little infer that it rested on any previous usage ; and the times were just such, in which a new precedent was

likely to be established. The right of the house indeed to punish its own members for indecent abuse of the liberty of speech, may be thought to result naturally from the king's concession of that liberty; and its right to preserve order in debate is plainly incident to that of debating at all.

In the subsequent reign of Mary, Mr. Copley incurred the displeasure of the house for speaking irreverent words of her majesty, and was committed to the serjeant at arms; but the despotic character of that government led the commons to recede in some degree from the regard to their own privileges they had shown in the former case. The speaker was directed to declare this offence to the queen, and to request her mercy for the offender. Mary answered, that she would well consider that request, but desired that Copley should be examined as to the cause of his behaviour. A prorogation followed the same day, and of course no more took place in this affair.*

A more remarkable assertion of the house's right to inflict punishment on its own members occurred in 1581, and being much better known than those I have mentioned, has been sometimes treated as the earliest precedent. One Arthur Hall, a burgess for Grantham, was charged with having caused to be published a book against the present parliament, on account of certain proceedings in the last session, wherein he was privately interested, "not only reproaching some particular good members of the house, but also very much slanderous and derogatory to its general authority, power and state, and prejudicial to the validity of its proceedings in making and establishing of laws." Hall was the master of Smalley, whose case has been mentioned above, and had so much incurred the displeasure of the house by his supposed privity to the fraud of his servant, that a bill was brought in and read a first time, the precise nature of which does not appear, but expressed to be against him and two of his servants. It seems probable, from these and some other passages in the entries that occur on this subject in the journal, that Hall in his libel had depreciated the house of commons as an estate of parliament, and especially in respect of its privileges, pretty much in the strain which the advocates of prerogative

* Journals, 5th and 7th March, 1557-8.

came afterwards to employ. Whatever share therefore personal resentment may have had in exasperating the house, they had a public quarrel to avenge against one of their members, who was led by pique to betray their ancient liberties. The vengeance of popular assemblies is not easily satisfied. Though Hall made a pretty humble submission, they went on, by a unanimous vote, to heap every punishment in their power upon his head. They expelled him, they imposed a fine of five hundred marks upon him, they sent him to the Tower until he should make a satisfactory retraction. At the end of the session he had not been released; nor was it the design of the commons that his imprisonment should then terminate; but their own dissolution, which ensued, put an end to the business.* Hall sat in some later parliaments. This is the leading precedent, as far as records show, for the power of expulsion, which the commons have ever retained without dispute of those who would most curtail their privileges. But in 1558 it had been put to the vote whether one outlawed and guilty of divers frauds should continue to sit, and carried in his favour by a very small majority; which affords a presumption that the right of expulsion was already deemed to appertain to the house.† They exercised it with no small violence in the session of 1585 against the famous Dr. Parry, who having spoken warmly against the bill inflicting the penalty of death on jesuits and seminary priests, as being cruel and bloody, the commons not only ordered him into the custody of the serjeant, for opposing a bill approved of by a committee, and directed the speaker to reprimand him upon his knees, but on his failing to make a sufficient apo-

* D'Ewes, 291. Hatsell, 93. The latter says, "I cannot but suspect, that there was some private history in this affair, some particular offence against the queen, with which we are unacquainted." But I believe the explanation I have given will be thought more to the purpose; and so far from having offended the queen, Hall seems to have had a patron in lord Burleigh, to whom he wrote many letters, complaining of the commons, which are extant in the Lansdowne collection. He appears to have been a man of eccentric and unpopular cha-

racter, and had already incurred the displeasure of the commons in the session of 1572, when he was ordered to be warned by the serjeant to appear at the bar, "to answer for sundry lewd speeches used as well in the house as elsewhere." Another entry records him to have been "charged with seven several articles, but having humbly submitted himself to the house, and confessed his folly, to have been upon the question released with a good exhortation from the speaker." D'Ewes, 207. 212.

† Hatsell, 80.

logy, voted him no longer a burgess of that house.* The year afterwards Bland, a currier, was brought to their bar for using what were judged contumelious expressions against the house for something they had done in a matter of little moment, and discharged on account of his poverty, on making submission, and paying a fine of twenty shillings.† In this case they perhaps stretched their power somewhat farther than in the case of Arthur Hall, who, as one of their body, might seem more amenable to their jurisdiction.

The commons asserted in this reign, perhaps for the first time, another and most important privilege, the right of determining all matters relative to their own elections. Difficulties of this nature had in former times been decided in chancery, from which the writ issued, and into which the return was made. Whether no cases of interference on the part of the house had occurred, it is impossible to pronounce, on account of the unsatisfactory state of the rolls and journals of parliament under Edward IV., Henry VII., and Henry VIII. One remarkable entry, however, may be found in the reign of Mary, when a committee is appointed “to inquire if Alexander Nowell, prebendary of Westminster, may be of the house; and it is declared next day by them, that “Alexander Nowell, being prebendary in Westminster, and thereby having voice in the convocation-house, cannot be a member of this house; and so agreed by the house, and the queen’s writ to be directed for another burgess in his place.”‡ Nothing farther appears on record till in 1586 the house appointed a committee to examine the state and circumstances of the returns for the county of Norfolk. The fact was, that the chancellor had issued a second writ for this county, on the ground of some irregularity in the first return, and a different person had been elected. Some notice having been taken of this matter in the commons, the speaker received orders to signify to them her majesty’s displeasure that “the house had been troubled

* D’Ewes, 341.

† D’Ewes, 366. This case, though of considerable importance, is overlooked by Hatsell, who speaks of that of Hall as the only one before the long parliament, wherein the commons have pu-

nished the authors of libels derogatory to their privileges. P. 127. Though he mentions only libels, certainly the punishment of words spoken is at least as strong an exercise of power.

‡ Journals, 1 Mary, p. 27.

with a thing impertinent for them to deal with, and only belonging to the charge and office of the lord chancellor, whom she had appointed to confer with the judges about the returns for the county of Norfolk, and to act therein according to justice and right." The house, in spite of this peremptory inhibition, proceeded to nominate a committee to examine into and report the circumstances of these returns; who reported the whole case with their opinion, that those elected on the first writ should take their seats, declaring farther that they understood the chancellor and some of the judges to be of the same opinion; but that "they had not thought it proper to inquire of the chancellor what he had done, because they thought it prejudicial to the privilege of the house to have the same determined by others than such as were members thereof. And though they thought very reverently of the said lord chancellor and judges, and knew them to be competent judges in their places; yet in this case they took them not for judges in parliament in this house: and thereupon required that the members, if it were so thought good, might take their oaths and be allowed of by force of the first writ, as allowed by the censure of this house, and not as allowed of by the said lord chancellor and judges. Which was agreed unto by the whole house."* This judicial control over their elections was not lost. A committee was appointed, in the session of 1589, to examine into sundry abuses of returns, among which is enumerated that some are returned for new places.† And several instances of the house's deciding on elections occur in subsequent parliaments.

This tenaciousness of their own dignity and privileges was shown in some disagreements with the upper house. They complained to the lords in 1597, that they had received a message from the commons at their bar without uncovering, or rising from their places. But the lords proved, upon a conference, that this was agreeable to usage in the case of messages; though when bills were brought up from the lower house, the speaker of the lords always left his place, and received them at the bar.‡ Another remonstrance of the commons, against having amendments to bills sent down

* D'Ewes, 393, &c.

† Id. 430.

‡ Id. 539.

to them on paper instead of parchment, seems a little frivolous, but serves to indicate a rising spirit, jealous of the superiority that the peers had arrogated.* In one point more material, and in which they had more precedent on their side, the commons successfully vindicated their privilege. The lords sent them a message in the session of 1593, reminding them of the queen's want of a supply, and requesting that a committee of conference might be appointed. This was accordingly done, and Sir Robert Cecil reported from it that the lords would consent to nothing less than a grant of three entire subsidies, the commons having shown a reluctance to give more than two. But Mr. Francis Bacon said, "he yielded to the subsidy, but disliked that this house should join with the upper house in granting it. For the custom and privilege of this house hath always been, first to make offer of the subsidies from hence, then to the upper house; except it were that they present a bill unto this house, with desire of our assent thereto, and then to send it up again." But the house were now so much awakened to the privilege of originating money-bills, that, in spite of all the exertions of the court, the proposition for another conference with the lords was lost on a division by 217 to 128.† It was by this opposition to the ministry in this session, that Bacon, who acted perhaps full as much from pique towards the Cecils, and ambitious attachment to Essex, as from any real patriotism, so deeply offended the queen, that, with all his subsequent pliancy, he never fully reinstated himself in her favour.‡

That the government of England was a monarchy bounded by law, far unlike the actual state of the principal kingdoms on the Continent, appears to have been so obvious and fundamental a truth, that flattery itself did not venture directly to contravene it. Hume has laid hold of a passage in Raleigh's preface to his History

The English constitution not admitted to be an absolute monarchy.

* D'Ewes, 596.

† D'Ewes, 486. Another trifling circumstance may be mentioned, to show the rising spirit of the age. In the session of 1601, sir Robert Cecil having proposed that the speaker should attend the lord keeper about some matter, sir Edward Hobby took up the word in

strong language, as derogatory to their dignity; and the secretary, who knew, as later ministers have done, that the commons are never so unmanageable as on such points of honour, made a proper apology. Id. 627.

‡ Birch's Memoirs, i. 97. 120. 152, &c. ii. 129. Bacon's Works, ii. 416. 435.

of the World (written indeed a few years later than the age of Elizabeth), as if it fairly represented public opinion as to our form of government. Raleigh says that Philip II. "attempted to make himself not only an absolute monarch over the Netherlands, like unto the kings and sovereigns of England and France; but, Turk-like, he treaded under his feet all their national and fundamental laws, privileges, and ancient rights." But who, that was really desirous of establishing the truth, would have brought Raleigh into court as an unexceptionable witness on such a question? Unscrupulous ambition taught men in that age who sought to win or regain the crown's favour, to falsify all law and fact in behalf of prerogative, as unblushingly as our modern demagogues exaggerate and distort the liberties of the people.* The sentence itself, if designed to carry the full meaning that Hume assigns to it, is little better than an absurdity. For why were the rights and privileges of the Netherlands more fundamental than those of England? and by what logic could it be proved more Turk-like to impose the tax of the twentieth penny, or to bring Spanish troops into those provinces, in contravention of their ancient charters, than to transgress the Great Charter of this kingdom, with all those unrescinded statutes and those traditional unwritten liberties which were the ancient inheritance of its subjects? Or could any one, conversant in the slightest degree with the two countries, range in the same class of absolute sovereigns the kings of France and England? The arbitrary acts of our Tudor princes, even of Henry VIII., were trifling in comparison of the despotism of Francis I. and Henry II., who

* Raleigh's Dedication of his Prerogative of Parliaments to James I. contains terrible things. "The bonds of subjects to their kings should always be wrought out of iron, the bonds of kings unto subjects but with cobwebs."—"All binding of a king by law upon the advantage of his necessity, makes the breach itself lawful in a king; his charters and all other instruments being no other than the surviving witnesses of his unconstrained will." The object however of the book is to persuade the king to call a parliament (about 1613), and we are not to suppose that Raleigh meant what

he said. He was never very scrupulous about truth. In another of his tracts, entitled "The Prince; or, Thesaurus of State," he holds, though not without flattery towards James, a more reasonable language. "In every just state some part of the government is or ought to be impartial to the people; as in a kingdom, a voice or suffrage in making laws; and sometimes also in levying of arms, if the charge be great and the prince be forced to borrow help of his subjects, the matter rightly may be propounded to a parliament, that the tax may seem to have proceeded from themselves."

forced their most tyrannical ordinances down the throats of the parliament of Paris with all the violence of military usurpers. No permanent law had ever been attempted in England, nor any internal tax imposed, without consent of the people's representatives. No law in France had ever received such consent; nor had the taxes, enormously burthensome as they were in Raleigh's time, been imposed, for one hundred and fifty years past, by any higher authority than a royal ordinance. If a few nobler spirits had protested against the excessive despotism of the house of Valois; if La Boetie had drunk at the springs of classical republicanism; if Hottoman had appealed to the records of their freeborn ancestry that surrounded the throne of Clovis; if Languet had spoken in yet a bolder tone of a rightful resistance to tyranny*; if the jesuits and partisans of the League had cunningly attempted to win men's hearts to their faction by the sweet sounds of civil liberty and the popular origin of politic rule; yet these obnoxious paradoxes availed little with the nation, which, after the wild fanaticism of a rebellion arising wholly from religious bigotry had passed away, relapsed at once into its patient loyalty, its self-complacent servitude. But did the English ever recognise, even by implication, the strange parallels which Raleigh has made for their government with that of France, and Hume with that of Turkey? The language adopted in addressing Elizabeth was always remarkably submissive. Hypocritical adulation was so much among the vices of that age, that the want of it passed for rudeness. Yet Onslow, speaker of the parliament of 1566, being then solicitor-general, in addressing the queen, says: "By our common law, although there be for the prince provided many princely prerogatives and royalties, yet it is not such as the prince can take money or other

* *Le Contre Un of La Boetie*, the friend of Montaigne, is, as the title intimates, a vehement philippic against monarchy. It is subjoined to some editions of the latter's essays. The *Franco-Gallia* of Hottoman contains little more than extracts from *Fredegarius*, *Aimoin*, and other ancient writers, to prove the elective character and general freedom of the monarchy under the two first races.

This made a considerable impression at the time, though the passages in question have been so often quoted since, that we are now almost surprised to find the book so devoid of novelty. Hubert Languet's *Vindiciæ contra Tyrannos*, published under the name of Junius Brutus, is a more argumentative discussion of the rights of governors and their subjects.

things, or do as he will at his own pleasure without order, but quietly to suffer his subjects to enjoy their own, without wrongful oppression; wherein other princes by their liberty do take as pleaseth them.*

* D'Ewes, p. 115.

I have already adverted to Gardiner's resolute assertion of the law against the prince's single will, as a proof that, in spite of Hume's preposterous insinuations to the contrary, the English monarchy was known and acknowledged to be limited. Another testimony may be adduced from the words of a great protestant churchman. Archbishop Parker, writing to Cecil to justify himself for not allowing the queen's right to grant some dispensation in a case of marriage, says, "he would not dispute of the queen's absolute power, or prerogative royal, how far her highness might go in following the Roman authority; but he yet doubted, that if any dispensation should pass from her authority, to any subject, not avouchable by laws of her realm, made and established by herself and her three estates, whether that subject be in surety at all times afterwards: especially seeing there be parliament laws, precisely determining cases of dispensations." Strype's Parker, 177.

Perhaps, however, there is no more decisive testimony to the established principles of limited monarchy in the age of Elizabeth, than a circumstance mentioned in Anderson's Reports, 154. The queen had granted to Mr. Richard Cavendish an office for issuing certain writs, and directed the judges to admit him to it, which they neglected (that is, did not think fit) to do. Cavendish hereupon obtained a letter from her majesty, expressing her surprise that he was not admitted according to her grant, and commanding them to sequester the profits of the office for his use, or that of any other to whom these might appear to be due, as soon as the controversy respecting the execution of the said office should be decided. It is plain that some other persons were in possession of these profits, or claimed a right therein. The judges conceived that they could not lawfully act according to the said letter and command, because through such a sequestration of the emoluments, those who claimed a right to issue the writs would be disseised of their freehold. The queen,

informed that they did not obey the letter, sent another, under the sign-manual, in more positive language, ending in these words: "We look that you and every of you should dutifully fulfil our commandment herein, and these our letters shall be your warrant." 21st April, 1587. This letter was delivered to the justices in the presence of the chancellor and lord Leicester, who were commissioned to hear their answer, telling them also, that the queen had granted the patent on account of her great desire to provide for Cavendish. The judges took a little time to consult what should be said; and, returning to the lords, answered that they desired in all respects humbly to obey her majesty; but, as this case is, could not do so without perjury, which they well knew the queen would not require, and so went away. Their answer was reported to the queen, who ordered the chancellor, chief justice of the king's bench, and master of the rolls, to hear the judges' reasons; and the queen's counsel were ordered to attend, when the queen's serjeant began to show the queen's prerogative to grant the issuing of writs, and showed precedents. The judges protested in answer, that they had every wish to assist her majesty to all her rights, but said that this manner of proceeding was out of course of justice; and gave their reasons, that the right of issuing these writs and fees incident to it was in the prothonotaries and others, who claimed it by freehold; who ought to be made to answer, and not the judges, being more interested therein. This was certainly a little feeble, but they soon recovered themselves. They were then charged with having neglected to obey these letters of the queen; which they confessed, but said that this was no offence or contempt towards her majesty, because the command was against the law of the land; in which case, they said, no one is bound to obey such command. When farther pressed, they said the queen herself was sworn to keep the laws as well as they; and that they could not obey this command without going against the laws

In the first months of Elizabeth's reign, Aylmer, afterwards bishop of London, published an answer to a book by John Knox, against female monarchy, or, as he termed it, "Blast of the Trumpet against the Monstrous Regiment of Women;" which, though written in the time of Mary, and directed against her, was of course not acceptable to her sister. The answerer relies, among other arguments, on the nature of the English constitution, which, by diminishing the power of the crown, renders it less unfit to be worn by a woman. "Well," he says, "a woman may not reign in England! Better in England than any where, as it shall well appear to him that without affection will consider the kind of regimen. While I compare ours with other, as it is in itself, and not maimed by usurpation, I can find none either so good or so indifferent. The regiment of England is not a mere monarchy, as some for lack of consideration think, nor a mere oligarchy nor democracy, but a rule mixed of all these, wherein each one of these have or should have like authority. The image whereof, and not the image but the thing indeed, is to be seen in the parliament-house, wherein you shall find these three estates; the king or queen which representeth the monarchy, the noblemen which be the aristocracy, and the burgesses and knights the democracy. If the parliament use their privileges, the king can ordain nothing without them: if he do, it is his fault in usurping it, and their fault in permitting it. Wherefore, in my judgment, those that in king Henry VIII.'s days would not grant him that his proclamations should have the force of a statute, were good fathers of the

directly and plainly, against their oaths, and to the offence of God, her majesty, the country, and commonwealth in which they were born and live: so that if the fear of God were gone from them, yet the examples of others, and the punishment of those who had formerly transgressed the laws, would remind them and keep them from such an offence. Then they cited the Spensers, and Thorp, a judge under Edward III., and precedents of Richard II.'s time, and of Empson, and the statutes of Magna Charta, which show what a crime it is for judges to infringe the laws of the land; and thus, since the queen and the judges

were sworn to observe them, they said that they would not act as was commanded in these letters.

All this was repeated to her majesty for her good allowance of the said reasons, and which her majesty, as I have heard, says the reporter, took well; but nothing farther was heard of the business. Such was the law and the government, which Mr. Hume has compared to that of Turkey! It is almost certain, that neither James nor Charles would have made so discreet a sacrifice of their pride and arbitrary temper; and in this self-command lay the great superiority of Elizabeth's policy.

country, and worthy commendation in defending their liberty. But to what purpose is all this? To declare that it is not in England so dangerous a matter to have a woman ruler as men take it to be. For first it is not she that ruleth, but the laws, the executors whereof be her judges appointed by her, her justices and such other officers. Secondly, she maketh no statutes or laws, but the honourable court of parliament; she breaketh none, but it must be she and they together, or else not. If on the other part the regiment were such as all hanged on the king's or queen's will, and not upon the laws written; if she might decree and make laws alone without her senate; if she judged offences according to her wisdom, and not by limitation of statutes and laws; if she might dispose alone of war and peace; if, to be short, she were a mere monarch, and not a mixed ruler, you might peradventure make me to fear the matter the more, and the less to defend the cause."*

This passage affords a proof of the doctrine current among Englishmen in 1559, and may perhaps be the less suspected, as it does not proceed from a legal pen. And the quotations I have made in the last chapter from Hooker are evidence still more satisfactory, on account of the gravity and judiciousness of the writer, that the same theory of the constitution prevailed in the later period of Elizabeth's reign. It may be observed, that those who speak of the limitations of the sovereign's power, and of the acknowledged liberties of the subject, use a distinct and intelligible language; while the opposite tenets are insinuated by means of vague and obscure generalities, as in the sentence above quoted from Raleigh. Sir Thomas Smith, secretary of state to Elizabeth, has bequeathed us a valuable legacy in his treatise on the commonwealth of England. But undoubtedly he evades, as far as possible, all great constitutional principles, and treats them, if at all, with a vagueness and timidity very different from the tone of Fortescue. He thus concludes his chapter on the parliament: "This is the order and form of the highest and most authentical court of England, by virtue whereof all these

* Harborowe of True and Faithful Subjects, 1559. Most of this passage is quoted by Dr. M'Crie, in his Life of Knox, vol. i. note BB, to whom I am indebted for pointing it out.

things be established whereof I spoke before, and no other means accounted available to make any new *forfeiture of life, members, or lands*, of any Englishman, where there was no law ordered for it before."* This leaves no small latitude for the authority of royal proclamations, which the phrase, I make no question, was studiously adopted in order to preserve.

There was unfortunately a notion very prevalent in the cabinet of Elizabeth, though it was not quite so broadly or at least so frequently promulgated as in the following reigns, that, besides the common prerogatives of the English crown, which were admitted to have legal bounds, there was a kind of paramount sovereignty, which they denominated her absolute power, incident, as they pretended, to the abstract nature of sovereignty, and arising out of its primary office of preserving the state from destruction. This seemed analogous to the dictatorial power which might be said to reside in the Roman senate, since it could confer it upon an individual. And we all must, in fact, admit that self-preservation is the first necessity of commonwealths as well as persons, which may justify, in Montesquieu's poetical language, the veiling of the statues of liberty. Thus martial law is proclaimed during an invasion, and houses are destroyed in expectation of a siege. But few governments are to be trusted with this insidious plea of necessity, which more often means their own security than that of the people. Nor do I conceive that the ministers of Elizabeth restrained this pretended absolute power, even in theory, to such cases of overbearing exigency. It was the misfortune of the sixteenth century to see kingly power strained to the highest pitch in the two principal European monarchies. Charles V. and Philip II. had crushed and trampled the ancient liberties of Castile and Aragon. Francis I. and his successors, who found the work nearly done to their hands, had inflicted every practical oppression upon their subjects. These examples could not be without their effect on a government so unceasingly attentive to all that passed on the stage of Europe.†

* Commonwealth of England, b. ii. c. 3. M. Dail (Mr. Dale) had assured him, not only that the king may assent to or

† Bodin says the English ambassador refuse a bill as he pleases, but that it ne