Consiglio regionale del Veneto

THE

CONSTITUTIONAL HISTORY

OF

ENGLAND.

VOL. II.

London:
Printed by A. Spottiswoode,
New-Street-Square.

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. II.

LONDON:
JOHN MURRAY, ALBEMARLE STREET.
1846.

CONTENTS

OF

THE SECOND VOLUME.

CHAPTER XI.

FROM THE RESTORATION OF CHARLES THE SECOND TO THE FALL OF THE CABAL ADMINISTRATION.

CHAPTER XII.

CHAPTER XIII.

ON THE STATE OF THE CONSTITUTION UNDER CHARLES II.

CHAPTER XIV.

THE REIGN OF JAMES II.

CHAPTER XV.

ON THE REIGN OF WILLIAM III.

CHAPTER XVI.

ON THE STATE OF THE CONSTITUTION IN THE REIGNS OF ANNE, GEORGE I., AND GEORGE II.

CHAPTER XVII.

ON THE CONSTITUTION OF SCOTLAND.

CHAPTER XVIII.

ON THE CONSTITUTION OF IRELAND.

THE

CONSTITUTIONAL HISTORY

OF

ENGLAND,

FROM

HENRY VII. TO GEORGE II.

CHAPTER XI.

FROM THE RESTORATION OF CHARLES THE SECOND TO THE FALL OF THE CABAL ADMINISTRATION.

Popular Joy at the Restoration — Proceedings of the Convention Parliament — Act of Indemnity — Exclusion of the Regicides and others — Discussions between the Houses on it — Execution of Regicides — Restitution of Crown and Church Lands — Discontent of the Royalists — Settlement of the Revenue — Abolition of Military Tenures — Excise granted instead — Army disbanded — Clergy restored to their Benefices — Hopes of the Presbyterians from the King — Projects for a Compromise — King's Declaration in Favour of it — Convention Parliament dissolved — Different Complexion of the next — Condemnation of Vane — Its Injustice — Acts replacing the Crown in its Prerogatives — Corporation Act — Repeal of Triennial Act — Star-chamber not restored — Presbyterians deceived by the King — Savoy Conference — Act of Uniformity — Ejection of Non-conformist Clergy — Hopes of the Catholics — Bias of the King towards them — Resisted by Clarendon and the Parliament — Declaration for Indulgence — Objected to by the Commons — Act against Conventicles — Another of the same Kind — Remarks on them — Dissatisfaction increases — Private Life of the King — Opposition in Parliament — Appropriation of Supplies — Commission of Public Accounts — Decline of Clarendon's Power — Loss of the King's Favour — Coalition against him — His Impeachment — Some Articles of it not unfounded — Illegal Imprisonments — Sale of Dunkirk — Solicitation of French Money — His Faults as a Minister — His pusillanimous Flight — And consequent Banishment — Cabal Ministry — Scheme of Comprehension and Indulgence — Triple Alliance — Intrigue with France — King's Desire to be absolute — Secret Treaty of 1670 — Its Objects — Differences between Charles and Louis as to the Mode of its Execution — Fresh Severities against Dissenters — Dutch War — Declaration of Indulgence — Opposed by Parliament — And withdrawn — Test Act — Fall of Shaftesbury and his Colleagues.

It is universally acknowledged that no measure was ever more national, or has ever produced more testimonies of public

approbation, than the restoration of Charles II. Nor can this be attributed to the usual fickleness of the multitude. For the late government, whether under the parliament or the protector, had never obtained the sanction of popular consent, nor could have subsisted for a day without the support of the army. The king's return seemed to the people the harbinger of a real liberty, instead of that bastard commonwealth which had insulted them with its name; a liberty secure from enormous assessments, which, even when lawfully imposed, the English had always paid with reluctance, and from the insolent despotism of the soldiery. The young and lively looked forward to a release from the rigours of fanaticism, and were too ready to exchange that hypocritical austerity of the late times for a licentiousness and impiety that became characteristic of the present. In this tumult of exulting hope and joy, there was much to excite anxious forebodings in calmer men; and it was by no means safe to pronounce that a change so generally demanded, and in most respects so expedient, could be effected without very serious sacrifices of public and particular interests.

Popular joy at the restoration.

Four subjects of great importance, and some of them very difficult, occupied the convention parliament from the time of the king's return till their dissolution in the following December; a general indemnity and legal oblivion of all that had been done amiss in the late interruption of government; an adjustment of the claims for reparation which the crown, the church, and private royalists had to prefer; a provision for the king's revenue, consistent with the abolition of military tenures; and the settlement of the church. These were, in effect, the articles of a sort of treaty between the king and the nation, without some legislative provisions as to which, no stable or tranquil course of law could be expected.

Proceedings of the convention parliament.

The king, in his well-known declaration from Breda, dated the 14th of April, had laid down, as it were, certain bases of his restoration, as to some points which he knew to excite much apprehension in England. One of these was a free and general pardon to all his subjects, saving only such as should be excepted by parliament.

Act of indemnity.

It had always been the king's expectation, or at least that of his chancellor, that all who had been immediately concerned in his father's death should be delivered up to punishment*; and, in the most unpropitious state of his fortunes, while making all professions of pardon and favour to different parties, he had constantly excepted the regicides.† Monk, however, had advised, in his first messages to the king, that none, or at most not above four, should be excepted on this account‡; and the commons voted that not more than seven persons should lose the benefit of the indemnity, both as to life and estate.§ Yet, after having named seven of the late king's judges, they proceeded in a few days to add several more, who had been concerned in managing his trial, or otherwise forward in promoting his death.‖ They went on to pitch upon twenty persons, whom, on account of their deep concern in the transactions of the last twelve years, they determined to affect with penalties, not extending to death, and to be determined by some future act of parliament.¶ As their passions grew warmer, and

Exclusion of the regicides and others.

* Life of Clarendon, p. 69.

† Clar. State Papers, iii. 427. 529. In fact, very few of them were likely to be of use; and the exception made his general offers appear more sincere.

‡ Clar. Hist. of Rebellion, vii. 447. Ludlow says that Fairfax and Northumberland were positively against the punishment of the regicides, vol. iii. p. 10.; and that Monk vehemently declared at first against any exceptions, and afterwards prevailed on the house to limit them to seven, p. 16. Though Ludlow was not in England, this seems very probable, and is confirmed by other authority as to Monk. Fairfax, who had sat one day himself on the king's trial, could hardly with decency concur in the punishment of those who went on.

§ Journals, May 14.

‖ June 5, 6, 7. The first seven were Scott, Holland, Lisle, Barkstead, Harrison, Say, Jones. They went on to add Coke, Broughton, Dendy.

¶ These were Lenthall, Vane, Burton, Keble, St. John, Ireton, Haslerig, Sydenham, Desborough, Axtell, Lambert, Pack, Blackwell, Fleetwood, Pyne, Dean, Creed, Nye, Goodwin, and Cobbet; some of them rather insignificant names. Upon the words that "twenty and no more" be so excepted, two divisions took place, 160 to 131, and 153 to 135; the presbyterians being the majority. June 8. Two other divisions took place on the names of Lenthall, carried by 215 to 126, and of Whitelock, lost by 175 to 134. Another motion was made afterwards against Whitelock by Prynne, Milton was ordered to be prosecuted separately from the twenty; so that they already broke their resolution. He was put in custody of the serjeant-at-arms, and released, December 17. Andrew Marvell, his friend, soon afterwards complained that fees to the amount of 150 pounds had been extorted from him; but Finch answered that Milton had been Cromwell's secretary, and deserved hanging. Parl. Hist. p. 162. Lenthall had taken some share in the restoration, and entered into correspondence with the king's advisers a little before. Clar. State Papers, iii. 711. 720. Kennet's Register, 762. But the royalists never could forgive his having put the question to the vote on the ordinance for trying the late king.

the wishes of the court became better known, they came to except from all benefit of the indemnity such of the king's judges as had not rendered themselves to justice according to the late proclamation.* In this state the bill of indemnity and oblivion was sent up to the lords.† But in that house, the old royalists had a more decisive preponderance than among the commons. They voted to except all who had signed the death-warrant against Charles the First, or sat when sentence was pronounced, and five others by name, Hacker, Vane, Lambert, Haslerig, and Axtell. They struck out, on the other hand, the clause reserving Lenthall and the rest of the same class for future penalties. They made other alterations in the bill to render it more severe‡; and with these, after a pretty long delay, and a positive message from the king, requesting them to hasten their proceedings, (an irregularity to which they took no exception, and which in the eyes of the nation was justified by the circumstances,) they returned the bill to the commons.

The vindictive spirit displayed by the upper house was not agreeable to the better temper of the commons, where the presbyterian or moderate party retained great influence. Though the king's judges (such at least as had signed the death-warrant) were equally guilty, it was consonant to the practice of all humane governments to make a selection for capital penalties; and to put forty or fifty persons to death for that offence seemed a very sanguinary course of proceeding, and not likely to promote the conciliation and oblivion so much cried up. But there was a yet stronger objection to this severity. The king had published a proclamation, in a few days after his landing, commanding his father's judges to render themselves up within fourteen days, on pain of being excepted from any pardon or indemnity, either as to

* June 30. This was carried without a division. Eleven were afterwards excepted by name, as not having rendered themselves. July 9.

† July 11.

‡ The worst and most odious of their proceedings, quite unworthy of a Christian and civilized assembly, was to give the next relations of the four peers who had been executed under the commonwealth, Hamilton, Holland, Capel, and Derby, the privilege of naming each one person (among the regicides) to be executed. This was done in the three last instances; but lord Denbigh, as Hamilton's kinsman, nominated one who was dead; and, on this being pointed out to him, refused to fix on another. Journal, Aug. 7. Ludlow, iii. 34.

their lives or estates. Many had voluntarily come in, having put an obvious construction on this proclamation. It seems to admit of little question, that the king's faith was pledged to those persons, and that no advantage could be taken of any ambiguity in the proclamation, without as real perfidiousness as if the words had been more express. They were at least entitled to be set at liberty, and to have a reasonable time allowed for making their escape, if it were determined to exclude them from the indemnity.* The commons were more mindful of the king's honour and their own than his nearest advisers.† But the violent royalists were gaining ground among them, and it ended in a compromise. They left Hacker and Axtell, who had been prominently concerned in the king's death, to their fate. They even admitted the exceptions of Vane and Lambert; contenting themselves with a joint address of both houses to the king, that, if they should be attainted, execution as to their lives might be remitted. Haslerig was saved on a division of 141 to 116, partly through the intercession of Monk, who had pledged his word to him. Most of the king's judges were entirely excepted; but with a proviso in favour of such as had surrendered according to the proclamation, that the sentence should not be executed without a special act of parliament.‡ Others were reserved for penalties not extending to life, to be inflicted by a future act. About twenty enumerated persons, as well as those who had pronounced

Discussions between the houses on it.

* Lord Southampton, according to Ludlow, actually moved this in the house of lords, but was opposed by Finch. iii. 43.

† Clarendon uses some shameful chicanery about this. Life, p. 69.; and with that inaccuracy, to say the least, so habitual to him, says, "the parliament had published a proclamation, that all who did not render themselves by a day named should be judged as guilty, and attainted of treason." The proclamation was published by the king, on the suggestion indeed of the lords and commons, and the expressions were what I have stated in the text. State Trials, v. 959. Somers Tracts, vii. 437. It is obvious that by this mis-representation he not only throws the blame of ill faith off the king's shoulders, but puts the case of those who obeyed the proclamation on a very different footing. The king, it seems, had always expected that none of the regicides should be spared. But why did he publish such a proclamation? Clarendon, however, seems to have been against the other exceptions from the bill of indemnity, as contrary to some expressions in the declaration from Breda, which had been inserted by Monk's advice; and thus wisely and honourably got rid of the twenty exceptions, which had been sent up from the commons, p. 133. The lower house resolved to agree with the lords as to those twenty persons, or rather sixteen of them, by 197 to 102, Hollis and Morrice telling the Ayes.

‡ Stat. 12 Car. II. c. 11.

sentence of death in any of the late illegal high courts of justice, were rendered incapable of any civil or military office. Thus after three months' delay, which had given room to distrust the boasted clemency and forgiveness of the victorious royalists, the act of indemnity was finally passed.

Execution of regicides.

Ten persons suffered death soon afterwards for the murder of Charles the First; and three more who had been seized in Holland, after a considerable lapse of time.* There can be no reasonable ground for censuring either the king or the parliament for their punishment; except that Hugh Peters, though a very odious fanatic, was not so directly implicated in the king's death as many who escaped; and the execution of Scrope, who had surrendered under the proclamation, was an inexcusable breach of faith.† But nothing can be more sophistical than to pretend that such men as Hollis and Annesley, who had been expelled from parliament by the violence of the same faction who put the king to death, were not to vote for their punishment, or to sit in judgment on them, because they had sided with the commons in the civil war.‡ It is mentioned by many writers, and in

* These were, in the first instance, Harrison, Scott, Scrope, Jones, Clement, Carew, all of whom had signed the warrant, Cook, the solicitor at the high court of justice, Hacker and Axtell, who commanded the guard on that occasion, and Peters. Two years afterwards, Downing, ambassador in Holland, prevailed on the states to give up Barkstead, Corbet, and Okey. They all died with great constancy, and an enthusiastic persuasion of the righteousness of their cause. State Trials.

Pepys says in his Diary, 13th October, 1660, of Harrison, whose execution he witnessed, that "he looked as cheerful as any man could do in that condition."

† It is remarkable, that Scrope had been so particularly favoured by the convention parliament, as to be exempted together with Hutchinson and Lascelles, from any penalty or forfeiture by a special resolution. June 9. But the lords put in his name again, though they pointedly excepted Hutchinson; and the commons, after first resolving that he should only pay a fine of one year's value of his estate, came at last to agree in excepting him from the indemnity as to life. It appears that some private conversation of Scrope had been betrayed, wherein he spoke of the king's death as he thought.

As to Hutchinson, he had certainly concurred in the restoration, having an extreme dislike to the party who had turned out the parliament in Oct. 1659, especially Lambert. This may be inferred from his conduct, as well as by what Ludlow says, and Kennet in his Register, p. 169. His wife puts a speech into his mouth as to his share in the king's death, not absolutely justifying it, but, I suspect, stronger than he ventured to use. At least, the commons voted that he should not be excepted from the indemnity, "on account of his signal repentance," which could hardly be predicated of the language she ascribes to him. Compare Mrs. Hutchinson's Memoirs, p. 367., with Commons' Journals, June 9.

‡ Horace Walpole, in his Catalogue of Noble Authors, has thought fit to censure both these persons for their pretended inconsistency. The case is however different as to Monk and Cooper; and

the Journals, that when Mr. Lenthall, son of the late speaker, in the very first days of the convention parliament, was led to say that those who had levied war against the king were as blamable as those who had cut off his head, he received a reprimand from the chair, which the folly and dangerous consequence of his position well deserved; for such language, though it seems to have been used by him in extenuation of the regicides, was quite in the tone of the violent royalists.*

A question, apparently far more difficult, was that of restitution and redress. The crown lands, those of the church, the estates in certain instances of eminent royalists, had been sold by the authority of the late usurpers; and that not at very low rates, considering the precariousness of the title. This naturally seemed a material obstacle to the restoration of ancient rights, especially in the case of ecclesiastical corporations, whom men are commonly less disposed to favour than private persons. The clergy themselves had never expected that their estates would revert to them in full propriety; and would probably have been contented, at the moment of the king's return, to have granted easy leases to the purchasers. Nor were the house of commons, many of whom were interested in these sales, inclined to let in the former owners without conditions. A bill was accordingly brought into the house at the beginning of the session to confirm sales, or to give indemnity to the purchasers. I do not find its provisions more particularly stated. The zeal of the royalists soon caused the crown lands to be excepted.† But the house adhered to the principle of composition as to ecclesiastical property, and kept the bill a long time in debate. At the adjournment in September, the chancellor told them, his majesty had thought much upon

Restitution of crown and church lands.

perhaps it may be thought, that men of more delicate sentiments than either of these possessed, would not have sat upon the trial of those with whom they had long professed to act in concert, though innocent of their crime.

* Commons' Journals, May 12. 1660. [Yet the balance of parties in the convention parliament was so equal, that on a resolution that receivers and collectors of public money should be accountable to the king for all monies received by them since Jan. 30. 1648–9, an amendment to substitute the year 1642–3 was carried against the presbyterians by 165 to 150. It was not designed that those who had accounted to the parliament should actually refund what they had received, but to declare, indirectly, the illegality of the parliamentary authority. Commons' Journals, June 2.] — 1845.

† Parl. Hist. iv. 80.

the business, and done much for the accommodation of many particular persons, and doubted not but that, before they met again, a good progress would be made, so that the persons concerned would be much to blame if they received not full satisfaction; promising also to advise with some of the commons as to that settlement.* These expressions indicate a design to take the matter out of the hands of parliament. For it was Hyde's firm resolution to replace the church in the whole of its property, without any other regard to the actual possessors than the right owners should severally think it equitable to display. And this, as may be supposed, proved very small. No further steps were taken on the meeting of parliament after the adjournment; and by the dissolution the parties were left to the common course of law. The church, the crown, the dispossessed royalists, re-entered triumphantly on their lands; there were no means of repelling the owners' claim, nor any satisfaction to be looked for by the purchasers under so defective a title. It must be owned that the facility with which this was accomplished, is a striking testimony to the strength of the new government, and the concurrence of the nation. This is the more remarkable, if it be true, as Ludlow inform us, that the chapter lands had been sold by the trustees appointed by parliament at the clear income of fifteen or seventeen years' purchase.†

Discontent of the royalists.

The great body however of the suffering cavaliers, who had compounded for their delinquency under the ordinances of the Long Parliament, or whose estates had been for a time in sequestration, found no remedy for these losses by any process of law. The act of indemnity put a stop to any suits they might have instituted against persons concerned in carrying these illegal ordinances into execution. They were compelled to put up with their poverty, having the additional mortification of seeing one class, namely, the clergy, who had been engaged in the same cause,

* Parl. Hist. iv. 129.

† Memoirs, p. 229. It appears by some passages in the Clarendon Papers, that the church had not expected to come off so brilliantly; and, while the restoration was yet unsettled, would have been content to give leases of their lands. P. 620. 723. Hyde however was convinced that the church would be either totally ruined, or restored to a great lustre; and herein he was right, as it turned out. P. 614.

not alike in their fortune, and many even of the vanquished republicans undisturbed in wealth which, directly or indirectly, they deemed acquired at their own expense.* They called the statute an act of indemnity for the king's enemies, and of oblivion for his friends. They murmured at the ingratitude of Charles, as if he were bound to forfeit his honour and risk his throne for their sakes. They conceived a deep hatred of Clarendon, whose steady adherence to the great principles of the act of indemnity is the most honourable act of his public life. And the discontent engendered by their disappointed hopes led to some part of the opposition afterwards experienced by the king, and still more certainly to the coalition against the minister.

Settlement of the revenue.

No one cause had so eminently contributed to the dissensions between the crown and parliament in the two last reigns, as the disproportion between the public revenues under a rapidly increasing depreciation in the value of money, and the exigencies, at least on some occasions, of the administration. There could be no apology for the parsimonious reluctance of the commons to grant supplies, except the constitutional necessity of rendering them the condition of redress of grievances; and in the present circumstances, satisfied, as they seemed at least to be, with the securities they had obtained, and enamoured of their new sovereign, it was reasonable to make some further provision for the current expenditure. Yet this was to be meted out with such prudence as not to place him beyond the necessity of frequent recurrence to their aid. A committee was accordingly appointed "to consider of settling such a revenue on his majesty as may maintain the splendour and grandeur of his kingly office, and preserve the crown from want, and

* Life of Clarendon, 99. L'Estrange, in a pamphlet printed before the end of 1660, complains that the cavaliers were neglected, the king betrayed, the creatures of Cromwell, Bradshaw, and St. John laden with offices and honours. Of the indemnity he says, "That act made the enemies to the constitution masters in effect of the booty of three nations, bating the crown and church lands, all which they might now call their own; while those who stood up for the laws were abandoned to the comfort of an irreparable but honourable ruin." He reviles the presbyterian ministers still in possession, and tells the king that misplaced lenity was his father's ruin. Kennet's Register, p. 233. See, too, in Somers Tracts, vii. 517., "The Humble Representation of the Sad Condition of the King's Party." Also, p. 557.

from being undervalued by his neighbours." By their report it appeared that the revenue of Charles I. from 1637 to 1641 had amounted on an average to about 900,000*l.*, of which full 200,000*l.* arose from sources either not warranted by law or no longer available.* The house resolved to raise the present king's income to 1,200,000*l.* per annum; a sum perhaps sufficient in those times for the ordinary charges of government. But the funds assigned to produce his revenue soon fell short of the parliament's calculation.†

Abolition of military tenures. Excise granted instead.

One ancient fountain that had poured its stream into the royal treasury, it was now determined to close up for ever. The feudal tenures had brought with them at the conquest, or not long after, those incidents, as they were usually called, or emoluments of signiory, which remained after the military character of fiefs had been nearly effaced; especially the right of detaining the estates of minors holding in chivalry, without accounting for the profits. This galling burthen, incomparably more ruinous to the tenant than beneficial to the lord, it had long been determined to remove. Charles, at the treaty of Newport, had consented to give it up for a fixed revenue of 100,000*l.*; and this was almost the only part of that ineffectual compact which the present parliament were anxious to complete. The king, though likely to lose much patronage and influence, and what passed with lawyers for a high attribute of his prerogative, could not decently refuse a commutation so evidently advantageous to the aristocracy. No great difference of opinion subsisting as to the expediency of taking away military tenures, it remained only to decide from what resources the commutation revenue should spring. Two schemes were suggested; the one, a permanent tax on lands held in chivalry (which, as distinguished from those in soccage, were alone liable to the feudal burthens); the other, an excise

* [Commons' Journals, Sept. 4. 1660; which I quote from "Letter to the Rev. T. Carte" (in 1749), p. 44. This seems to have been exclusive of ship-money.] — 1845.

† Commons' Journals, September 4. 1660. Sir Philip Warwick, chancellor of the exchequer, assured Pepys that the revenue fell short by a fourth of the 1,200,000*l.* voted by parliament. See his Diary, March 1. 1664. Ralph, however, says, the income in 1662 was 1,120,593*l.*, though the expenditure was 1,439,000*l.* P. 88. It appears probable that the hereditary excise did not yet produce much beyond its estimate. Id. p. 20.

on beer and some other liquors. It is evident that the former was founded on a just principle, while the latter transferred a particular burthen to the community. But the self-interest which so unhappily predominates even in representative assemblies, with the aid of the courtiers, who knew that an excise increasing with the riches of the country was far more desirable for the crown than a fixed land-tax, caused the former to be carried, though by the very small majority of two voices.* Yet even thus, if the impoverishment of the gentry, and dilapidation of their estates through the detestable abuses of wardship, was, as cannot be doubted, very mischievous to the inferior classes, the whole community must be reckoned gainers by the arrangement, though it might have been conducted in a more equitable manner. The statute 12 Car. II. c. 24., takes away the court of wards, with all wardships and forfeitures for marriage by reason of tenure, all primer seisins, and fines for alienation, aids, escuages, homages, and tenures by chivalry without exception, save the honorary services of grand sergeantry; converting all such tenures into common soccage. The same statute abolishes those famous rights of purveyance and preemption, the fruitful theme of so many complaining parliaments; and this relief of the people from a general burthen may serve in some measure as an apology for the imposition of the excise. This act may be said to have wrought an important change in the spirit of our constitution, by reducing what is emphatically called the prerogative of the crown, and which, by its practical exhibition in these two vexatious exercises of power, wardship and purveyance, kept up in the minds of the people a more distinct perception, as well as more awe, of the monarchy, than could be felt in later periods, when it has become, as it were, merged in the common course of law, and blended with the very complex mechanism of our institutions. This great innovation however is properly to be referred to the revolution of 1641, which put an end to the court of star-chamber, and sus-

* Nov. 21. 1660, 151 to 149. Parl. Hist. [It is to be observed, as some excuse of the commons, that the hereditary excise thus granted was one moiety of what already was paid, by virtue of ordinances under the commonwealth.]—1845.

pended the feudal superiorities. Hence, with all the misconduct of the two last Stuarts, and all the tendency towards arbitrary power that their government often displayed, we must perceive that the constitution had put on, in a very great degree, its modern character during that period; the boundaries of prerogative were better understood; its pretensions, at least in public, were less enormous; and not so many violent and oppressive, certainly not so many illegal, acts were committed towards individuals as under the two first of their family.

Army disbanded.

In fixing upon 1,200,000*l.* as a competent revenue for the crown, the commons tacitly gave it to be understood that a regular military force was not among the necessities for which they meant to provide. They looked upon the army, notwithstanding its recent services, with that apprehension and jealousy which became an English house of commons. They were still supporting it by monthly assessments of 70,000*l.*, and could gain no relief by the king's restoration till that charge came to an end. A bill therefore was sent up to the lords before their adjournment in September, providing money for disbanding the land forces. This was done during the recess; the soldiers received their arrears with many fair words of praise, and the nation saw itself, with delight and thankfulness to the king, released from its heavy burthens and the dread of servitude.* Yet Charles had too much knowledge of foreign countries, where monarchy flourished in all its plenitude of sovereign power under the guardian sword of a standing army, to part readily with so favourite an instrument of kings. Some of his counsellors, and especially the duke of York, dissuaded him from disbanding the army, or at least advised his supplying its place by another. The unsettled state of the kingdom after so momentous a revolution, the dangerous audacity of the fanatical party, whose enterprises were the more to be guarded against, because they were founded on no such calculation as reasonable men would form, and of which the insurrection of Venner in November,

* The troops disbanded were fourteen regiments of horse and eighteen of foot in England: one of horse and four of foot in Scotland, besides garrisons. Journals, Nov. 7.

1660, furnished an example, did undoubtedly appear a very plausible excuse for something more of a military protection to the government than yeomen of the guard and gentlemen pensioners. General Monk's regiment, called the Coldstream, and one other of horse, were accordingly retained by the king in his service; another was formed out of troops brought from Dunkirk; and thus began, under the name of guards, the present regular army of Great Britain.* In 1662 these amounted to about 5000 men; a petty force according to our present notions, or to the practice of other European monarchies in that age, yet sufficient to establish an alarming precedent, and to open a new source of contention between the supporters of power and those of freedom.

So little essential innovation had been effected by twenty years' interruption of the regular government in the common law or course of judicial proceedings, that, when the king and house of lords were restored to their places, little more seemed to be requisite than a change of names. But what was true of the state could not be applied to the church. The revolution there had gone much farther, and the questions of restoration and compromise were far more difficult.

Clergy restored to their benefices.

It will be remembered that such of the clergy as steadily adhered to the episcopal constitution had been expelled from their benefices by the Long Parliament under various pretexts, and chiefly for refusing to take the covenant. The new establishment was nominally presbyterian. But the presbyterian discipline and synodical government were very partially introduced; and, upon the whole, the church, during the suspension of the ancient laws, was rather an assemblage of congregations than a compact body, having little more unity than resulted from their common dependency on the temporal magistrate. In the time of Cromwell, who favoured the independent sectaries, some of that denomination obtained livings; but very few, I believe, comparatively, who had not received either episcopal or presbyterian ordination. The right of private patronage to benefices, and that of tithes, though continually menaced by

* Ralph, 35.; Life of James, 447.; Grose's Military Antiquities, i. 61.

the more violent party, subsisted without alteration. Meanwhile the episcopal ministers, though excluded from legal toleration along with papists, by the instrument of government under which Cromwell professed to hold his power, obtained, in general, a sufficient indulgence for the exercise of their function.* Once, indeed, on discovery of the royalist conspiracy in 1655, he published a severe ordinance, forbidding every ejected minister or fellow of a college to act as domestic chaplain or schoolmaster. But this was coupled with a promise to show as much tenderness as might consist with the safety of the nation towards such of the said persons as should give testimony of their good affection to the government; and, in point of fact, this ordinance was so far from being rigorously observed, that episcopalian conventicles were openly kept in London.† Cromwell was of a really tolerant disposition, and there had perhaps, on the whole, been no period of equal duration wherein the catholics themselves suffered so little molestation as under the protectorate.‡ It is well known that he permitted the settlement of Jews in England, after an exclusion of nearly three centuries, in spite of the denunciations of some bigoted churchmen and lawyers.

Hopes of the presbyterians from the king.

The presbyterian clergy, though co-operating in the king's restoration, experienced very just apprehensions of the church they had supplanted; and this was in fact one great motive of the restrictions that party was so anxious to impose on him. His character and sentiments were yet very imperfectly known in England; and much pains were taken on both sides, by short pamphlets,

* Neal, 429. 444.

† Neal, 471. Pepys's Diary, ad init. Even in Oxford, about 300 episcopalians used to meet every Sunday with the connivance of Dr. Owen, Dean of Christ Church. Orme's Life of Owen, 188. It is somewhat bold in Anglican writers to complain, as they now and then do, of the persecution they suffered at this period, when we consider what had been the conduct of the bishops before, and what it was afterwards. I do not know that any member of the church of England was imprisoned under the commonwealth, except for some political reason; certain it is that the gaols were not filled with them.

‡ The penal laws were comparatively dormant, though two priests suffered death, one of them before the protectorate. Butler's Mem. of Catholics, ii. 13. But in 1655 Cromwell issued a proclamation for the execution of these statutes; which seems to have been provoked by the prosecution of the Vaudois. Whitelocke tells us he opposed it, 625. It was not acted upon.

panegyrical or defamatory, to represent him as the best Englishman and best protestant of the age, or as one given up to profligacy and popery.* The caricature likeness was, we must now acknowledge, more true than the other; but at that time it was fair and natural to dwell on the more pleasing picture. The presbyterians remembered that he was what they called a covenanted king; that is, that, for the sake of the assistance of the Scots, he had submitted to all the obligations, and taken all the oaths, they thought fit to impose.† But it was well known that, on the failure of those prospects, he had returned to the church of England, and that he was surrounded by its zealous adherents. Charles, in his declaration from Breda, promised to grant liberty of conscience, so that no man should be disquieted or called in question for differences of opinion in matters of religion which do not disturb the peace of the kingdom, and to consent to such acts of parliament as should be offered for him for confirming that indulgence. But he was silent as to the church establishment; and the presbyterian ministers, who went over to present the congratulations of their body, met with civil language, but no sort of encouragement to expect any personal compliance on the king's part with their mode of worship.‡

* Several of these appear in Somers Tracts, vol. vii. The king's nearest friends were of course not backward in praising him, though a little at the expense of their consciences. "In a word," says Hyde to a correspondent in 1659, "if being the best protestant and the best Englishman of the nation can do the king good at home, he must prosper with and by his own subjects." Clar. State Papers, 541. Morley says he had been to see judge Hale, who asked him questions about the king's character and firmness in the protestant religion. Id. 736. Morley's exertions to dispossess men of the notion that the king and his brother were inclined to popery, are also mentioned by Kennet in his Register, 818.; a book containing very copious information as to this particular period. Yet Morley could hardly have been without strong suspicions as to both of them.

† He had written in cipher to secretary Nicholas, from St. Johnston's, Sept. 3. 1650, the day of the battle of Dunbar, "Nothing could have confirmed me more to the church of England than being here, seeing their hypocrisy." Supplement to Evelyn's Diary, 133. The whole letter shows that he was on the point of giving his new friends the slip; as indeed he attempted soon after, in what was called the start. Laing, iii. 463.

‡ [Several letters of Sharp, then in London, are published in Wodrow's "History of the Church of Scotland," which I quote from Kennet's Register. "I see clearly," he writes on June 10., "the General will not stand by the presbyterians; they talk of closing with moderate episcopacy for fear of worse." And on June 23., "All is wrong here as to church affairs. Episcopacy will be settled here to the height; their lands will be all restored. None of the presbyterian way here oppose this, but mourn

Projects for a compromise.

The moderate party in the convention parliament, though not absolutely of the presbyterian interest, saw the danger of permitting an oppressed body of churchmen to regain their superiority without some restraint. The actual incumbents of benefices were, on the whole, a respectable and even exemplary class, most of whom could not be reckoned answerable for the legal defects of their title. But the ejected ministers of the Anglican church, who had endured for their attachment to its discipline and to the crown so many years of poverty and privation, stood in a still more favourable light, and had an evident claim to restoration. The commons accordingly, before the king's return, prepared a bill for confirming and restoring ministers; with the twofold object of replacing in their benefices, but without their legal right to the intermediate profits, the episcopal clergy who by ejection or forced surrender had made way for intruders, and at the same time of establishing the possession, though originally usurped, of those against whom there was no claimant living to dispute it, as well as of those who had been presented on legal vacancies.* This act did not pass without opposition of the cavaliers, who panted to retaliate the persecution that had afflicted their church.†

This legal security, however, for the enjoyment of their livings gave no satisfaction to the scruples of conscientious

in secret." "The generality of the people are doting after prelacy and the service book." He found to his cost that it was much otherwise in Scotland.]—1845.

* 12 Car. II. c. 17. It is quite clear that an usurped possession was confirmed by this act, where the lawful incumbent was dead; though Burnet intimates [that this statute not having been confirmed by the next parliament, those who had originally come in by an unlawful title, were expelled by course of law. This I am inclined to doubt, as such a proceeding would have assumed the invalidity of the laws enacted in the convention-parliament. But we find by a case reported in 1 Ventris, that the judges would not suffer these acts to be disputed.] — 1845.

† Parl. Hist. 94. The chancellor, in his speech to the houses at their adjournment in September, gave them to understand that this bill was not quite satisfactory to the court, who preferred the confirmation of ministers by particular letters patent under the great seal; that the king's prerogative of dispensing with acts of parliament might not grow into disuse. Many got the additional security of such patents; which proved of service to them, when the next parliament did not think fit to confirm this important statute. Baxter says, p. 241., some got letters patent to turn out the possessors, where the former incumbents were dead. These must have been to benefices in the gift of the crown; in other cases, letters patent could have been of no effect. I have found this confirmed by the Journals, Aug. 27. 1660.

men. The episcopal discipline, the Anglican liturgy and ceremonies, having never been abrogated by law, revived of course with the constitutional monarchy; and brought with them all the penalties that the act of uniformity and other statutes had inflicted. The non-conforming clergy threw themselves on the king's compassion, or gratitude, or policy, for relief. The independents, too irreconcilable to the established church for any scheme of comprehension, looked only to that liberty of conscience which the king's declaration from Breda had held forth.* But the presbyterians soothed themselves with hopes of retaining their benefices by some compromise with their adversaries. They had never, generally speaking, embraced the rigid principles of the Scottish clergy, and were willing to admit what they called a moderate episcopacy. They offered, accordingly, on the king's request to know their terms, a middle scheme, usually denominated Bishop Usher's Model; not as altogether approving it, but because they could not hope for any thing nearer to their own views. This consisted, first, in the appointment of a suffragan bishop for each rural deanery, holding a monthly synod of the presbyters within his district; and, secondly, in an annual diocesan synod of suffragans and representatives of the presbyters, under the presidency of the bishop, and deciding upon all matters before them by plurality of suffrages.† This is, I believe, considered by most competent judges as approaching more nearly than our own system to the usage of the primitive church, which gave considerable influence and superiority of rank to the bishop, without destroying the aristocratical character and co-ordinate jurisdiction of the ecclesiastical senate.‡ It lessened also the

* Upon Venner's insurrection, though the sectaries, and especially the independents, published a declaration of their abhorrence of it, a pretext was found for issuing a proclamation to shut up the conventicles of the anabaptists and quakers, and so worded as to reach all others. Kennet's Register, 357.

† Collier, 869. 871.; Baxter, 232. 238. The bishops said, in their answer to the presbyterians' proposals, that the objections against a single person's administration in the church were equally applicable to the state. Collier, 872. But this was false, as they well knew, and designed only to produce an effect at court; for the objections were not grounded on reasoning, but on a presumed positive institution. Besides which, the argument cut against themselves: for, if the English constitution, or something analogous to it, had been established in the church, their adversaries would have had all they *now* asked.

‡ Stillingfleet's Irenicum. King's Inquiry into the Constitution of the Primi-

inconveniences supposed to result from the great extent of some English dioceses. But, though such a system was inconsistent with that parity which the rigid presbyterians maintained to be indispensable, and those who espoused it are reckoned, in a theological division, among episcopalians, it was, in the eyes of equally rigid churchmen, little better than a disguised presbytery, and a real subversion of the Anglican hierarchy. *

The presbyterian ministers, or rather a few eminent persons of that class, proceeded to solicit a revision of the liturgy, and a consideration of the numerous objections which they made to certain passages, while they admitted the lawfulness of a prescribed form. They implored the king also to abolish, or at least not to enjoin as necessary, some of those ceremonies which they scrupled to use, and which in fact had been the original cause of their schism; the surplice, the cross in baptism, the practice of kneeling at the communion, and one or two more. A tone of humble supplication pervades all their language, which some might indi-

tive Church. The former work was published at this time, with a view to moderate the pretensions of the Anglican party, to which the author belonged, by showing: 1. That there are no sufficient data for determining with certainty the form of church-government in the apostolical age, or that which immediately followed it; 2. That, as far as we may probably conjecture, the primitive church was framed on the model of the synagogue; that is, a synod of priests in every congregation, having one of their own number for a chief or president; 3. That there is no reason to consider any part of the apostolical discipline as an invariable model for future ages, and that much of our own ecclesiastical polity cannot any way pretend to primitive authority; 4. That this has been the opinion of all the most eminent theologians at home and abroad; 5. That it would be expedient to introduce various modifications, not on the whole much different from the scheme of Usher. Stillingfleet, whose work is a remarkable instance of extensive learning and mature judgment at the age of about twenty-three, thought fit afterwards to retract it in a certain degree; and towards the latter part of his life gave into more high-church politics. It is true that the Irenicum must have been composed with almost unparalleled rapidity for such a work; but it shows, as far as I can judge, no marks of precipitancy. The biographical writers put its publication in 1659; but this must be a mistake; it could not have passed the press on the 24th of March, 1660, the latest day which could, according to the old style, have admitted the date of 1659, as it contains allusions to the king's restoration.

* Baxter's Life. Neal. [The episcopalians, according to Baxter, were of two kinds, "the old common moderate sort," who took episcopacy to be good, but not necessary, and owned the other reformed to be true churches; and those who followed Dr. Hammond, and were very few: their notion was that presbyters in Scripture meant bishops exclusively, and they set aside the reformed churches. But those few, "by their parts and interest in the nobility and gentry, did carry it at last against the other party." Baxter's Life, part 2. p. 149.]—1845.

vidiously contrast with their unbending haughtiness in prosperity. The bishops and other Anglican divines, to whom their propositions were referred, met the offer of capitulation with a scornful and vindictive smile. They held out not the least overture towards a compromise.

The king, however, deemed it expedient, during the continuance of a parliament, the majority of whom were desirous of union in the church, and had given some indications of their disposition*, to keep up the delusion a little longer, and prevent the possible consequences of despair. He had already appointed several presbyterian ministers his chaplains, and given them frequent audiences. But during the recess of parliament he published a declaration, wherein, after some compliments to the ministers of the presbyterian opinion, and an artful expression of satisfaction that he had found them no enemies to episcopacy or a liturgy, as they had been reported to be, he announces his intention to appoint a sufficient number of suffragan bishops in the larger dioceses; he promises that no bishop should ordain or exercise any part of his spiritual jurisdiction without advice and assistance of his presbyters; that no chancellors or officials of the bishops should use any jurisdiction over the ministry, nor any archdeacon without the advice of a council of his clergy; that the dean and chapter of the diocese, together with an equal number of presbyters, annually chosen by the clergy, should be always advising and assisting at all ordinations, church censures, and other important acts of spiritual jurisdiction. He declared also that he would appoint an equal number of divines of both persuasions to revise the liturgy; desiring that in the mean time none would wholly lay it aside, yet promising that no one should be molested for not using it till it should be reviewed and reformed. With regard to ceremonies, he declared that none should be compelled to receive the sacrament kneeling, nor to use the cross in baptism, nor to bow at the name of Jesus, nor to wear the surplice, except in the royal chapel and in cathedrals, nor should subscription to articles

King's declaration in favour of it.

* They addressed the king to call such divines as he should think fit, to advise with concerning matters of religion. July 20. 1660. Journals and Parl. Hist.

not doctrinal be required. He renewed also his declaration from Breda, that no man should be called in question for differences of religious opinion, not disturbing the peace of the kingdom.*

Though many of the presbyterian party deemed this modification of Anglican episcopacy a departure from their notions of an apostolic church, and inconsistent with their covenant, the majority would doubtless have acquiesced in so extensive a concession from the ruling power. If faithfully executed, according to its apparent meaning, it does not seem that the declaration falls very short of their own proposal, the scheme of Usher.† The high churchmen indeed would have murmured had it been made effectual. But such as were nearest the king's councils well knew that nothing else was intended by it than to scatter dust in men's eyes, and to prevent the interference of parliament. This was soon rendered manifest, when a bill to render the king's declaration effectual was vigorously opposed by the courtiers, and rejected on a second reading by 183 to 157.‡ Nothing could more forcibly demonstrate an intention of breaking faith with the presbyterians than this vote. For the king's declaration was repugnant to the act of uniformity and many other statutes, so that it could

* Parl. Hist. Neal, Baxter, Collier, &c. Burnet says that Clarendon had made the king publish this declaration; "but the bishops did not approve of this; and, after the service they did that lord in the duke of York's marriage, he would not put any hardship on those who had so signally obliged him." This is very invidious. I know no evidence that the declaration was published at Clarendon's suggestion, except indeed that he was the great adviser of the crown; yet in some things, especially of this nature, the king seems to have acted without his concurrence. He certainly speaks of the declaration as if he did not wholly relish it, (Life, 75.) and does not state it fairly. In State Trials, vi. 11., it is said to have been drawn up by Morley and Henchman for the church, Reynolds and Calamy for the dissenters; if they disagreed, lords Anglesea and Hollis to decide.

† The chief objection made by the presbyterians, as far as we learn from Baxter, was, that the consent of presbyters to the bishops' acts was not promised by the declaration, but only their advice; a distinction apparently not very material in practice, but bearing perhaps on the great point of controversy, whether the difference between the two were in order or in degree. The king would not come into the scheme of consent; though they pressed him with a passage out of the Icon Basilike, where his father allowed of it. Life of Baxter, 276. Some alterations however were made in consequence of their suggestions.

‡ Parl. Hist. 141. 152. Clarendon, 76., most strangely observes on this: "Some of the leaders brought a bill into the house for the making that declaration a law, which was suitable to their other acts of ingenuity to keep the church for ever under the same indulgence and without any settlement; which being quickly perceived, there was no further progress in it." The bill was brought in by sir Matthew Hale.

not be carried into effect without the authority of parliament, unless by means of such a general dispensing power as no parliament would endure.* And it is impossible to question that a bill for confirming it would have easily passed through this house of commons, had it not been for the resistance of the government.

Convention parliament dissolved.

Charles now dissolved the convention parliament, having obtained from it what was immediately necessary, but well aware that he could better accomplish his objects with another.† It was studiously inculcated by the royalist lawyers, that as this assembly had not been summoned by the king's writ, none of its acts could have any real validity, except by the confirmation of a true parliament.‡

* Collier, who of course thinks this declaration an encroachment on the church, as well as on the legislative power, says, "For this reason it was overlooked at the assizes and sessions in several places in the country, where the dissenting ministers were indicted for not conforming pursuant to the laws in force." P. 876. Neal confirms this, 586., and Kennet's Register, 374.

† [After the king had concluded his own speech by giving the royal assent to many bills at the prorogation of the convention-parliament, the lord chancellor Hyde (not then a peer) requested his majesty's permission to address the two houses. His speech is long and eloquent, expressive of nothing but satisfaction, and recommending harmony to all classes. One passage is eloquent enough to be extracted: "They are too much in love with England, too partial to it, who believe it the best country in the world; there is a better earth, and a better air, and better, that is, a warmer sun in other countries; but we are no more than just when we say, that England is an enclosure of the best people in the world, when they are well informed and instructed; a people, in sobriety of conscience, the most devoted to God Almighty; in the integrity of their affections, the most dutiful to the king; in their good manners and inclinations, most regardful and loving to the nobility; no nobility in Europe so entirely beloved by the people; there may be more awe and fear of them, but no such respect towards them as in England. I beseech your lordships do not undervalue this love," &c. Parl. Hist. iv. 170.] — 1845.

‡ Life of Clarendon, 74. A plausible and somewhat dangerous attack had been made on the authority of this parliament from an opposite quarter, in a pamphlet written by one Drake, under the name of Thomas Philips, entitled "The Long Parliament Revived," and intended to prove that by the act of the late king, providing that they should not be dissolved but by the concurrence of the whole legislature, they were still in existence; and that the king's demise, which legally puts an end to a parliament, could not affect one that was declared permanent by so direct an enactment. This argument seems by no means inconsiderable; but the times were not such as to admit of technical reasoning. The convention parliament, after questioning Drake, finally sent up articles of impeachment against him; but the lords, after hearing him in his defence, when he confessed his fault, left him to be prosecuted by the attorney-general. Nothing more, probably, took place. Parl. Hist. 145. 157. This was in November and December, 1660: but Drake's book seems still to have been in considerable circulation; at least I have two editions of it, both bearing the date of 1661. The argument it contains is purely legal; but the aim must have been to serve the presbyterian or parliamentarian cause. [The next parliament never give their predecessors any other name in the Journals than "the last assembly."]

This doctrine being applicable to the act of indemnity left the kingdom in a precarious condition till an undeniable security could be obtained, and rendered the dissolution almost necessary. Another parliament was called of very different composition from the last. Possession and the standing ordinances against royalists had enabled the secluded members of 1648, that is, the adherents of the long parliament, to stem with some degree of success the impetuous tide of loyalty in the last elections, and put them almost upon an equality with the court. But, in the new assembly, cavaliers, and the sons of cavaliers, entirely predominated; the great families, the ancient gentry, the episcopal clergy, resumed their influence; the presbyterians and sectarians feared to have their offences remembered; so that we may rather be surprised that about fifty or sixty who had belonged to the opposite side found places in such a parliament, than that its general complexion should be decidedly royalist. The presbyterian faction seemed to lie prostrate at the feet of those on whom they had so long triumphed, without any force of arms or civil convulsion, as if the king had been brought in against their will. Nor did the cavaliers fail to treat them as enemies to monarchy, though it was notorious that the restoration was chiefly owing to their endeavours.*

Different complexion of the new parliament.

The new parliament gave the first proofs of their disposition by voting that all their members should receive the sacrament on a certain day according to the rites of the church of England, and that the solemn league and covenant should be burned by the common hangman.† They excited still more serious alarm by an evident reluctance to confirm the late act of indemnity, which the king at the opening of the session had pressed upon their attention. Those who had suffered the sequestrations and other losses

* Complaints of insults on the presbyterian clergy were made to the late parliament. Parl. Hist. 160. The Anglicans inveighed grossly against them on the score of their past conduct, notwithstanding the act of indemnity. Kennet's Register, 156. See, as a specimen, South's Sermons, passim.

† Journals, 17th of May, 1661. The previous question was moved on this vote, but lost by 228 to 103; Morice, the secretary of state, being one of the tellers for the minority. Monk, I believe, to whom Morice owed his elevation, did what he could to prevent violent measures against the presbyterians. Alderman Love was suspended from sitting in the house July 3., for not having taken the sacrament. I suppose that he afterwards conformed; for he became an active member of the opposition.

of a vanquished party, could not endure to abandon what they reckoned a just reparation. But Clarendon adhered with equal integrity and prudence to this fundamental principle of the restoration; and, after a strong message from the king on the subject, the commons were content to let the bill pass with no new exceptions.* They gave indeed some relief to the ruined cavaliers, by voting 60,000*l.* to be distributed among that class; but so inadequate a compensation did not assuage their discontents.

Condemnation of Vane.

It has been mentioned above, that the late house of commons had consented to the exception of Vane and Lambert from indemnity on the king's promise that they should not suffer death. They had lain in the Tower accordingly, without being brought to trial. The regicides who had come in under the proclamation were saved from capital punishment by the former act of indemnity. But the present parliament abhorred this lukewarm lenity. A bill was brought in for the execution of the king's judges in the Tower; and the attorney-general was requested to proceed against Vane and Lambert.† The former was dropped in

* Journals, June 14, &c. Parl. Hist. 209. Life of Clarendon, 71. Burnet, 230. A bill discharging the loyalists from all interest exceeding three per cent. on debts contracted before the wars passed the commons; but was dropped in the other house. The great discontent of this party at the indemnity continued to show itself in subsequent sessions. Clarendon mentions, with much censure, that many private bills passed about 1662, annulling conveyances of lands made during the troubles, pp. 162, 163. One remarkable instance ought to be noticed, as having been greatly misrepresented. At the earl of Derby's seat of Knowsley in Lancashire a tablet is placed, to commemorate the ingratitude of Charles II. in having refused the royal assent to a bill which had passed both houses for restoring the son of the earl of Derby, who had lost his life in the royal cause, to his family estate. This has been so often reprinted by tourists and novelists, that it passes currently for a just reproach on the king's memory. It was, however, in fact, one of his most honourable actions. The truth is, that the cavalier faction carried through parliament a bill to make void the conveyances of some manors which lord Derby had voluntarily sold before the restoration, in the very face of the act of indemnity, and against all law and justice. Clarendon, who, together with some very respectable peers, had protested against this measure in the upper house, thought it his duty to recommend the king to refuse his assent. Lords' Journals. Feb. 6. and May 14. 1662. There is so much to blame in both the minister and his master, that it is but fair to give them credit for that which the pardonable prejudices of the family interested have led it to mis-state.

† Commons' Journals, 1st July, 1661. A division took place, November 26., on a motion to lay this bill aside, in consideration of the king's proclamation; which was lost by 124 to 109: lord Cornbury (Clarendon's son) being a teller for the Noes. The bill was sent up to the lords Jan. 27 1662. See also Parl. Hist. 217. 225. Some of their proceedings trespassed upon the executive power, and infringed the prerogative they laboured to exalt. But long interruption of the

the house of lords; but those formidable chiefs of the commonwealth were brought to trial. Their indictments alleged as overt acts of high treason against Charles II. their exercise of civil and military functions under the usurping government; though not, as far as appears, expressly directed against the king's authority, and certainly not against his person. Under such an accusation, many who had been the most earnest in the king's restoration might have stood at the bar. Thousands might apply to themselves, in the case of Vane, the beautiful expression of Mrs. Hutchinson, as to her husband's feelings at the death of the regicides, that "he looked on himself as judged in their judgment and executed in their execution." The stroke fell upon one, the reproach upon many.

Its injustice.

The condemnation of sir Henry Vane was very questionable even according to the letter of the law. It was plainly repugnant to its spirit. An excellent statute enacted under Henry VII., and deemed by some great writers to be only declaratory of the common law, but occasioned, no doubt, by some harsh judgments of treason which had been pronounced during the late competition of the houses of York and Lancaster, assured a perfect indemnity to all persons obeying a king for the time being, however defective his title might come to be considered, when another claimant should gain possession of the throne. It established the duty of allegiance to the existing government upon a general principle; but in its terms it certainly presumed that government to be a monarchy. This furnished the judges upon the trial of Vane with a distinction, of which they willingly availed themselves. They proceeded however beyond all bounds of constitutional precedents and of common sense, when they determined that Charles the Second had been king

due course of the constitution had made its boundaries indistinct. Thus, in the convention parliament, the bodies of Cromwell, Bradshaw, Ireton, and others, were ordered, Dec. 4., on the motion of colonel Titus, to be disinterred, and hanged on a gibbet. The lords concurred in this order; but the mode of address to the king would have been more regular. Parl. Hist. 151. [These bodies had been previously removed from Westminster Abbey, and "cast together into a pit at the back door of the prebendaries lodgings." The body of Blake was the same day, Sept. 12. 1660, taken up and "buried in St. Margaret's church-yard." It appears to have been done by an order of the king to the dean of Westminster. Kennet's Register, p. 536.

de facto as well as de jure from the moment of his father's death, though, in the words of their senseless sophistry, "kept out of the exercise of his royal authority by traitors and rebels." He had indeed assumed the title during his exile, and had granted letters patent for different purposes, which it was thought proper to hold good after his restoration; thus presenting the strange anomaly, and as it were contradiction in terms, of a king who began to govern in the twelfth year of his reign. But this had not been the usage of former times. Edward IV., Richard III., Henry VII., had dated their instruments either from their proclamation, or at least from some act of possession. The question was not whether a right to the crown descended according to the laws of inheritance; but whether such a right, divested of possession, could challenge allegiance as a bounden duty by the law of England. This is expressly determined in the negative by lord Coke in his third Institute, who maintains a king "that hath right, and is out of possession," not to be within the statute of treasons. He asserts also that a pardon granted by him would be void; which by parity of reasoning must extend to all his patents.* We may consider therefore the execution of Vane as one of the most reprehensible actions of this bad reign. It not only violated the assurance of indemnity, but introduced a principle of sanguinary proscription, which would render the return of what is called legitimate government, under any circumstances, an intolerable curse to a nation.†

The king violated his promise by the execution of Vane, as much as the judges strained the law by his conviction. He had assured the last parliament, in answer to their address, that if Vane and Lambert should be attainted by law he would not suffer the sentence to be executed. Though the present parliament had urged the attorney-general to bring these delinquents to trial, they had never, by an address to the king, given him a colour for retracting his promise of mercy. It is worthy of notice that Clarendon

* 3 Inst. 7. This appears to have been held in Bagot's case, 9 Edw. 4. See also Higden's View of the English Constitution, 1709.

† Foster, in his Discourse on High Treason, evidently intimates that he thought the conviction of Vane unjustifiable.

does not say a syllable about Vane's trial; which affords a strong presumption that he thought it a breach of the act of indemnity. But we have on record a remarkable letter of the king to his minister, wherein he expresses his resentment at Vane's bold demeanour during his trial, and intimates a wish for his death, though with some doubts whether it could be honourably done.* Doubts of such a nature never lasted long with this prince; and Vane suffered the week after. Lambert, whose submissive behaviour had furnished a contrast with that of Vane, was sent to Guernsey; and remained a prisoner for thirty years. The royalists have spoken of Vane with extreme dislike; yet it should be remembered that he was not only incorrupt, but disinterested, inflexible in conforming his public conduct to his principles, and averse to every sanguinary or oppressive measure: qualities not very common in revolutionary chiefs, and which honourably distinguished him from the Lamberts and Haslerigs of his party.†

Acts replacing the crown in its prerogatives.

No time was lost, as might be expected from the temper of the commons, in replacing the throne on its constitutional basis after the rude encroachments of the long parliament. They declared that there was no legislative power in either or both houses without the king; that the league and covenant was unlawfully imposed; that the sole supreme command of the militia, and of all forces by sea and land, had ever been by the laws of England the undoubted right of the crown; that neither house of parlialiament could pretend to it, nor could lawfully levy any war offensive or defensive against his majesty.‡ These last words

* "The relation that has been made to me of Sir H. Vane's carriage yesterday in the Hall is the occasion of this letter, which, if I am rightly informed, was so insolent, as to justify all he had done; acknowledging no supreme power in England but a parliament, and many things to that purpose. You have had a true account of all; and if he has given new occasion to be hanged, certainly he is too dangerous a man to let live, if we can honestly put him out of the way. Think of this, and give me some account of it to-morrow; till when, I have no more to say to you. C." Indorsed in lord Clarendon's hand, "The king, June 7. 1662." Vane was beheaded June 14. Burnet (note in Oxford edition), p. 164. Harris's Lives, v. 32.

† Vane gave up the profits of his place as treasurer of the navy, which, according to his patent, would have amounted to 30,000*l.* per annum, if we may rely on Harris's Life of Cromwell, p. 260.

‡ 13 Car. 2. c. 1. & 6. A bill for settling the militia had been much opposed in the convention parliament, as tending to bring in martial law. Parl. Hist. iv. 145. It seems to have dropped.

appeared to go to a dangerous length, and to sanction the suicidal doctrine of absolute non-resistance. They made the law of high treason more strict during the king's life in pursuance of a precedent in the reign of Elizabeth.* They restored the bishops to their seats in the house of lords; a step which the last parliament would never have been induced to take, but which met with little opposition from the present.† The violence that had attended their exclusion seemed a sufficient motive for rescinding a statute so improperly obtained, even if the policy of maintaining the spiritual peers were somewhat doubtful. The remembrance of those tumultuous assemblages which had overawed their predecessors in the winter of 1641, and at other times, produced a law against disorderly petitions. This statute provides that no petition or address shall be presented to the king or either house of parliament by more than ten persons; nor shall any one procure above twenty persons to consent or set their hands to any petition for alteration of matters established by law in church or state, unless with the previous order of three justices of the county, or the major part of the grand jury.‡

Thus far the new parliament might be said to have acted chiefly on a principle of repairing the breaches recently made in our constitution, and of re-establishing the just boundaries of the executive power; nor would much objection have been offered to their measures, had they gone no farther in the same course. The act for regulating corporations is much more questionable, and displayed a determination to exclude a considerable portion of the community from their civil rights. It enjoined all magistrates and persons bearing offices of trust in corporations to swear that they believed it unlawful, on any pretence whatever, to take arms against the king, and that they abhorred the traitorous position of bearing arms by his authority against his person, or against those that are commissioned by him. They were also to renounce all obligation arising out of the oath called the solemn league and covenant; in case of

Corporation act.

* C. 1.

† C. 2. The only opposition made to this was in the house of lords by the earl of Bristol and some of the Roman catholic party, who thought the bishops would not be brought into a toleration of their religion. Life of Clarendon, p. 138.

‡ C. 5.

refusal, to be immediately removed from office. Those elected in future were, in addition to the same oaths, to have received the sacrament within one year before their election according to the rites of the English church.* These provisions struck at the heart of the presbyterian party, whose strength lay in the little oligarchies of corporate towns, which directly or indirectly returned to parliament a very large proportion of its members. Yet it rarely happens that a political faction is crushed by the terrors of an oath. Many of the more rigid presbyterians refused the conditions imposed by this act; but the majority found pretexts for qualifying themselves.

Repeal of the triennial act.

It could not yet be said that this loyal assembly had meddled with those safeguards of public liberty which had been erected by their great predecessors in 1641. The laws that Falkland and Hampden had combined to provide, those bulwarks against the ancient exorbitance of prerogative, stood unscathed; threatened from afar, but not yet betrayed by the garrison. But one of these, the bill for triennial parliaments, wounded the pride of royalty, and gave scandal to his worshippers; not so much on account of its object, as of the securities provided against its violation. If the king did not summon a fresh parliament within three years after a dissolution, the peers were to meet and issue writs of their own accord; if they did not within a certain time perform this duty, the sheriffs of every county were to take it on themselves; and, in default of all constituted authorities, the electors might assemble without any regular summons to choose representatives. It was manifest that the king must have taken a fixed resolution to trample on a fundamental law, before these irregular tumultuous modes of redress could be called into action; and that the existence of such provisions could not in any degree weaken or endanger the legal and limited monarchy. But the doctrine of passive

* 13 Car. 2. sess. 2. c. 1. This bill did not pass without a strong opposition in the commons. It was carried at last by 182 to 77, Journals, July 5.; but on a previous division for its commitment the numbers were 185 to 136. June 20. Prynne was afterwards reprimanded by the speaker for publishing a pamphlet against this act, July 15.; but his courage had now forsaken him; and he made a submissive apology, though the censure was pronounced in a very harsh manner.

obedience had now crept from the homilies into the statute-book; the parliament had not scrupled to declare the unlawfulness of defensive war against the king's person; and it was but one step more to take away all direct means of counteracting his pleasure. Bills were accordingly more than once ordered to be brought in for repealing the triennial act; but no further steps were taken till the king thought it at length necessary in the year 1664 to give them an intimation of his desires.* A vague notion had partially gained ground that no parliament, by virtue of that bill, could sit for more than three years. In allusion to this, he told them, on opening the session of 1664, that he "had often read over that bill; and, though there was no colour for the fancy of the determination of the parliament, yet he would not deny that he had always expected them to consider the wonderful clauses in that bill, which passed in a time very uncareful for the dignity of the crown or the security of the people. He requested them to look again at it. For himself, he loved parliaments; he was much beholden to them; he did not think the crown could ever be happy without frequent parliaments; but assure yourselves," he concluded, "if I should think otherwise, I would never suffer a parliament to come together by the means prescribed by that bill."†

So audacious a declaration, equivalent to an avowed design, in certain circumstances, of preventing the execution of the laws by force of arms, was never before heard from the lips of an English king; and would in any other times have awakened a storm of indignation from the commons. They were however sufficiently compliant to pass a bill for the repeal of that which had been enacted with unanimous consent in 1641, and had been hailed as the great palladium of constitutional monarchy. The preamble recites the said act to have been "in derogation of his majesty's just rights and prerogative inherent in the imperial crown of this realm for the calling and assembling of parliaments." The bill then

* Journals, 3d April, 1662; 10th March, 1663.

† Parl. Hist. 289. Clarendon speaks very unjustly of the triennial act, forgetting that he had himself concurred in it. P. 221.

repeals and annuls every clause and article in the fullest manner; yet, with an inconsistency not unusual in our statutes, adds a provision that parliaments shall not in future be intermitted for above three years at the most. This clause is evidently framed in a different spirit from the original bill, and may be attributed to the influence of that party in the house, which had begun to oppose the court, and already showed itself in considerable strength.* Thus the effect of this compromise was, that the law of the long parliament subsisted as to its principle, without those unusual clauses which had been enacted to render its observance secure. The king assured them, in giving his assent to the repeal, that he would not be a day more without a parliament on that account. But the necessity of those securities, and the mischiefs of that false and servile loyalty which abrogated them, became manifest at the close of the present reign; nearly four years having elapsed between the dissolution of Charles's last parliament and his death.

Clarendon, the principal adviser, as yet, of the king since his restoration (for Southampton rather gave reputation to the administration than took that superior influence which belonged to his place of treasurer), has thought fit to stigmatize the triennial bill with the epithet of infamous. So wholly had he divested himself of the sentiments he entertained at the beginning of the long parliament, that he sought nothing more ardently than to place the crown again in a condition to run into those abuses and excesses, against which he had once so much inveighed. "He did never dissemble," he says, "from the time of his return with the king, that the late rebellion could never be extirpated and pulled up by the roots till the king's regal and inherent power and prerogative should be fully avowed and vindicated, and till the usurpations in both houses of parliament, since the year 1640, were disclaimed and made odious; and many other excesses, which had been affected by both before that time under the name of privileges, should be restrained

* 16 Car. 2. c. 1. We find by the Journals that some divisions took place during the passage of this bill, and though, as far as appears, on subordinate points, yet probably springing from an opposition to its principle. March 28. 1664. There was by this time a regular party formed against the court.

or explained. For all which reformation the kingdom in general was very well disposed, when it pleased God to restore the king to it. The present parliament had done much, and would willingly have prosecuted the same method, if they had had the same advice and encouragement."* I can only understand these words to mean that they might have been led to repeal other statutes of the long parliament, besides the triennial act, and that excluding the bishops from the house of peers; but more especially, to have restored the two great levers of prerogative, the courts of star-chamber and high-commission. This would indeed have pulled up by the roots the work of the long parliament, which, in spite of such general reproach, still continued to shackle the revived monarchy. There had been some serious attempts at this in the house of lords during the session of 1661–2. We read in the Journals † that a committee was appointed to prepare a bill for repealing all acts made in the parliament begun the 3d day of November, 1640, and for re-enacting such of them as should be thought fit. This committee some time after‡ reported their opinion, "that it was fit for the good of the nation, that there be a court of like nature to the late court called the star-chamber; but desired the advice and directions of the house in these particulars following: Who should be judges? What matters should they be judges of? By what manner of proceedings should they act?" The house, it is added, thought it not fit to give any particular directions therein, but left it to the committee to proceed as they would. It does not appear that any thing farther was done in this session; but we find the bill of repeal revived next year.§ It is however only once mentioned. Perhaps it may be questionable whether, even amidst the fervid loyalty of 1661, the house of commons would have concurred in re-establishing the star-chamber. They had taken marked precautions in passing an act for the restoration of ecclesiastical jurisdiction, that it should not be construed to restore the high commission court, or to give validity to the canons of 1640, or to enlarge in any

Star-chamber not restored.

* P. 383.

† Lords' Journals, 23d and 24th Jan. 1662.

‡ 12th Feb.

§ 19th March, 1663.

manner the ancient authority of the church.* A tribunal still more formidable and obnoxious would hardly have found favour with a body of men, who, as their behaviour shortly demonstrated, might rather be taxed with passion and vindictiveness towards a hostile faction, than a deliberate willingness to abandon their English rights and privileges.

The striking characteristic of this parliament was a zealous and intolerant attachment to the established church, not losing an atom of their aversion to popery in their abhorrence of protestant dissent. In every former parliament since the reformation, the country party (if I may use such a word, by anticipation, for those gentlemen of landed estates who owed their seats to their provincial importance, as distinguished from courtiers, lawyers, and dependents on the nobility,) had incurred with rigid churchmen the reproach of puritanical affections. They were implacable against popery, but disposed to far more indulgence with respect to nonconformity, than the very different maxims of Elizabeth and her successors would permit. Yet it is obvious that the puritan commons of James I. and the high-church commons of Charles II. were composed, in a great measure, of the same families, and entirely of the same classes. But, as the arrogance of the prelates had excited indignation, and the sufferings of the scrupulous clergy begotten sympathy in one age, so the reversed scenes of the last twenty years had given to the former, or their adherents, the advantage of enduring oppression with humility and fortitude, and displayed in the latter, or at least many of their number, those odious and malevolent qualities which adversity had either concealed or rendered less dangerous. The gentry, connected for the most part by birth or education with the episcopal clergy, could not for an instant hesitate between the ancient establishment, and one composed of men whose eloquence in preaching was chiefly directed towards the common people, and pre-supposed a degree of enthusiasm in the hearer which the higher classes rarely possessed. They dreaded the wilder sectaries, foes to property, or at least to its political influence, as much as to the regal constitution; and

* 13 Car. 2. c. 12.

not unnaturally, though without perfect fairness, confounded the presbyterian or moderate non-conformist in the motley crowd of fanatics, to many of whose tenets he at least more approximated than the church of England minister.

Presbyterians deceived by the king.

There is every reason to presume, as I have already remarked, that the king had no intention but to deceive the presbyterians and their friends in the convention parliament by his declaration of October, 1660.* He proceeded, after the dissolution of that assembly, to fill up the number of bishops, who had been reduced to nine, but with no further mention of suffragans, or of the council of presbyters, which had been announced in that declaration.† It does indeed appear highly probable that the scheme of Usher would have been found inconvenient and even impracticable; and reflecting men would perhaps be apt to say that the usage of primitive antiquity, upon which all parties laid so much stress, was rather a presumptive argument against

* Clarendon, in his Life, p. 149., says that the king "had received the presbyterian ministers with grace; and did believe that he should work upon them by persuasions, having been well acquainted with their common arguments by the conversation he had had in Scotland, and *was very able to confute them.*" This is one of the strange absurdities into which Clarendon's prejudices hurry him in almost every page of his writings, and more especially in this continuation of his Life. Charles, as his minister well knew, could not read a common Latin book, (Clarendon State Papers, iii. 567.) and had no manner of acquaintance with theological learning, unless the popular argument in favour of popery is so to be called; yet he was very able to confute men who had passed their lives in study, on a subject involving a considerable knowledge of Scripture and the early writers in their original languages.

† Clarendon admits that this could not have been done till the former parliament was dissolved. 97. This means, of course, on the supposition that the king's word was to be broken. "The malignity towards the church," he says, "seemed increasing, and to be greater than at the coming in of the king." Pepys, in his Diary, has several sharp remarks on the misconduct and unpopularity of the bishops, though himself an episcopalian even before the restoration. "The clergy are so high that all people I meet with do protest against their practice." August 31. 1660. "I am convinced in my judgment that the present clergy will never heartily go down with the generality of the commons of England; they have been so used to liberty and freedom, and they are so acquainted with the pride and debauchery of the present clergy. He [Mr. Blackburn, a non-conformist] did give me many stories of the affronts which the clergy receive in all parts of England from the gentry and ordinary persons of the parish." November 9. 1663. The opposite party had recourse to the old weapons of pious fraud. I have a tract containing twenty-seven instances of remarkable judgments, all between June, 1660, and April, 1661, which befell divers persons for reading the common prayer or reviling godly ministers. This is entitled Annus Mirabilis; and, besides the above twenty-seven, attests so many prodigies, that the name is by no means misapplied. The bishops made large fortunes by filling up leases. Burnet, 260. And Clarendon admits them to have been too rapacious, though he tries to extenuate. P. 48.

the adoption of any system of church-government, in circumstances so widely different, than in favour of it. But inconvenient and impracticable provisions carry with them their own remedy; and the king might have respected his own word, and the wishes of a large part of the church, without any formidable danger to episcopal authority. It would have been, however, too flagrant a breach of promise (and yet hardly greater than that just mentioned) if some show had not been made of desiring a reconciliation on the subordinate details of religious ceremonies and the liturgy. This produced a conference held at the Savoy, in May, 1661, between twenty-one Anglican and as many presbyterian divines: the latter were called upon to propose their objections; it being the part of the others to defend. They brought forward so long a list as seemed to raise little hope of agreement. Some of these objections to the service, as may be imagined, were rather captious and hypercritical; yet in many cases they pointed out real defects. As to ceremonies, they dwelt on the same scruples as had from the beginning of Elizabeth's reign produced so unhappy a discordance, and had become inveterate by so much persecution. The conference was managed with great mutual bitterness and recrimination; the one party stimulated by vindictive hatred and the natural arrogance of power; the other irritated by the manifest design of breaking the king's faith, and probably by a sense of their own improvidence in ruining themselves by his restoration. The chief blame, it cannot be dissembled, ought to fall on the churchmen. An opportunity was afforded of healing, in a very great measure, that schism and separation which, if they are to be believed, is one of the worst evils that can befall a Christian community. They had it in their power to retain, or to expel, a vast number of worthy and laborious ministers of the gospel, with whom they had, in their own estimation, no essential ground of difference. They knew the king, and consequently themselves, to have been restored with (I might almost say by) the strenuous co-operation of those very men who were now at their mercy. To judge by the rules of moral wisdom, or of the spirit of Christianity, (to which, notwithstanding what might be satirically said of experience, it is difficult not

Savoy conference.

to think we have a right to expect that a body of ecclesiastics should pay some attention,) there can be no justification for the Anglican party on this occasion. They have certainly one apology, the best very frequently that can be offered for human infirmity; they had sustained a long and unjust exclusion from the emoluments of their profession, which begot a natural dislike towards the members of the sect that had profited at their expense, though not, in general, personally responsible for their misfortunes.*

The Savoy conference broke up in anger, each party more exasperated and more irreconcilable than before. This indeed has been the usual consequence of attempts to bring men to an understanding on religious differences by explanation or compromise. The public was apt to expect too much from these discussions; unwilling to believe either that those who have a reputation for piety can be wanting in desire to find the truth, or that those who are esteemed for ability can miss it. And this expectation is heightened by the language rather too strongly held by moderate and peaceable divines, that little more is required than an understanding of each others' meaning, to unite conflicting sects in a common faith. But as it generally happens that the disputes of theologians, though far from being so important as they appear to the narrow prejudices and heated passions of the combatants, are not wholly nominal, or capable of being reduced to a common

* The fullest account of this conference, and of all that passed as to the comprehension of the presbyterians, is to be read in Baxter, whom Neal has abridged. Some allowance must, of course, be made for the resentment of Baxter; but his known integrity makes it impossible to discredit the main part of his narration. Nor is it necessary to rest on the evidence of those who may be supposed to have the prejudices of dissenters. For bishop Burnet admits that all the concern which seemed to employ the prelates' minds, was not only to make no alteration on the presbyterians' account, but to straiten the terms of conformity far more than before the war. Those, however, who would see what can be said by writers of high-church principles, may consult Kennet's History of Charles II. p. 252., or Collier, p. 878. One little anecdote may serve to display the spirit with which the Anglicans came to the conference. Upon Baxter's saying that their proceedings would alienate a great part of the *nation*, Stearne, bishop of Carlisle, observed to his associates: "He will not say *kingdom*, lest he should acknowledge a king." Baxter, p. 338. This was a very malignant reflection on a man who was well known never to have been of the republican party. It is true that Baxter seems to have thought, in 1659, that Richard Cromwell would have served the turn better than Charles Stuart; and, as a presbyterian, he thought very rightly. See p. 207. and part iii. p. 71. But, preaching before the parliament, April 30. 1660, he said it was none of our differences whether we should be loyal to our king; on that all were agreed. P. 217.

form of words, the hopes of union and settlement vanish upon that closer inquiry which conferences and schemes of agreement produce. And though this may seem rather applicable to speculative controversies than to such matters as were debated between the church and the presbyterians at the Savoy conference, and which are in their nature more capable of compromise than articles of doctrine; yet the consequence of exhibiting the incompatibility and reciprocal alienation of the two parties in a clearer light was nearly the same.

A determination having been taken to admit of no extensive comprehension, it was debated by the government whether to make a few alterations in the liturgy, or to restore the ancient service in every particular. The former advice prevailed, though with no desire or expectation of conciliating any scrupulous persons by the amendments introduced.* These were by no means numerous, and in some instances rather chosen in order to irritate and mock the opposite party than from any compliance with their prejudices. It is indeed very probable, from the temper of the new parliament, that they would not have come into more tolerant and healing measures. When the act of uniformity was brought into the house of lords, it was found not only to restore all the ceremonies and other matters to which objection had been taken, but to contain fresh clauses more intolerable than the rest to the presbyterian clergy. One of these enacted that not only every beneficed minister, but fellow of a college, or even schoolmaster, should declare his unfeigned assent and consent to all and every thing contained in the book of common prayer.† These words, however capable

Act of uniformity.

* Life of Clarendon, 147. He observes that the alterations made did not reduce one of the opposite party to the obedience of the church. Now, in the first place, he could not know this; and, in the next, he conceals from the reader that, on the whole matter, the changes made in the liturgy were more likely to disgust than to conciliate. Thus the puritans having always objected to the number of saints' days, the bishops added a few more; and the former having given very plausible reasons against the apocryphal lessons in the daily service, the others inserted the legend of Bel and the Dragon, for no other purpose than to show contempt of their scruples. The alterations may be seen in Kennet's Register, 585. The most important was the restoration of a rubric inserted in the communion service under Edward VI., but left out by Elizabeth, declaring against any corporal presence in the Lord's supper. This gave offence to some of those who had adopted that opinion, especially the duke of York, and perhaps tended to complete his alienation from the Anglican church. Burnet, i. 183.

† 13 & 14 Car. 2. c. iv. § 3.

of being eluded and explained away, as such subscriptions always are, seemed to amount, in common use of language, to a complete approbation of an entire volume, such as a man of sense hardly gives to any book, and which, at a time when scrupulous persons were with great difficulty endeavouring to reconcile themselves to submission, placed a new stumbling-block in their way, which, without abandoning their integrity, they found it impossible to surmount.

The temper of those who chiefly managed church affairs at this period displayed itself in another innovation tending to the same end. It had been not unusual, from the very beginnings of our reformation, to admit ministers ordained in foreign protestant churches to benefices in England. No re-ordination had ever been practised with respect to those who had received the imposition of hands in a regular church; and hence it appears that the church of England, whatever tenets might latterly have been broached in controversy, did not consider the ordination of presbyters invalid. Though such ordinations as had taken place during the late troubles, and by virtue of which a great part of the actual clergy were in possession, were evidently irregular, on the supposition that the English episcopal church was then in existence; yet, if the argument from such great convenience as men call necessity was to prevail, it was surely worth while to suffer them to pass without question for the present, enacting provisions, if such were required, for the future. But this did not fall in with the passion and policy of the bishops, who found a pretext for their worldly motives of action in the supposed divine right and necessity of episcopal succession; a theory naturally more agreeable to arrogant and dogmatical ecclesiastics than that of Cranmer, who saw no intrinsic difference between bishops and priests; or of Hooker, who thought ecclesiastical superiorities, like civil, subject to variation: or of Stillingfleet, who had lately pointed out the impossibility of ascertaining beyond doubtful conjecture the real constitution of the apostolical church, from the scanty, inconclusive testimonies that either Scripture or antiquity furnish. It was therefore enacted in the statute for uniformity, that no person should hold any preferment in England, without having received episcopal ordi-

nation. There seems to be little or no objection to this provision, if ordination be considered as a ceremony of admission into a particular society; but, according to the theories which both parties had embraced in that age, it conferred a sort of mysterious indelible character, which rendered its repetition improper.*

Ejection of non-conformist clergy.

The new act of uniformity succeeded to the utmost wishes of its promoters. It provided that every minister should, before the feast of St. Bartholomew, 1662, publicly declare his assent and consent to every thing contained in the book of common prayer, on pain of being ipso facto deprived of his benefice.† Though even the long parliament had reserved a fifth of the profits to those who were rejected for refusing the covenant, no mercy could be obtained from the still greater bigotry of the present; and a motion to make that allowance to non-conforming ministers was lost by 94 to 87.‡ The lords had shown a more temperate spirit, and made several alterations of a conciliating nature. They objected to extending the subscription required by the act to schoolmasters. But the commons urged in a conference the force of education, which made it neces-

* Life of Clarendon, 152. Burnet, 256. Morley, afterwards bishop of Winchester, was engaged just before the restoration in negotiating with the presbyterians. They stuck out for the negative voice of the council of presbyters, and for the validity of their ordinations. Clar. State Papers, 727. He had two schemes to get over the difficulty; one to pass them over sub silentio; the other, a hypothetical re-ordination, on the supposition that something might have been wanting before, as the church of Rome practises about re-baptization. The former is a curious expedient for those who pretend to think presbyterian ordinations really null. Id. 738.

† The day fixed upon suggested a comparison which, though severe, was obvious. A modern writer has observed on this, "They were careful not to remember that the same day, and for the same reason, because the tithes were commonly due at Michaelmas, had been appointed for the former ejectment, when four times as many of the loyal clergy were deprived for fidelity to their sovereign." Southey's Hist. of the Church, ii. 467. That the day was chosen in order to deprive the incumbent of a whole year's tithes, Mr. Southey has learned from Burnet; and it aggravates the cruelty of the proceeding — but where has he found his precedent? The Anglican clergy were ejected for refusing the covenant at no one definite period, as, on recollection, Mr. S. would be aware; nor can I find any one parliamentary ordinance in Husband's Collection that mentions St. Bartholomew's day. There was a precedent indeed in that case, which the government of Charles did not choose to follow. One fifth of the income had been reserved for the dispossessed incumbents; but it is said that they often did not get them. Kennet's Register, 392.

‡ Journals, April 26. This may perhaps have given rise to a mistake we find in Neal, 624., that the act of uniformity only passed by 186 to 180. There was no division at all upon the bill except that I have mentioned.

sary to take care for the youth. The upper house even inserted a proviso, allowing the king to dispense with the surplice and the sign of the cross; but the commons resolutely withstanding this and every other alteration, they were all given up.* Yet next year, when it was found necessary to pass an act for the relief of those who had been prevented involuntarily from subscribing the declaration in due time, a clause was introduced, declaring that the assent and consent to the book of common prayer required by the said act should be understood only as to practice and obedience, and not otherwise. The duke of York and twelve lay peers protested against this clause, as destructive to the church of England as now established; and the commons vehemently objecting to it, the partisans of moderate councils gave way as before.† When the day of St. Bartholomew came, about 2000 persons resigned their preferments rather than stain their consciences by compliance — an act to which the more liberal Anglicans, after the bitterness of immediate passions had passed away, have accorded that praise which is due to heroic virtue in an enemy. It may justly be said that the episcopal clergy had set an example of similar magnanimity in refusing to take the covenant. Yet, as that was partly of a political nature, and those who were ejected for not taking it might hope to be restored through the success of the king's arms, I do not know that it was altogether so eminent an act of self-devotion as the presbyterian clergy displayed on St. Bartholomew's day. Both of them afford striking contrasts to the pliancy of the English church in the greater question of the preceding century, and bear witness to a remarkable integrity and consistency of principle.‡

* The report of the conference, Lords' Journals, 7th May, is altogether rather curious.

† Lords' Journals, 25th and 27th July, 1663. Ralph, 58.

‡ Neal, 625—636. Baxter told Burnet, as the latter says, p. 185., that not above 300 would have resigned, had the terms of the king's declaration been adhered to. The blame, he goes on, fell chiefly on Sheldon. But Clarendon was charged with entertaining the presbyterians with good words, while he was giving way to the bishops. See also p. 268. Baxter puts the number of the deprived at 1800 or 2000. Life, 384. And it has generally been reckoned about 2000; though Burnet says it has been much controverted. If indeed we can rely on Calamy's account of the ejected ministers, abridged by Palmer, under the title of The Non-conformist's Memorial, the number must have been full 2400, including fellows of colleges, though not in orders. Palmer says, that a manuscript catalogue gives 2257 names. Kennet,

No one who has any sense of honesty and plain dealing can pretend that Charles did not violate the spirit of his declarations, both that from Breda, and that which he published in October, 1660. It is idle to say that those declarations were subject to the decision of parliament, as if the crown had no sort of influence in that assembly, nor even any means of making its inclinations known. He had urged them to confirm the act of indemnity, wherein he thought his honour and security concerned: was it less easy to obtain, or at least to ask for, their concurrence in a comprehension or toleration of the presbyterian clergy? Yet, after mocking those persons with pretended favour, and even offering bishoprics to some of their number, by way of purchasing their defection, the king made no effort to mitigate the provisions of the act of uniformity; and Clarendon strenuously supported them through both houses of parliament.* This behaviour in the minister sprang from real bigotry and dislike of the presbyterians; but Charles was influenced by a very different motive, which had become the secret spring of all his policy. This requires to be fully explained.

Hopes of the catholics.

Charles, during his misfortunes, had made repeated promises to the pope and the great catholic princes of relaxing the penal laws against his subjects of that religion — promises which he well knew to be the necessary condition of their assistance. And, though he never received any succour which could demand the performance of these assurances, his desire to stand well with France and Spain, as well as a sense of what was really due to the English catholics, would have disposed him to grant every indulgence which the temper of his people should permit. The laws were highly severe, in some cases sanguinary; they were enacted in very different times, from plausible motives of distrust, which it would be now

however (Register, 807.), notices great mistakes of Calamy in respect only to one diocese, that of Peterborough. Probably both in this collection, and in that of Walker on the other side, as in all martyrologies, there are abundant errors; but enough will remain to afford memorable examples of conscientious suffering; and we cannot read without indignation Kennet's endeavours, in the conclusion of this volume, to extenuate the praise of the deprived presbyterians by captious and unfair arguments.

* See Clarendon's feeble attempt to vindicate the king from the charge of breach of faith, 157.

both absurd and ungrateful to retain. The catholics had been the most strenuous of the late king's adherents, the greatest sufferers for their loyalty. Out of about 500 gentlemen who lost their lives in the royal cause, one third, it has been said, were of that religion.* Their estates had been selected for confiscation, when others had been admitted to compound. It is, however, certain that after the conclusion of the war, and especially during the usurpation of Cromwell, they declined in general to provoke a government, which showed a good deal of connivance towards their religion, by keeping up any connexion with the exiled family. † They had, as was surely very natural, one paramount object in their political conduct, the enjoyment of religious liberty; whatever debt of gratitude they might have owed to Charles I. had been amply paid; and perhaps they might reflect that he had never scrupled, in his various negotiations with the parliament, to acquiesce in any proscriptive measures suggested against popery. This apparent abandonment, however, of the royal interests excited the displeasure of Clarendon, which was increased by a tendency some of the catholics showed to unite with Lambert, who was understood to be privately of their religion, and by an intrigue carried on in 1659, by the machinations of Buckingham with some priests, to set up the duke of York for the crown. But the king retained no resentment of the general conduct of this party; and was desirous to give them a testimony of his confidence, by mitigating the penal laws against their religion. Some steps were taken towards this by the house of lords in the session of 1661; and there seems little doubt that the statutes at least inflicting capital punishment would have been repealed without difficulty, if the catholics had not lost the favourable moment by some disunion among themselves, which the never-ceasing intrigues of the Jesuits contrived to produce. ‡

* A list of these, published in 1660, contains more than 170 names. Neal, 590.

† Sir Kenelm Digby was supposed to be deep in a scheme that the catholics, in 1649, should support the commonwealth with all their power, in return for liberty of religion. Carte's Letters, i. 216. et post. We find a letter from him to Cromwell in 1656, (Thurloe, iv. 591.) with great protestations of duty.

‡ See Lords' Journals, June and July,

Bias of the king towards them.

There can be no sort of doubt that the king's natural facility, and exemption from all prejudice in favour of established laws, would have led him to afford every indulgence that could be demanded to his catholic subjects, many of whom were his companions or his counsellors, without any propensity towards their religion. But it is morally certain that, during the period of his banishment, he had imbibed, as deeply and seriously as the character of his mind would permit, a persuasion that, if any scheme of Christianity were true, it could only be found in the bosom of an infallible church; though he was never reconciled, according to the formal profession which she exacts, till the last hours of his life. The secret however of his inclinations, though disguised to the world by the appearance, and probably sometimes more than the appearance, of carelessness and infidelity, could not be wholly concealed from his court. It appears the most natural mode of accounting for the sudden conversion of the earl of Bristol to popery, which is generally agreed to have been insincere. An ambitious intriguer, holding the post of secretary of state, would not have ventured such a step without some grounds of confidence in his master's wishes; though his characteristic precipitancy hurried him forward to destroy his own hopes. Nor are there wanting proofs that the protestantism of both the brothers was greatly suspected in England before the restoration.*

1661, or extracts from them in Kennet's Register, 469, &c. 620, &c. and 798., where are several other particulars worthy of notice. Clarendon, 143., explains the failure of this attempt at a partial toleration (for it was only meant as to the exercise of religious rites in private houses) by the persevering opposition of the Jesuits to the oath of allegiance, to which the lay catholics, and generally the secular priests, had long ceased to make objection. The house had voted that the indulgence should not extend to Jesuits, and that they would not alter the oaths of allegiance or supremacy. The Jesuits complained of the distinction taken against them; and asserted, in a printed tract (Kennet, ubi suprà), that since 1616 they had been inhibited by their superiors from maintaining the pope's right to depose sovereigns. See also Butler's Mem. of Catholics, ii. 27.; iv. 142.; and Burnet, i. 194.

* The suspicions against Charles were very strong in England before the restoration, so as to alarm his emissaries: "Your master," Mordaunt writes to Ormond, Nov. 10. 1659, "is utterly ruined as to his interest here in whatever party, if this be true." Carte's Letters, ii. 264., and Clar. State Papers, iii. 602. But an anecdote related in Carte's Life of Ormond, ii. 255., and Harris's Lives, v. 54., which has obtained some credit, proves, if true, that he had embraced the Roman catholic religion as

These suspicions acquired strength after the king's return, through his manifest intention not to marry a protestant; and still more through the presumptuous demeanour of the opposite party, which seemed to indicate some surer grounds of confidence than were yet manifest. The new parliament in its first session had made it penal to say that the king was a papist or popishly affected; whence the prevalence of that scandal may be inferred.*

Charles had no assistance to expect, in his scheme of granting a full toleration to the Roman faith, from his chief adviser, Clarendon. A repeal of the sanguinary laws, a reasonable connivance, perhaps in some cases a dispensation — to these favours he would have acceded. But, in his creed of policy, the legal allowance of any but the established religion was inconsistent with public order, and with the king's ecclesiastical prerogative. This was also a fixed principle with the parliament, whose implacable resentment towards the sectaries had not inclined them to abate in the least of their abhorrence and apprehension of popery. The church of England, distinctly and exclusively, was their rallying-point; the crown itself stood only second in their affections. The king therefore had recourse to a more subtle and indirect policy. If the terms of conformity had been so far relaxed as to suffer the continuance of the presbyterian clergy in their benefices, there was every reason to expect from their known disposition a determined hostility to all approaches towards popery, and even to its toleration. It was therefore the policy of those who had the interests of that cause at heart, to permit no deviation from the act of uniformity, to resist all endeavours at a comprehension of dissenters within the pale of the church, and to make them look up to the king for indulgence in their separate way of worship. They were to be taught that, amenable to the same laws as

Resisted by Clarendon and the parliament.

early as 1659, so as even to attend mass. This cannot be reckoned out of question; but the tendency of the king's mind before his return to England is to be inferred from all his behaviour. Kennet (Complete Hist. of England, iii. 237.) plainly insinuates that the project for restoring popery began at the treaty of the Pyrenees; and see his Register, p. 852.

* 13 Car. 2. c. 1.

the Romanists, exposed to the oppression of the same enemies, they must act in concert for a common benefit.* The presbyterian ministers, disheartened at the violence of the parliament, had recourse to Charles, whose affability and fair promises they were loth to distrust; and implored his dispensation for their non-conformity. The king, naturally irresolute, and doubtless sensible that he had made a bad return to those who had contributed so much towards his restoration, was induced, at the strong solicitation of lord Manchester, to promise that he would issue a declaration suspending the execution of the statute for three months. Clarendon, though he had been averse to some of the rigorous clauses inserted in the act of uniformity, was of opinion that, once passed, it ought to be enforced without any connivance; and told the king likewise, that it was not in his power to preserve those who did not comply with it from deprivation. Yet, as the king's word had been given, he advised him rather to issue such a declaration than to break his promise. But, the bishops vehemently remonstrating against it, and intimating that they would not be parties to a violation of the law, by refusing to institute a clerk presented by the patron on an avoidance for want of conformity in the incumbent, the king gave way, and resolved to make no kind of concession. It is remarkable that the noble historian does not seem struck at the enormous and unconstitutional prerogative which a proclamation suspending the statute would have assumed.†

Declaration for indulgence.

Instead of this very objectionable measure, the king adopted one less arbitrary, and more consonant to his own secret policy. He published a declaration in favour of liberty of conscience, for which no provision had been made, so as to redeem the promises he had held forth at his accession. Adverting to these, he declared that, "as in the first place he had been zealous to settle the uniformity of the church of England in dis-

* Burnet, i. 179.

† Life of Clarendon, 159. He intimates that this begot a coldness in the bishops towards himself, which was never fully removed. Yet he had no reason to complain of them on his trial. See, too, Pepys's Diary, Sept. 3. 1662.

cipline, ceremony, and government, and should ever constantly maintain it; so as for what concerns the penalties upon those who, living peaceably, do not conform themselves thereto, he should make it his special care, so far as in him lay, without invading the freedom of parliament, to incline their wisdom next approaching sessions to concur with him in making some such act for that purpose as may enable him to exercise with a more universal satisfaction that power of dispensing, which he conceived to be inherent in him." *

The aim of this declaration was to obtain from parliament a mitigation at least of all penal statutes in matters of religion, but more to serve the interests of catholic than of protestant non-conformity.† Except however the allusion to the dispensing power, which yet is very moderately alleged, there was nothing in it, according to our present opinions, that should have created offence. But the commons, on their meeting in February, 1663, presented an address, denying that any obligation lay on the king by virtue of his declaration from Breda, which must be understood to depend on the advice of parliament, and slightly intimating that he possessed no such dispensing prerogative as was suggested. They strongly objected to the whole scheme of indulgence, as the means of increasing sectaries, and rather likely to occasion disturbance than to promote peace.‡ They remonstrated, in another address, against the release of Calamy, an eminent dissenter, who, having been imprisoned for transgressing the act of uniformity, was irregularly set at liberty by the king's personal order.§ The king, undeceived as to the disposition of this

Objected to by the commons.

* Parl. Hist. 257.

† Baxter intimates, 429., that some disagreement arose between the presbyterians and independents as to the toleration of popery, or rather, as he puts it, as to the active concurrence of the protestant dissenters in accepting such a toleration as should include popery. The latter, conformably to their general principles, were favourable to it; but the former would not make themselves parties to any relaxation of the penal laws against the church of Rome, leaving the king to act as he thought fit. By this stiffness it is very probable that they provoked a good deal of persecution from the court, which they might have avoided by falling into its views of a general indulgence.

‡ Parl. Hist. 260. An adjournment had been moved, and lost by 161 to 119. Journals, 25th Feb.

§ 19th Feb. Baxter, p. 429.

loyal assembly to concur in his projects of religious libert y was driven to more tedious and indirect courses in order to compass his end. He had the mortification of finding that the house of commons had imbibed, partly perhaps in consequence of this declaration, that jealous apprehension of popery, which had caused so much of his father's ill fortune. On this topic the watchfulness of an English parliament could never be long at rest. The notorious insolence of the Romish priests, who, proud of the court's favour, disdained to respect the laws enough to disguise themselves, provoked an address to the king, that they might be sent out of the kingdom; and bills were brought in to prevent the further growth of popery.*

Meanwhile, the same remedy, so infallible in the eyes of legislators, was not forgotten to be applied to the opposite disease of protestant dissent. Some had believed, of whom Clarendon seems to have been, that all scruples of tender conscience in the presbyterian clergy being faction and hypocrisy, they would submit very quietly to the law, when they found all their clamour unavailing to obtain a dispensation from it. The resignation of 2000 beneficed ministers at once, instead of extorting praise, rather inflamed the resentment of their bigoted enemies; especially when they perceived that a public and perpetual toleration of separate worship was favoured by part of the court. Rumours of

* Journals, 17th and 28th March, 1663. Parl. Hist. 264. Burnet, 274., says the declaration of indulgence was usually ascribed to Bristol, but in fact proceeded from the king, and that the opposition to it in the house was chiefly made by the friends of Clarendon. The latter tells us in his Life, 189., that the king was displeased at the insolence of the Romish party, and gave the judges general orders to convict recusants. The minister and historian either was, or pretended to be, his master's dupe; and, if he had any suspicions of what was meant as to religion (as he must surely have had), is far too loyal to hint them. Yet the one circumstance he mentions soon after, that the countess of Castlemaine suddenly declared herself a catholic, was enough to open his eyes and those of the world.

The Romish partisans assumed the tone of high loyalty, as exclusively characteristic of their religion; but affected, at this time, to use great civility towards the church of England. A book, entitled Philanax Anglicus, published under the name of Bellamy, the second edition of which is in 1663, after a most flattering dedication to Sheldon, launches into virulent abuse of the presbyterians and of the reformation in general, as founded on principles adverse to monarchy. This indeed was common with the ultra or high-church party; but the work in question, though it purports to be written by a clergyman, is manifestly a shaft from the concealed bow of the Roman Apollo.

conspiracy and insurrection, sometimes false, but gaining credit from the notorious discontent both of the old commonwealth's party, and of many who had never been on that side, were sedulously propagated, in order to keep up the animosity of parliament against the ejected clergy* ; and these are recited as the pretext of an act passed in 1664 for suppressing seditious conventicles (the epithet being in this place wantonly and unjustly insulting), which inflicted on all persons above the age of sixteen, present at any religious meeting in other manner than is allowed by the practice of the church of England, where five or more persons besides the household should be present, a penalty of three months' imprisonment for the first offence, of six for the second, and of seven years' transportation for the third, on conviction before a single justice of peace.† This act, says Clarendon, if it had been vigorously executed, would no doubt have produced a thorough reformation. ‡ Such is ever the language of the supporters of tyranny; when oppression does not succeed, it is because there has been too little of it. But those who suffered under this statute report very differently as to its vigorous execution. The gaols were filled, not only with ministers who had borne the brunt of former persecutions, but with the laity who attended them ; and the hardship was the more grievous, that the act being ambiguously worded, its construction was

Act against conventicles.

* See proofs of this in Ralph, 53., Rapin, p. 78. There was in 1663 a trifling insurrection in Yorkshire, which the government wished to have been more serious, so as to afford a better pretext for strong measures; as may be collected from a passage in a letter of Bennet to the duke of Ormond, where he says, "The country was in greater readiness to prevent the disorders than perhaps were to be wished; but it being the effect of their own care, rather than his majesty's commands, it is the less to be censured." Clarendon, 218., speaks of this as an important and extensive conspiracy; and the king dwelt on it in his next speech to the parliament. Parl. Hist. 289.

† 16 Car. 2. c. 4. A similar bill had passed the commons in July, 1663, but hung some time in the upper house, and was much debated; the commons sent up a message (an irregular practice of those times) to request their lordships would expedite this and some other bills. The king seems to have been displeased at this delay; for he told them at their prorogation, that he had expected some bills against conventicles and distempers in religion, as well as the growth of popery, and should himself present some at their next meeting. Parl. Hist. 288. Burnet observes, that to empower a justice of peace to convict without a jury, was thought a great breach on the principles of the English constitution, 285.

‡ P. 221.

left to a single magistrate, generally very adverse to the accused.

Another of the same kind.

It is the natural consequence of restrictive laws to aggravate the disaffection which has served as their pretext; and thus to create a necessity for a legislature that will not retrace its steps, to pass still onward in the course of severity. In the next session accordingly held at Oxford in 1665, on account of the plague that ravaged the capital, we find a new and more inevitable blow aimed at the fallen church of Calvin. It was enacted that all persons in holy orders, who had not subscribed the act of uniformity, should swear that it is not lawful, upon any pretence whatsoever, to take arms against the king; and that they did abhor that traitorous position of taking arms by his authority against his person, or against those that are commissioned by him, and would not at any time endeavour any alteration of government in church or state. Those who refused this oath, were not only made incapable of teaching in schools, but prohibited from coming within five miles of any city, corporate town, or borough sending members to parliament.*

Remarks on them.

This persecuting statute did not pass without the opposition of the earl of Southampton, lord treasurer, and other peers. But archbishop Sheldon, and several bishops, strongly supported the bill, which had undoubtedly the sanction also of Clarendon's authority.† In the commons, I do not find that any division took place; but an unsuccessful attempt was made to insert the word "legally" before commissioned; the lawyers, however, declared that this word must be understood.‡ Some of the non-conforming clergy took the oath upon this construction. But the far greater number refused. Even if they could have borne the solemn assertion of the principles of passive obedience in all possible cases, their scrupulous consciences revolted from a pledge to endeavour no kind of alteration in church and state; an engagement, in its extended sense, irreconcilable with their own principles in religion, and with the civil

* 17 Car. 2. c. 2.
† Burnet. Baxter, Part III. p. 2. Neal, p. 652.
‡ Burnet. Baxter.

duties of Englishmen. Yet to quit the towns where they had long been connected, and where alone they had friends and disciples, for a residence in country villages, was an exclusion from the ordinary means of subsistence. The church of England had doubtless her provocations; but she made the retaliation much more than commensurate to the injury. No severity, comparable to this cold-blooded persecution, had been inflicted by the late powers, even in the ferment and fury of a civil war. Encouraged by this easy triumph, the violent party in the house of commons thought it a good opportunity to give the same test a more sweeping application. A bill was brought in imposing this oath upon the whole nation; that is, I presume (for I do not know that its precise nature is any where explained), on all persons in any public or municipal trust. This however was lost on a division by a small majority.*

It has been remarked that there is no other instance in history, where men have suffered persecution on account of differences, which were admitted by those who inflicted it to be of such small moment. But, supposing this to be true, it only proves, what may perhaps be alleged as a sort of extenuation of these severe laws against non-conformists, that they were merely political, and did not spring from any theological bigotry. Sheldon indeed, their great promoter, was so free from an intolerant zeal, that he is represented as a man who considered religion chiefly as an engine of policy. The principles of religious toleration had already gained considerable ground over mere bigotry; but were still obnoxious to the arbitrary temper of some politicians, and wanted perhaps experimental proof of their safety to recommend them to the caution of others. There can be no doubt that all laws against dissent and separation from an established church, those even of the inquisition, have proceeded in a greater or less degree from political motives; and these appear to me far less odious than the disinterested rancour of superstition.

* Mr. Locke, in the "Letter from a Person of Quality to his Friend in the Country," printed in 1675, (see it in his works, or in Parliamentary History, vol. iv. Appendix, No. 5.) says it was lost by three votes, and mentions the persons. But the numbers in the Journals, October 27. 1665, appear to be 57 to 51. Probably he meant that those persons might have been expected to vote the other way.

The latter is very common among the populace, and sometimes among the clergy. Thus the presbyterians exclaimed against the toleration of popery, not as dangerous to the protestant establishment, but as a sinful compromise with idolatry; language which, after the first heat of the reformation had abated, was never so current in the Anglican church.* In the case of these statutes against non-conformists under Charles II., revenge and fear seem to have been the unmixed passions that excited the church party against those, whose former superiority they remembered, and whose disaffection and hostility it was impossible to doubt.†

Dissatisfaction increases.

A joy so excessive and indiscriminating had accompanied the king's restoration, that no prudence or virtue in his government could have averted that re-action of popular sentiment, which inevitably follows the disappointment of unreasonable hope. Those who lay their account upon blessings, which no course of political administration can bestow, live, according to the poet's comparison, like the sick man, perpetually changing posture in search of the rest which nature denies; the dupes of successive revolutions, sanguine as children in all the novelties of politics, a new constitution, a new sovereign, a new minister, and as angry

* A pamphlet, with Baxter's name subscribed, called Fair Warning, or XXV Reasons against Toleration and Indulgence of Popery, 1663, is a pleasant specimen of this *argumentum ab inferno*. "Being there is but one safe way to salvation, do you think that the protestant way is that way, or is it not? If it be not, why do you live in it? If it be, how can you find in your heart to give your subjects liberty to go another way? Can you, in your conscience, give them leave to go on in that course in which, in your conscience, you think you could not be saved?" Baxter however does not mention this little book in his life; nor does he there speak violently about the toleration of Romanists.

† The clergy had petitioned the house of commons in 1664, inter alia, "That for the better observation of the Lord's day, and for the promoting of conformity, you would be pleased to advance the pecuniary mulct of twelve pence for each absence from divine service, in proportion to the degree, quality, and ability of the delinquent; that so the penalty may be of force sufficient to conquer the obstinacy of the non-conformists." Wilkins's Concilia, iv. 580. Letters from Sheldon to the commissary of the diocese of Canterbury, in 1669 and 1670, occur in the same collection, pp. 588, 589., directing him to inquire about conventicles; and if they cannot be restrained by ecclesiastical authority, to apply to the next justice of the peace in order to put them down. A proclamation appears also from the king, enjoining magistrates to do this. In 1673, the archbishop writes a circular to his suffragans, directing them to proceed against such as keep schools without licence. P. 593.

See in the Somers Tracts, vii. 586., a "true and faithful narrative" of the severities practised against non-conformists about this time. Baxter's Life is also full of proofs of persecution; but the most complete register is in Calamy's account of the ejected clergy.

with the playthings when they fall short of their desires. What then was the discontent that must have ensued upon the restoration of Charles II.? The neglected cavalier, the persecuted presbyterian, the disbanded officer, had each his grievance; and felt that he was either in a worse situation than he had formerly been, or at least than he had expected to be. Though there were not the violent acts of military power, which had struck every man's eyes under Cromwell, it cannot be said that personal liberty was secure, or that the magistrates had not considerable power of oppression, and that pretty unsparingly exercised towards those suspected of disaffection. The religious persecution was not only far more severe than it was ever during the commonwealth, but perhaps more extensively felt than under Charles I. Though the monthly assessments for the support of the army ceased soon after the restoration, several large grants were made by parliament, especially during the Dutch war; and it appears, that in the first seven years of Charles II. the nation paid a far greater sum in taxes than in any preceding period of the same duration.* If then the people compared the national fruits of their expenditure, what a contrast they found, how deplorable a falling off in public honour and dignity since the days of the magnanimous usurper! † They saw with indignation, that Dunkirk, acquired by Cromwell, had been chaffered away by Charles (a transaction justifiable perhaps on the mere balance of profit and loss, but certainly derogatory to the pride of a great nation); that a war, needlessly commenced, had been carried on with much display of bravery in our seamen and their commanders, but no sort of good conduct in the government; and that a petty northern potentate, who would have trembled at the name of the com-

* [Bishop Parker, certainly no enemy to the administration of Charles II., owns that nothing did the king so much harm as the immense grant of 2,500,000*l.* in 1764, to be levied in three years; from which time he thought that he should never want money, and put no restraint on his expenses. Hist. of his own Time, p. 245. In the session of 1666, great difficulties were found, as Marvell tells us, in raising money; "the nation's extreme necessity makes us exceedingly tender whereupon to fasten our resolutions." Marvell's Letters (in his works), Nov. 6.]—1845.

† Pepys observes, 12th July, 1667, "how every body now-a-days reflect upon Oliver and commend him, what brave things he did, and made all the neighbour princes fear him."

monwealth, had broken his faith towards us out of mere contempt of our inefficiency.*

Private life of the king.

These discontents were heightened by the private conduct of Charles, if the life of a king can in any sense be private, by a dissoluteness and contempt of moral opinion, which a nation, still in the main grave and religious, could not endure. The austere character of the last king had repressed to a considerable degree the common vices of a court, which had gone to a scandalous excess under James. But the cavaliers in general affected a profligacy of manners, as their distinction from the fanatical party, which gained ground among those who followed the king's fortunes in exile, and became more flagrant after the restoration.† Anecdotes of court excesses, which required not the aid of exaggeration, were in daily circulation through the coffee-houses; those who cared least about the vice, not failing to inveigh against the scandal. It is in the nature of a limited monarchy that men should censure very freely the private lives of their princes, as being more exempt from that immoral servility which blinds itself to the distinctions of right and wrong in elevated rank. And as a voluptuous court will always appear prodigal, because all expense in vice is needless, they had the mortification of believing that the public revenues were wasted on the vilest associates of the king's

* [Clarendon, while he admits these discontents, and complaints of the decay of trade, asserts them to be unfounded. No estate could be put up to sale any where but a purchaser was found for it, vol. ii. p. 364. The main question, however, is, at what rate he would purchase. Rents, he owns, had suddenly fallen 25 per cent, which caused a clamour against taxes, presumed to be the cause of it. But the truth is, that wheat, which had been at a very high price for a few years just before and after the restoration, fell about 1663; and there is no doubt that the reign of Charles II. was not favourable to the landed interest. Lady Sunderland tells us, in a letter of 1681, that "the manor of Worme-Leighton, which, when I was married [1662], was let for 320*l*., is now let for 230*l*." Sidney's Diary, edited by Blencowe, 1843. vol. i. Introduction, p. 73. On the other hand, sir Josiah Child asserts, that there were more men on change worth 10,000*l*. in 1680 than there were in 1660 worth 1000*l*., and that a hundred coaches were kept for one formerly. Lands yielded twenty years' purchase, which, when he was young, were not worth above eight or ten. See Macpherson's Annals of Commerce, ad A. D. 1660.] — 1845.

† [Life of Clarendon, p. 34. Perhaps he lays too much the blame of this on the sectaries; yet we may suspect that the enthusiastic and antinomian conceits of these men had relaxed the old bonds of morality, and paved the way for the more glaring licentiousness of the restoration. See too Pepys's Diary, Aug. 31. 1660, for the rapid increase of dissoluteness about the court.] — 1845.

debauchery. We are, however, much indebted to the memory of Barbara, duchess of Cleveland, Louisa, duchess of Portsmouth, and Mrs. Eleanor Gwyn. We owe a tribute of gratitude to the Mays, the Killigrews, the Chiffinches, and the Grammonts. They played a serviceable part in ridding the kingdom of its besotted loyalty. They saved our forefathers from the star-chamber, and the high-commission court; they laboured in their vocation against standing armies and corruption; they pressed forward the great ultimate security of English freedom, the expulsion of the house of Stuart.*

Opposition in parliament.

Among the ardent loyalists who formed the bulk of the present parliament, a certain number of a different class had been returned, not sufficient of themselves to constitute a very effective minority, but of considerable importance as a nucleus, round which the lesser factions that circumstances should produce, might be gathered. Long sessions, and a long continuance of the same parliament, have an inevitable tendency to generate a systematic opposition to the measures of the crown, which it requires all vigilance and management to hinder from becoming too powerful. The sense of personal importance, the desire of occupation in business (a very characteristic propensity of the English gentry), the various inducements of private passion and interest, bring forward so many active spirits, that it was, even in that age, as reasonable to expect that the ocean should always be tranquil, as that a house of commons should continue long to do the king's bidding, with any kind of

* The Mémoires de Grammont are known to every body; and are almost unique in their kind, not only for the grace of their style and the vivacity of their pictures, but for the happy ignorance in which the author seems to have lived, that any one of its readers could imagine that there are such things as virtue and principle in the world. In the delirium of thoughtless voluptuousness they resemble some of the memoirs about the end of Louis XV.'s reign, and somewhat later; though I think, even in these, there is generally some effort, here and there, at moral censure, or some affectation of sensibility. *They*, indeed, have always an awful moral; and in the light portraits of the court of Versailles (such, sometimes, as we might otherwise almost blush to peruse,) we have before us the hand-writing on the wall, the winter whirlwind hushed in its grim repose, and expecting its prey, the vengeance of an oppressed people, and long-forbearing Deity. No such retribution fell on the courtiers of Charles II., but they earned in their own age, what has descended to posterity, though possibly very indifferent to themselves, the disgust and aversion of all that was respectable among mankind.

unanimity or submission. Nothing can more demonstrate the incompatibility of the tory scheme, which would place the virtual and effective, as well as nominal, administration of the executive government in the sole hands of the crown, with the existence of a representative assembly, than the history of this long parliament of Charles II.* None has ever been elected in circumstances so favourable for the crown, none ever brought with it such high notions of prerogative; yet in this assembly a party soon grew up, and gained strength in every successive year, which the king could neither direct nor subdue. The methods of bribery, to which the court had largely recourse, though they certainly diverted some of the measures, and destroyed the character, of this opposition, proved in the end like those dangerous medicines, which palliate the instant symptoms of a disease that they aggravate. The leaders of this parliament were, in general, very corrupt men; but they knew better than to quit the power which made them worth purchase. Thus the house of commons matured and extended those rights of inquiring into and controlling the management of public affairs, which had caused so much dispute in former times; and, as the exercise of these functions became more habitual, and passed with little or no open resistance from the crown, the people learned to reckon them unquestionable or even fundamental; and were prepared for that more perfect settlement of the constitution on a more republican basis, which took place after the revolution. The reign of Charles II., though displaying some stretches of arbitrary power, and threatening a great deal more, was, in fact, the transitional state between the ancient and modern schemes of the English constitution; between that course of government where the executive power, so far as executive, was very little bounded except by the laws, and that where it can only be carried on,

* [Aubrey relates a saying of Harrington just before the restoration, which shows his sagacity. "Well! the king will come in. Let him come in and call a parliament of the greatest cavaliers in England, so they be men of estates, and let them sit but seven years, and they will all turn commonwealth's men." Letters of Aubrey and others, from the Bodleian, vol. ii. p. 373. By commonwealth's men, he probably meant only men who would stand up for public liberty against the crown.] — 1845.

even within its own province, by the consent and co-operation, in a great measure, of the parliament.

The commons took advantage of the pressure which the war with Holland brought on the administration, to establish two very important principles on the basis of their sole right of taxation. The first of these was the appropriation of supplies to limited purposes. This indeed was so far from an absolute novelty, that it found precedents in the reigns of Richard II. and Henry IV.; a period when the authority of the house of commons was at a very high pitch. No subsequent instance, I believe, was on record till the year 1624, when the last parliament of James I., at the king's own suggestion, directed their supply for the relief of the Palatinate to be paid into the hands of commissioners named by themselves. There were cases of a similar nature in the year 1641, which, though of course they could no longer be upheld as precedents, had accustomed the house to the idea that they had something more to do than simply to grant money, without any security or provision for its application. In the session of 1665, accordingly, an enormous supply, as it then appeared, of 1,250,000*l.*, after one of double that amount in the preceding year, having been voted for the Dutch war, sir George Downing, one of the tellers of the exchequer, introduced into the subsidy bill a proviso, that the money raised by virtue of that act should be applicable only to the purposes of the war.* Clarendon inveighed with fury against this, as an innovation derogatory to the honour of the crown; but the king himself, having listened to some who persuaded him that the money would be advanced more easily by the bankers, in anticipation of the revenue, upon this better security for speedy re-payment, insisted that it should not be thrown out.† That supplies,

Appropriation of supplies.

* This was carried on a division by 172 to 102. Journals, 25th November, 1665. It was to be raised "in a regulated subsidiary way, reducing the same to a certainty in all counties, so as no person, for his real or personal estate, be exempted." They seem to have had some difficulty in raising this vast subsidy. Parliamentary History, 305.

† 17 Car. II. c. 1. The same clause is repeated next year, and has become regular. ["The bankers did not consist of above the number of five or six men, some whereof were aldermen and had been lord mayors of London, and all the rest were aldermen or had fined for aldermen. They were a tribe that had risen and grown up in Cromwell's time, and never were heard of before the late troubles, till when the whole trade of

granted by parliament, are only to be expended for particular objects specified by itself, became, from this time, an undisputed principle, recognised by frequent and at length constant practice. It drew with it the necessity of estimates regularly laid before the house of commons; and, by exposing the management of the public revenues, has given to parliament, not only a real and effective control over an essential branch of the executive administration, but, in some measure, rendered them partakers in it.*

Commission of public accounts.

It was a consequence of this right of appropriation, that the house of commons should be able to satisfy itself as to the expenditure of their monies in the services for which they were voted. But they might claim a more extensive function, as naturally derived from their power of opening and closing the public purse, that of investigating the wisdom, faithfulness, and economy with which their grants had been expended. For this too there was some show of precedents in the ancient days of Henry IV.; but what undoubtedly had most influence was the recollection, that during the late civil war, and in the times of the commonwealth, the house had superintended, through its committees, the whole receipts and issues of the national treasury. This had not been much practised since the restoration. But in the year 1666, the large cost and indifferent success of the Dutch war begetting vehement suspicions, not only of profuseness but of diversion of the public money from its proper purposes, the house appointed a committee to inspect the accounts of the officers of the navy, ordnance, and stores, which were laid before them, as it appears, by the king's direction. This committee after some time, having been probably found deficient in powers, and particularly being incompetent to administer an oath, the house determined to proceed in a more novel and vigorous manner; and sent up a bill, nominating commissioners to inspect the public accounts, who

money had passed through the hands of the scriveners. They were, for the most part, goldsmiths, men known to be so rich, and of so good reputation, that all the money of the kingdom would be trusted or deposited in their hands." Life of Clarendon, vol. iii. p. 7.]—1845.

* Life of Clarendon, p. 315. Hatsell's Precedents, iii. 80. The principle of appropriation was not carried into full effect till after the revolution. Id. 179. 484.

were to possess full powers of inquiry, and to report with respect to such persons as they should find to have broken their trust. The immediate object of this inquiry, so far as appears from lord Clarendon's mention of it, was rather to discover whether the treasurers had not issued money without legal warrant than to enter upon the details of its expenditure. But that minister, bigoted to his tory creed of prerogative, thought it the highest presumption for a parliament to intermeddle with the course of government. He spoke of this bill as an encroachment and usurpation that had no limits, and pressed the king to be firm in his resolution never to consent to it.* Nor was the king less averse to a parliamentary commission of this nature, as well from a jealousy of its interference with his prerogative, as from a consciousness which Clarendon himself suggests, that great sums had been issued by his orders, which could not be put in any public account; that is (for we can give no other interpretation), that the monies granted for the war, and appropriated by statute to that service, had been diverted to supply his wasteful and debauched course of pleasures.† It was the suspicion, or rather private knowledge of this criminal breach of trust, which had led to the bill in question. But such a slave was Clarendon to his narrow prepossessions, that he would rather

* Life of Clarendon, p. 368. Burnet observes it was looked upon at the time as a great innovation, p. 335.

† Pepys's Diary has lately furnished some things worthy to be extracted. "Mr. W. and I by water to Whitehall, and there at sir George Carteret's lodgings sir William Coventry met; and we did debate the whole business of our accounts to the parliament; where it appears to us that the charge of the war from Sept. 1. 1664, to this Michaelmas, will have been but 3,200,000*l.*, and we have paid in that time somewhat about 2,200,000*l.*, so that we owe about 900,000*l.*: but our method of accounting, though it cannot, I believe, be far wide from the mark, yet will not abide a strict examination, if the parliament should be troublesome. Here happened a pretty question of sir William Coventry, whether this account of ours will not put my lord treasurer to a difficulty to tell what is become of all the money the parliament have given in this time for the war, which hath amounted to about 4,000,000*l.*, which nobody there could answer; but I perceive they did doubt what his answer could be." Sept. 23. 1666. — The money granted the king for the war he afterwards reckons at 5,590,000*l.*, and the debt at 900,000*l.* The charge stated only at 3,200,000*l.* "So what is become of all this sum, 2,390,000*l.*!" He mentions afterwards, Oct. 8., the proviso in the poll-tax bill, that there shall be a committee of nine persons to have the inspection on oath of all the accounts of the money given and spent for the war, "which makes the king and court mad; the king having given order to my lord chamberlain to send to the play-houses and brothels, to bid all the parliament men that were there to go to the parliament presently; but it was carried against the court by thirty or forty voices." It was thought, he says, Dec. 12., that above 400,000*l.* had gone into the privy purse since the war.

see the dissolute excesses which he abhorred suck nourishment from that revenue which had been allotted to maintain the national honour and interests, and which, by its deficiencies thus aggravated, had caused even in this very year the navy to be laid up, and the coasts to be left defenceless, than suffer them to be restrained by the only power to which thoughtless luxury would submit. He opposed the bill therefore in the house of lords, as he confesses, with much of that intemperate warmth which distinguished him, and with a contempt of the lower house and its authority, as imprudent in respect to his own interests as it was unbecoming and unconstitutional. The king prorogued parliament while the measure was depending; but in hopes to pacify the house of commons, promised to issue a commission under the great seal for the examination of public accountants* ; an expedient which was not likely to bring more to light than suited his purpose. But it does not appear that this royal commission, though actually prepared and sealed, was ever carried into effect; for in the ensuing session, the great minister's downfall having occurred in the mean time, the house of commons brought forward again their bill, which passed into a law. It invested the commissioners therein nominated with very extensive and extraordinary powers, both as to auditing public accounts, and investigating the frauds that had taken place in the expenditure of money, and employment of stores. They were to examine upon oath, to summon inquests if they thought fit, to commit persons disobeying their orders to prison without bail, to determine finally on the charge and discharge of all accountants; the barons of the exchequer, upon a certificate of their judgment, were to issue process for recovering money to the king's use, as if there had been an immediate judgment of their own court. Reports were to be made of the commissioners' proceedings from time to time to the king and to both houses of parliament. None of the commissioners were members of either house. The king, as may be supposed, gave way very reluctantly to this interference with his expenses. It brought to light a great deal of abuse and misapplication of the public revenues, and contributed doubtless

* Life of Clarendon, p. 392.

in no small degree to destroy the house's confidence in the integrity of government, and to promote a more jealous watchfulness of the king's designs.* At the next meeting of parliament, in October, 1669, sir George Carteret, treasurer of the navy, was expelled the house for issuing money without legal warrant.

Sir Edward Hyde, whose influence had been almost annihilated in the last years of Charles I. through the inveterate hatred of the queen and those who surrounded her, acquired by degrees the entire confidence of the young king, and baffled all the intrigues of his enemies. Guided by him, in all serious matters, during the latter years of his exile, Charles followed his counsels almost implicitly in the difficult crisis of the restoration. The office of chancellor and the title of earl of Clarendon were the proofs of the king's favour; but in effect, through the indolence and ill health of Southampton, as well as their mutual friendship, he was the real minister of the crown.† By the clandestine marriage of his daughter with the duke of York, he changed one brother from an enemy to a sincere and zealous friend, without forfeiting the esteem and favour of the other. And though he was wise enough to dread the invidiousness of such an elevation, yet for several years it by no means seemed to render his influence less secure.‡

Decline of Clarendon's power.

* 19 & 20 Car. II. c. 1. Burnet, p. 374. They reported unaccounted balances of 1,509,161*l.*, besides much that was questionable in the payments. But, according to Ralph, p. 177., the commissioners had acted with more technical rigour than equity, surcharging the accountants for all sums not expended since the war began, though actually expended for the purposes of preparation.

† Burnet, p. 130. Southampton left all the business of the treasury, according to Burnet, p. 131., in the hands of sir Philip Warwick, "a weak but incorrupt man." The king, he says, chose to put up up with his contradiction rather than make him popular by dismissing him. But in fact, as we see by Clarendon's instance, the king retained his ministers long after he was displeased with them. Southampton's remissness and slowness, notwithstanding his integrity, Pepys says, was the cause of undoing the nation as much as any thing; "yet, if I knew all the difficulties he has lain under, and his instrument sir Philip Warwick, I might be of another mind." May 16. 1667.—He was willing to have done something, Clarendon tells us, p. 415., to gratify the presbyterians; on which account, the bishops thought him not enough affected to the church. His friend endeavours to extenuate this heinous sin of tolerant principles.

‡ The behaviour of lord Clarendon on this occasion was so extraordinary, that no credit could have been given to any other account than his own. The duke of York, he says, informed the king of the affection and friendship that had long been between him and the young lady; that they had been long contracted, and that she was with child; and therefore requested his majesty's leave that he

Both in their characters however, and turn of thinking, there was so little conformity between Clarendon and his

might publicly marry her. The marquis of Ormond by the king's order communicated this to the chancellor, who "broke out into an immoderate passion against the wickedness of his daughter; and said, with all imaginable earnestness, that as soon as he came home, he would turn her out of his house as a strumpet to shift for herself, and would never see her again. They told him that his passion was too violent to administer good counsel to him; that they thought that the duke was married to his daughter, and that there were other measures to be taken than those which the disorder he was in had suggested to him. Whereupon he fell into new commotions; and said, If that were true, he was well prepared to advise what was to be done; that he had much rather his daughter should be the duke's whore than his wife: in the former case, nobody could blame him for the resolution he had taken, for he was not obliged to keep a whore for the greatest prince alive; and the indignity to himself he would submit to the good pleasure of God. But, if there were any reason to suspect the other, he was ready to give a positive judgment, in which he hoped their lordships would concur with him, that the king should immediately cause the woman *to be sent to the Tower and cast into the dungeon*, under so strict a guard that no person living should be admitted to come to her; and then that *an act of parliament should be immediately passed for cutting off her head, to which he would not only give his consent, but would very willingly be the first man that should propose it.* And whoever knew the man, will believe that he said all this very heartily." Lord Southampton, he proceeds to inform us, on the king's entering the room at the time, said very naturally, that the chancellor was mad, and had proposed such extravagant things that he was no more to be consulted with. This, however, did not bring him to his senses; for he repeated his strange proposal of "sending her presently to the Tower, and the rest;" imploring the king to take this course, as the only expedient that could free him from the evils that this business would otherwise bring upon him.

That any man of sane intellects should fall into such an extravagance of passion, is sufficiently wonderful; that he should sit down in cool blood several years afterwards to relate it, is still more so; and perhaps we shall carry our candour to an excess, if we do not set down the whole of this scene to overacted hypocrisy. Charles II., we may be very sure, could see it in no other light. And here I must take notice, by the way, of the singular observation the worthy editor of Burnet has made: "King Charles's conduct in this business was excellent throughout; that of Clarendon *worthy an ancient Roman.*" We have indeed a Roman precedent for subduing the sentiments of nature rather than permitting a daughter to incur disgrace through the passions of the great; but I think Virginius would not quite have understood the feelings of Clarendon. Such virtue was more like what Montesquieu calls "l'héroïsme de l'esclavage," and was just fit for the court of Gondar. But with all this violence that he records of himself, he deviates greatly from the truth: "The king (he says) afterwards spoke every day about it, and told the chancellor that he must behave himself wisely, for that the thing was remediless, and that his majesty knew that they were married; which would quickly appear to all men who knew that nothing could be done upon it. In this time the chancellor had conferred with his daughter, without any thing of indulgence, and not only discovered that they were unquestionably married, but *by whom, and who were present at it, who would be ready to avow it;* which pleased him not, though it diverted him from using some of that rigour which he intended. And he saw no other remedy could be applied but that which he had proposed to the king, who thought of nothing like it." Life of Clarendon, 29. et post.

Every one would conclude from this, that a marriage had been solemnized, if not before their arrival in England, yet before the chancellor had this conference with his daughter. It appears however from the duke of York's declaration in the books of the privy council, quoted by Ralph, p. 40., that he was contracted to

master, that the continuance of his ascendancy can only be attributed to the power of early habit over the most thoughtless tempers. But it rarely happens that kings do not ultimately shake off these fetters, and release themselves from the sort of subjection which they feel in acting always by the same advisers. Charles, acute himself and cool-headed, could not fail to discover the passions and prejudices of his minister, even if he had wanted the suggestion of others who, without reasoning on such broad principles as Clarendon, were perhaps his superiors in judging of temporary business. He wished too, as is common, to depreciate a wisdom, and to

Ann Hyde on the 24th of November, 1659, at Breda; and after that time lived with her as his wife, though very secretly; he married her 3d Sept. 1660, according to the English ritual, lord Ossory giving her away. The first child was born Oct. 22. 1660. Now whether the contract were sufficient to constitute a valid marriage, will depend on two things; first, upon the law existing at Breda; secondly, upon the applicability of what is commonly called the rule of the lex loci, to a marriage between such persons according to the received notions of English lawyers in that age. But, even admitting all this, it is still manifest that Clarendon's expressions point to an actual celebration, and are consequently intended to mislead the reader. Certain it is, that at the time the contract seems to have been reckoned only an honorary obligation. James tells us himself (Macpherson's Extracts, p. 17.) that he promised to marry her; and "though when he asked the king for his leave, he refused and dissuaded him from it, yet at last he opposed it no more, and the duke married her privately, and owned it some time after." His biographer, writing from James's own manuscript, adds, "it may well be supposed that my lord chancellor did his part, but with great caution and circumspection, to soften the king in that matter which in every respect seemed so much for his own advantage." Life of James, 387. And Pepys inserts in his diary, Feb. 23. 1661, "Mr. H. told me how my lord chancellor had lately got the duke of York and duchess, and her woman, my lord Ossory and a doctor, to make oath before most of the judges of the kingdom, concerning all the circumstances of their marriage. And, in fine, it is confessed that they were not fully married till about a month or two before she was brought to bed; but that they were contracted long before, and [were married] time enough for the child to be legitimate. But I do not hear that it was put to the judges to determine that it was so or not." [There was no question to put about the child's legitimacy, which was beyond all doubt.] He had said before that lord Sandwich told him, 17th Oct. 1660, "the king wanted him [the duke] to marry her, but he would not." This seems at first sight inconsistent with what James says himself. But at this time, though the private marriage had really taken place, he had been persuaded by a most infamous conspiracy of some profligate courtiers that the lady was of a licentious character, and that Berkeley, afterwards lord Falmouth, had enjoyed her favours. Life of Clarendon, 33. It must be presumed that those men knew only of a contract which they thought he could break. Hamilton, in the Memoirs of Grammont, speaks of this transaction with his usual levity, though the parties showed themselves as destitute of spirit as of honour and humanity. Clarendon, we must believe (and the most favourable hypothesis for him is to give up his veracity), would not permit his daughter to be made the victim of a few perjured debauchees, and of her husband's fickleness or credulity. [Upon reconsidering this note, I think it probable that Clarendon's conversation with his daughter, when he ascertained her marriage, was subsequent to the 3d of September. It is always difficult to make out his dates.]—1845.

suspect a virtue, which seemed to reproach his own vice and folly. Nor has Clarendon spared those remonstrances against the king's course of life, which are seldom borne without impatience or resentment. He was strongly suspected by the king as well as his courtiers (though, according to his own account, without any reason) of having promoted the marriage of miss Stewart with the duke of Richmond.* But above all he stood in the way of projects, which, though still probably unsettled, were floating in the king's mind. No one was more zealous to uphold the prerogative at a height where it must overtop and chill with its shadow the privileges of the people. No one was more vigilant to limit the functions of parliament, or more desirous to see them confiding and submissive. But there were landmarks which he could never be brought to transgress. He would prepare the road for absolute monarchy, but not introduce it; he would assist to batter down the walls, but not to march into the town. His notions of what the English constitution ought to be, appear evidently to have been derived from the times of Elizabeth and James I., to which he frequently refers with approbation. In the history of that age, he found much that could not be reconciled to any liberal principles of government. But there were two things which he certainly did not find; a revenue capable of meeting an extraordinary demand without parliamentary supply, and a standing army. Hence he took no pains, if he did not even, as is asserted by Burnet, discourage the proposal of others, to obtain such a fixed annual revenue for the king on the restoration, as would have rendered it very rarely necessary to have recourse to parliament†, and did not advise the keeping up any part of the

* Hamilton mentions this as the current rumour of the court, and Burnet has done the same. But Clarendon himself denies that he had any concern in it, or any acquaintance with the parties. He wrote in too humble a strain to the king on the subject. Life of Clar. p. 454.

† Burnet says that Southampton had come into a scheme of obtaining 2,000,000*l.* as the annual revenue; which was prevented by Clarendon, lest it should put the king out of need of parliaments. This the king found out, and hated him mortally for it. P. 223. It is the fashion to discredit all that Burnet says. But observe what we may read in Pepys: "Sir W. Coventry did tell me it as the wisest thing that was ever said to the king by any statesman of his time; and it was by my lord treasurer that is dead, whom, I find, he takes for a very great statesman, that when the king did show himself forward for passing the act of indemnity, he did advise the king that he would hold his hand in doing it, till he had got his power restored that had

army. That a few troops were retained, was owing to the duke of York. Nor did he go the length that was expected in procuring the repeal of all the laws that had been enacted in the long parliament.*

These omissions sank deep in Charles's heart, especially when he found that he had to deal with an unmanageable house of commons, and must fight the battle for arbitrary power; which might have been achieved, he thought, without a struggle by his minister. There was still less hope of obtaining any concurrence from Clarendon in the king's designs as to religion. Though he does not once hint at it in his writings, there can be little doubt that he must have suspected his master's inclination towards the church of Rome. The duke of York considered this as the most likely cause of his remissness in not sufficiently advancing the prerogative.† He was always opposed to the various schemes of a general indulgence towards popery, not only from his strongly protestant principles and his dislike of all toleration, but from a prejudice against the body of the English catholics, whom he thought to arrogate more on the ground of merit than they could claim. That interest, so powerful at court, was decidedly hostile to the chancellor; for the duke of York, who strictly adhered to him, if he had not kept his change of religion wholly secret, does not seem to have hitherto formed any avowed connexion with the popish party.‡

been diminished by the late times, and his revenue settled in such a manner as he might depend upon himself without resting upon parliaments, and then pass it. But my lord chancellor, who thought he could have the command of parliaments for ever, because for the king's sake they were awhile willing to grant all the king desired, did press for its being done; and so it was, and the king from that time able to do nothing with the parliament almost." March 20. 1669. Rari quippe boni! Neither Southampton nor Coventry make the figure in this extract we should wish to find; yet who were their superiors for integrity and patriotism under Charles II.? Perhaps Pepys, like most gossiping men, was not always correct.

* Macpherson's Extracts from Life of James, 17, 18. Compare Innes's Life of James, published by Clarke, i. 391. 393. In the former work it is said that Clarendon, upon Venner's insurrection, advised that the guards should not be disbanded. But this seems to be a mistake in copying: for Clarendon read the duke of York. Pepys however, who heard all the gossip of the town, mentions the year after, that the chancellor thought of raising an army, with the duke as general. Dec. 22. 1661.

† Ibid.

‡ The earl of Bristol, with all his constitutional precipitancy, made a violent attack on Clarendon, by exhibiting articles of treason against him in the house of lords in 1663; believing, no doubt, that

Loss of the king's favour. Coalition against Clarendon.

This estrangement of the king's favour is sufficient to account for Clarendon's loss of power; but his entire ruin was rather accomplished by a strange coalition of enemies, which his virtues, or his errors and infirmities, had brought into union. The cavaliers hated him on account of the act of indemnity, and the presbyterians for that of uniformity. Yet the latter were not in general so eager in his prosecution as the others.* But he owed great part of the severity with which he was treated

the schemes of the intriguers were more mature, and the king more alienated, than was really the case; and thus disgraced himself at court instead of his enemy. Parl. Hist. 276. Life of Clar. 209. Before this time Pepys had heard that the chancellor had lost the king's favour, and that Bristol, with Buckingham and two or three more, ruled him. May 15. 1663.

* A motion to refer the heads of charge against Clarendon to a committee was lost by 194 to 128; Seymour and Osborne telling the noes, Birch and Clarges the ayes. Commons' Journals, Nov. 6. 1667. These names show how parties ran, Seymour and Osborne being high-flying cavaliers, and Birch a presbyterian. A motion that he be impeached for treason on the first article was lost by 172 to 103, the two former tellers for the ayes: Nov. 9. In the Harleian MS. 881. we have a copious account of the debates on this occasion, and a transcript in No. 1218. Sir Heneage Finch spoke much against the charge of treason; Maynard seems to have done the same. A charge of secret correspondence with Cromwell was introduced merely ad invidiam, the prosecutors admitting that it was pardoned by the act of indemnity, but wishing to make the chancellor plead that: Maynard and Hampden opposed it, and it was given up out of shame without a vote. Vaughan, afterwards chief justice, argued that counselling the king to govern by a standing army was treason at common law, and seems to dispute what Finch laid down most broadly, that there can be no such thing as a common-law treason; relying on a passage in Glanvill, where "seductio domini regis" is said to be treason. Maynard stood up for the opposite doctrine. Waller and Vaughan argued that the sale of Dunkirk was treason, but the article passed without declaring it to be so; nor would the word have appeared probably in the impeachment, if a young lord Vaughan had not asserted that he could prove Clarendon to have betrayed the king's councils, on which an article to that effect was carried by 161 to 89. Garraway and Littleton were forward against the Chancellor; but Coventry seems to have taken no great part. See Pepys's Diary, Dec. 3d and 6th, 1667. Baxter also says that the presbyterians were by no means strenuous against Clarendon, but rather the contrary, fearing that worse might come for the country, as giving him credit for having kept off military government. Baxter's Life, part iii. 21. This is very highly to the honour of that party whom he had so much oppressed, if not betrayed. "It was a notable providence of God," he says, "that this man, who had been the great instrument of state, and done almost all, and had dealt so cruelly with the nonconformists, should thus by his own friends be cast out and banished; while those that he had persecuted were the most moderate in his cause, and many for him. And it was a great ease that befell the good people throughout the land by his dejection. For his way was to decoy men into conspiracies or to pretend plots, and upon the rumour of a plot the innocent people of many countries were laid in prison, so that no man knew when he was safe. Whereas since then, though laws have been made more and more severe, yet a man knoweth a little better what he is to expect, when it is by a law that he is to be tried." Sham plots there seem to have been; but it is not reasonable to charge Clarendon with inventing them. Ralph, 122.

to his own pride and ungovernable passionateness, by which he had rendered very eminent men in the house of common implacable, and to the language he had used as to the dignity and privileges of the house itself.* A sense of this eminent person's great talents as well as general integrity and conscientiousness on the one hand, an indignation at the king's ingratitude and the profligate counsels of those who supplanted him on the other, have led most writers to overlook his faults in administration, and to treat all the articles of accusation against him as frivolous or unsupported. It is doubtless impossible to justify the charge of high treason, on which he was impeached; but there are matters that never were or could be disproved; and our own knowledge enables us to add such grave accusations as must show Clarendon's unfitness for the government of a free country.†

His impeachment; some articles of it not unfounded.

1. It is the fourth article of his impeachment, that he "advised and procured divers of his majesty's subjects to be imprisoned against law, in remote islands, garrisons, and other places, thereby to prevent them from the

Illegal imprisonments.

* In his wrath against the proviso inserted by sir George Downing, as above mentioned, in the bill of supply, Clarendon told him, as he confesses, that the king could never be well served, while fellows of his condition were admitted to speak as much as they had a mind; and that in the best times such presumptions had been punished with imprisonment by the lords of the council, without the king's taking notice of it, 321. The king was naturally displeased at this insolent language towards one of his servants, a man who had filled an eminent station, and done services, for a suggestion intended to benefit the revenue. And it was a still more flagrant affront to the house of commons, of which Downing was a member, and where he had proposed this clause, and induced the house to adopt it.

Coventry told Pepys "many things about the chancellor's dismissal, not fit to be spoken; and yet not any unfaithfulness to the king, but instar omnium, that he was so great at the council-board and in the administration of matters there was no room for any body to propose any remedy for what was amiss, or to compass any thing, though never so good for the kingdom, unless approved of by the chancellor; he managing all things with that greatness which now will be removed, that the king may have the benefit of others' advice." Sept. 2. 1667. His own memoirs are full of proofs of this haughtiness and intemperance. He set himself against sir William Coventry, and speaks of a man as able and virtuous as himself with marked aversion. See too life of James, 398. Coventry, according to this writer, 431., was the chief actor in Clarendon's impeachment, but this seems to be a mistake; though he was certainly desirous of getting him out of place.

The king, Clarendon tells us, 438., pretended that the anger of parliament was such, and their power too, as it was not in his power to save him. The fallen minister desired him not to fear the power of parliament, "which was more or less, or nothing, as he pleased to make it." So preposterous as well as unconstitutional a way of talking could not but aggravate his unpopularity with that great body he pretended to contemn.

† State Trials, vi. 318. Parl. Hist.

benefit of the law, and to produce precedents for the imprisoning any other of his majesty's subjects in like manner." This was undoubtedly true. There was some ground for apprehension on the part of the government from those bold spirits who had been accustomed to revolutions, and drew encouragement from the vices of the court and the embarrassments of the nation. Ludlow and Algernon Sidney, about the year 1665, had projected an insurrection, the latter soliciting Louis XIV. and the pensionary of Holland for aid.* Many officers of the old army, Wildman, Creed, and others, suspected, perhaps justly, of such conspiracies, had been illegally detained in prison for several years, and only recovered their liberty on Clarendon's dismissal.† He had too much encouraged the hateful race of informers, though he admits that it had grown a trade by which men got money, and that many were committed on slight grounds.‡ Thus colonel Hutchinson died in the close confinement of a remote prison, far more probably on account of his share in the death of Charles I., from which the act of indemnity had discharged him, than any just pretext of treason.§ It was difficult to obtain a habeas corpus from some of the judges in this reign. But to elude that provision by removing men out of the kingdom, was such an offence against the constitution, as may be thought enough to justify the impeachment of any minister.

2. The first article, and certainly the most momentous, asserts, "That the earl of Clarendon hath designed a standing army to be raised, and to govern the kingdom thereby, and advised the king to dissolve this present parliament, to lay aside all thoughts of parliaments for the future, to govern by a military power, and to maintain the same by free quarter and contribution." This was prodigiously exaggerated; yet there was some foundation for a part of it. In the disastrous summer of 1667, when the Dutch fleet had insulted our

* Ludlow, iii. 118. 165. et post. Clarendon's Life, 290. Burnet, 226. Œuvres de Louis XIV. ii. 204.

† Harris's Lives, v. 28. Biogr. Brit. art. Harrington. Life of James, 396. Somers Tracts, vii. 530. 534.

‡ See Kennet's Register, 757. Ralph, 78. et post, Harris's Lives, v. 182., for the proofs of this.

§ Mem. of Hutchinson, 303. It seems however that he was suspected of some concern with an intended rising in 1663, though nothing was proved against him. Miscellanea Aulica, 319.

coasts, and burned our ships in the Medway, the exchequer being empty, it was proposed in council to call together immediately the parliament, which then stood prorogued to a day at the distance of some months. Clarendon, who feared the hostility of the house of commons towards himself, and had pressed the king to dissolve it, maintained that they could not legally be summoned before the day fixed; and, with a strange inconsistency, attaching more importance to the formalities of law than to its essence, advised that the counties where the troops were quartered should be called upon to send in provisions, and those where there were no troops to contribute money, which should be abated out of the next taxes. And he admits that he might have used the expression of raising contributions, as in the late civil war. This unguarded and unwarrantable language, thrown out at the council-table where some of his enemies were sitting, soon reached the ears of the commons, and, mingled up with the usual misrepresentations of faction, was magnified into a charge of high treason.*

3. The eleventh article charged lord Clarendon with having advised and effected the sale of Dunkirk to the French king, being part of his majesty's dominions, for no greater value than the ammunition, artillery, and stores were worth. The latter part is generally asserted to be false. The sum received is deemed the utmost that Louis would have given, who thought he had made a hard bargain. But it is very difficult to reconcile what Clarendon asserts in his defence, and much more at length in his Life, (that the business of Dunkirk was entirely decided before he had any thing to do in it, by the advice of Albemarle and Sandwich,) with the letters of d'Estrades, the negotiator in this transaction on the part of France. In these letters, written at the time to Louis XIV., Clarendon certainly appears not only as the person chiefly concerned, but as representing himself almost the only one of the council favourable to the measure,

Sale of Dunkirk.

* Life of Clarendon, 424. Pepys says, the parliament was called together "against the duke of York's mind flatly, who did rather advise the king to raise money as he pleased; and against the chancellor, who told the king that queen Elizabeth did do all her business in 1588 without calling a parliament, and so might he do for any thing he saw." June 25. 1667. He probably got this from his friend sir W. Coventry.

and having to overcome the decided repugnance of Southampton, Sandwich, and Albemarle.* I cannot indeed see any other explanation than that he magnified the obstacles in the way of this treaty, in order to obtain better terms; a management not very unusual in diplomatical dealing, but, in the degree at least to which he carried it, scarcely reconcilable with the good faith we should expect from this minister. For the transaction itself, we can hardly deem it honourable or politic. The expense of keeping up Dunkirk, though not trifling, would have been willingly defrayed by parliament; and could not well be pleaded by a government which had just encumbered itself with the useless burthen of Tangier. That its possession was of no great direct value to England must be confessed; but it was another question whether it ought to have been surrendered into the hands of France.

4. This close connexion with France is indeed a great reproach to Clarendon's policy, and was the spring of mischiefs to which he contributed, and which he ought to have foreseen. What were the motives of these strong professions of attachment to the interests of Louis XIV. which he makes in some of his letters, it is difficult to say, since he had undoubtedly an ancient prejudice against that nation and its

* Ralph, 78, &c. The overture came from Clarendon, the French having no expectation of it. The worst was that, just before, he had dwelt in a speech to parliament on the importance of Dunkirk. This was on May 19. 1662. It appears by Louis XIV.'s own account, which certainly does not tally with some other authorities, that Dunkirk had been so great an object with Cromwell, that it was the stipulated price of the English alliance. Louis, however, was vexed at this, and determined to recover it at any price: il est certain que je ne pouvois trop donner pour racheter Dunkerque. He sent d'Estrades accordingly to England in 1661, directing him to make this his great object. Charles told the ambassador that Spain had made him great offers, but he would rather treat with France. Louis was delighted at this; and though the sum asked was considerable, 5,000,000 livres, he would not break off, but finally concluded the treaty for 4,000,000, payable in three years; nay, saved 500,000 without its being found out by the English, for a banker having offered them prompt payment at this discount, they gladly accepted it; but this banker was a person employed by Louis himself, who had the money ready. He had the greatest anxiety about this affair; for the city of London deputed the lord mayor to offer any sum so that Dunkirk might not be alienated. Œuvres de Louis XIV. i. 167. If this be altogether correct, the king of France did not fancy he had made so bad a bargain; and indeed, with his projects, if he had the money to spare, he could not think so. Compare the Mémoires d'Estrades, and the supplement to the third volume of Clarendon State Papers. The historians are of no value, except as they copy from some of these original testimonies.

government. I should incline to conjecture that his knowledge of the king's unsoundness in religion led him to keep at a distance from the court of Spain, as being far more zealous in its popery, and more connected with the Jesuit faction, than that of France; and this possibly influenced him also with respect to the Portuguese match, wherein, though not the first adviser, he certainly took much interest; an alliance as little judicious in the outset, as it proved eventually fortunate.* But the capital misdemeanour that he committed in this relation with France was the clandestine solicitation of pecuniary aid for the king. He first taught a lavish prince to seek the wages of dependence in a foreign power, to elude the control of parliament by the help of French money.† The purpose for which this aid was asked, the succour of Portugal, might be fair and laudable; but the precedent was most base, dangerous, and abominable. A king who had once tasted the sweets of dishonest and clandestine lucre would, in the words of the poet, be no more capable afterwards of abstaining from it, than a dog from his greasy offal.

Solicitation of French money.

These are the errors of Clarendon's political life; which, besides his notorious concurrence in all measures of severity and restraint towards the non-conformists, tend to diminish our respect for his memory, and to exclude his name from that list of great and wise ministers, where some are willing to place him near the head. If I may seem to my readers less favourable to so eminent a person than common history might warrant, it is at least to be said that I have formed my decision from his own recorded sentiments, or from equally undisputable sources of authority. The publication of his life, that is, of the history of his administration,

Clarendon's faults as a minister.

* Life of Clar. 78. Life of James, 393.

† See Supplement to third volume of Clarendon State Papers, for abundant evidence of the close connexion between the courts of France and England. The former offered bribes to lord Clarendon so frequently and unceremoniously, that one is disposed to think he did not show so much indignation at the first overture as he ought to have done. See pp. 1. 4. 13. The aim of Louis was to effect the match with Catharine. Spain would have given a great portion with any protestant princess, in order to break it. Clarendon asked, on his master's account, for 50,000*l.* to avoid application to parliament, p. 4. The French offered a secret loan, or subsidy perhaps, of 2,000,000 livres for the succour of Portugal. This was accepted by Clarendon, p. 15.; but I do not find any thing more about it.

has not contributed to his honour. We find in it little or nothing of that attachment to the constitution for which he had acquired credit, and some things which we must struggle hard to reconcile with his veracity, even if the suppression of truth is not to be reckoned an impeachment of it in an historian.* But the manifest profligacy of those who contributed most to his ruin, and the measures which the court took soon afterwards, have rendered his administration comparatively honourable, and attached veneration to his memory. We are unwilling to believe that there was any thing to censure in a minister, whom Buckingham persecuted, and against whom Arlington intrigued.†

* As no one, who regards with attachment the present system of the English constitution, can look upon lord Clarendon as an excellent minister, or a friend to the soundest principles of civil and religious liberty; so no man whatever can avoid considering his incessant deviations from the great duties of an historian as a moral blemish in his character. He dares very frequently to say what is not true, and what he must have known to be otherwise; he does not dare to say what is true. And it is almost an aggravation of this reproach, that he aimed to deceive posterity, and poisoned at the fountain a stream from which another generation was to drink. No defence has ever been set up for the fidelity of Clarendon's history; nor can men, who have sifted the authentic materials, entertain much difference of judgment in this respect; though, as a monument of powerful ability and impressive eloquence, it will always be read with that delight which we receive from many great historians, especially the ancient, independent of any confidence in their veracity.

One more instance, before we quit lord Clarendon for ever, may here be mentioned of his disregard for truth. The strange tale of a fruitless search after the restoration for the body of Charles I. is well known. Lords Southampton and Lindsey, he tells us, who had assisted at their master's obsequies in St. George's chapel at Windsor, were so overcome with grief, that they could not recognise the place of interment; and, after several vain attempts, the search was abandoned in despair. Hist. of Rebellion, vi. 244. Whatever motive the noble historian may have had for this story, it is absolutely incredible that any such ineffectual search was ever made. Nothing could have been more easy than to have taken up the pavement of the choir. But this was unnecessary. Some at least of the workmen employed must have remembered the place of the vault. Nor did it depend on them; for sir Thomas Herbert, who was present, had made at the time a note of the spot, "just opposite the eleventh stall on the king's side." Herbert's Memoirs, 142. And we find from Pepys's Diary, Feb. 26. 1666, that "he was shown at Windsor, where the late king was buried, and king Henry VIII., and my lady Seymour." In which spot, as is well known, the royal body has twice been found, once in the reign of Anne, and again in 1813. [It has been sometimes suggested, that Charles II. having received a large sum of money from parliament towards his father's funeral, chose to have it believed, that the body could not be found. But the vote of 70,000*l.* by the commons for this purpose was on Jan. 30. 1678, long after the pretended search which Clarendon has mentioned. Wren was directed to make a design for a monument, which is in All Souls' College; but no further steps were taken. Ellis's Letters, 1st series, vol. iii. p. 329. It seems very unlikely that the king ever got the money which had been voted, and the next parliaments were not in a temper to repeat the offer.] — 1845.

† The tenor of Clarendon's life and writings almost forbids any surmise of pecuniary corruption. Yet this is insinu-

A distinguished characteristic of Clarendon had been his firmness, called indeed by most pride and obstinacy, which no circumstances, no perils, seemed likely to bend. But his spirit sunk all at once with his fortune. Clinging too long to office, and cheating himself against all probability with a hope of his master's kindness when he had lost his confidence, he forgot that dignified philosophy which ennobles a voluntary retirement, that stern courage which innocence ought to inspire; and hearkening to the king's treacherous counsels, fled before his enemies into a foreign country. Though the impeachment, at least in the point of high treason, cannot be defended, it is impossible to deny that the act of banishment, under the circumstances of his flight, was capable, in the main, of full justification. In an ordinary criminal suit, a process of outlawry goes against the accused who flies from justice; and his neglect to appear within a given time is equivalent, in cases of treason or felony, to a conviction of the offence; can it be complained of, that a minister of state, who dares not confront a parliamentary impeachment, should be visited with an analogous penalty? But, whatever injustice and violence may be found in this prosecution, it established for ever the right of impeachment, which the discredit into which the long parliament had fallen exposed to some hazard; the strong abettors of prerogative, such as Clarendon himself, being inclined to dispute this responsibility of the king's advisers to parliament. The commons had, in the preceding session, sent up an impeachment against lord Mordaunt, upon charges of so little public moment, that they may be suspected of having chiefly had in view the assertion of this important privilege.* It

His pusillanimous flight,

and consequent banishment.

ated by Pepys, on the authority of Evelyn, April 27. and May 16. 1667. But the one was gossiping, though shrewd; and the other feeble, though accomplished. Lord Dartmouth, who lived in the next age, and whose splenetic humour makes him no good witness against any body, charges him with receiving bribes from the main instruments and promoters of the late troubles, and those who had plundered the royalists, which enabled him to build his great mansion in Piccadilly; asserting that it was full of pictures belonging to families who had been despoiled of them. "And whoever had a mind to see what great families had been plundered during the civil war, might find some remains either at Clarendon house or at Cornbury." Note on Burnet, 88.

The character of Clarendon, as a minister, is fairly and judiciously drawn by Macpherson, Hist. of England, 98.; a work by no means so full of a tory spirit as has been supposed.

* Parl. Hist. 347.

was never called in question from this time; and indeed they took care during the remainder of this reign, that it should not again be endangered by a paucity of precedents.*

The period between the fall of Clarendon in 1667, and the commencement of lord Danby's administration in 1673, is generally reckoned one of the most disgraceful in the annals of our monarchy. This was the age of what is usually denominated the Cabal administration, from the five initial letters of sir Thomas Clifford, first commissioner of the treasury, afterwards lord Clifford and high treasurer, the earl of Arlington, secretary of state, the duke of Buckingham, lord Ashley, chancellor of the exchequer, afterwards earl of Shaftesbury and lord chancellor, and lastly, the duke of Lauderdale. Yet, though the counsels of these persons soon became extremely pernicious and dishonourable, it must be admitted that the first measures after the banishment of Clarendon, both in domestic

Cabal ministry.

Scheme of comprehension and indulgence.

* The lords refused to commit the earl of Clarendon on a general impeachment of high treason; and in a conference with the lower house, denied the authority of the precedent in Strafford's case, which was pressed upon them. It is remarkable that the managers of this conference for the commons vindicated the first proceedings of the long parliament, which shows a considerable change in their tone since 1661. They do not however seem to have urged, what is an apparent distinction between the two precedents, that the commitment of Strafford was on a verbal request of Pym in the name of the commons, without alleging any special matter of treason, and consequently irregular and illegal; while the 16th article of Clarendon's impeachment charges him with betraying the king's counsels to his enemies; which, however untrue, evidently amounted to treason within the statute of Edward III.; so that the objection of the lords extended to committing any one for treason upon impeachment, without all the particularity required in an indictment. This showed a very commendable regard to the liberty of the subject; and from this time we do not find the vague and unintelligible accusations, whether of treason or misdemeanour, so usual in former proceedings of parliament. Parl. Hist. 387. A protest was signed by Buckingham, Albemarle, Bristol, Arlington, and others of their party, including three bishops, (Cosins, Croft, and another,) against the refusal of their house to commit Clarendon upon the general charge. A few, on the other hand, of whom Hollis is the only remarkable name, protested against the bill of banishment.

"The most fatal blow (says James) the king gave himself to his power and prerogative, was when he sought aid from the house of commons to destroy the earl of Clarendon: by that he put that house again in mind of their impeaching privilege, which had been wrested out of their hands by the restoration; and when ministers found they were like to be left to the censure of parliament, it made them have a greater attention to court an interest there than to pursue that of their princes, from whom they hoped not for so sure a support." Life of James, 593.

The king, it is said, came rather slowly into the measure of impeachment; but became afterwards so eager, as to give the attorney-general, Finch, positive orders to be active in it, observing him to be silent. Carte's Ormond, ii. 353. Buckingham had made the king great promises of what the commons would do, in case he would sacrifice Clarendon.

and foreign policy, were highly praiseworthy. Bridgeman, who succeeded the late chancellor in the custody of the great seal, with the assistance of chief baron Hale and bishop Wilkins, and at the instigation of Buckingham, who, careless about every religion, was from humanity or politic motives friendly to the indulgence of all, laid the foundations of a treaty with the non-conformists, on the basis of a comprehension for the presbyterians, and a toleration for the rest.* They had nearly come, it is said, to terms of agreement, so that it was thought time to intimate their design in a speech from the throne. But the spirit of 1662 was still too powerful in the commons; and the friends of Clarendon, whose administration this change of counsels seemed to reproach, taking a warm part against all indulgence, a motion that the king be desired to send for such persons as he should think fit to make proposals to him in order to the uniting of his protestant subjects, was negatived by 176 to 70.† They proceeded, by almost an equal majority, to continue the bill of 1664, for suppressing seditious conventicles; which failed, however, for the present, in consequence of the sudden prorogation.‡

Triple alliance.

But whatever difference of opinion might at that time prevail with respect to this tolerant disposition of the new government, there was none as to their great measure in external policy, the triple alliance with Holland and Sweden. A considerable and pretty sudden change had taken place in the temper of the English people towards France. Though the discordance of national character, and the dislike that seems natural to neighbours, as well as in

* Kennet, 293. 300. Burnet. Baxter, 23. The design was to act on the principle of the declaration of 1600, so that presbyterian ordinations should pass sub modo. Tillotson and Stillingfleet were concerned in it. The king was at this time exasperated against the bishops for their support of Clarendon. Burnet, ibid. Pepys's Diary, 21st Dec. 1667. And he had also deeper motives.

† Parl. Hist, 421. Ralph, 170. Carte's Life of Ormond, ii. 362. Sir Thomas Littleton spoke in favour of the comprehension, as did Seymour and Waller; all of them enemies of Clarendon, and probably connected with the Buckingham faction: but the church party was much too strong for them. Pepys says the commons were furious against the project; it was said that whoever proposed new laws about religion must do it with a rope about his neck. Jan. 10. 1668. This is the first instance of a triumph obtained by the church over the crown in the house of commons. Ralph observes upon it, "It is not for nought that the words church and state are so often coupled together, and that the first has so insolently usurped the precedency of the last."

‡ Parl. Hist. 422.

some measure the recollections of their ancient hostility, had at all times kept up a certain ill will between the two, it is manifest that before the reign of Charles II. there was not that antipathy and inveterate enmity towards the French in general, which it has since been deemed an act of patriotism to profess. The national prejudices, from the accession of Elizabeth to the restoration, ran far more against Spain; and it is not surprising that the apprehensions of that ambitious monarchy, which had been very just in the age of Philip II., should have lasted longer than its ability or inclination to molest us. But the rapid declension of Spain, after the peace of the Pyrenees, and the towering ambition of Louis XIV., master of a kingdom intrinsically so much more formidable than its rival, manifested that the balance of power in Europe, and our own immediate security, demanded a steady opposition to the aggrandisement of one monarchy, and a regard to the preservation of the other. These indeed were rather considerations for statesmen than for the people; but Louis was become unpopular both by his acquisition of Dunkirk at the expense, as it was thought, of our honour, and much more deservedly by his shuffling conduct in the Dutch war, and union in it with our adversaries. Nothing therefore gave greater satisfaction in England than the triple alliance, and consequent peace of Aix la Chapelle, which saved the Spanish Netherlands from absolute conquest, though not without important sacrifices.*

Intrigue with France.

Charles himself meanwhile by no means partook in this common jealousy of France. He had, from the time of his restoration, entered into close relations with that power, which a short period of hostility had interrupted without leaving any resentment in his mind. It is now known that, while his minister was negotiating at the Hague for the triple alliance, he had made overtures for a clandestine treaty with Louis, through his sister the duchess

* France retained Lille, Tournay, Douay, Charleroi, and other places by the treaty. The allies were surprised, and not pleased at the choice Spain made of yielding these towns in order to save Franche Comté. Temple's Letters, 97. In fact, they were not on good terms with that power; she had even a project, out of spite to Holland, of giving up the Netherlands entirely to France, in exchange for Rousillon, but thought better of it on cooler reflection.

of Orleans, the duke of Buckingham, and the French ambassador Rouvigny.* As the king of France was at first backward in meeting these advances, and the letters published in regard to them are very few, we do not find any precise object expressed beyond a close and intimate friendship. But a few words in a memorial of Rouvigny to Louis XIV. seem to let us into the secret of the real purpose. "The duke of York," he says, "wishes much for this union; the duke of Buckingham the same: they use no art, but say that nothing else can re-establish the affairs of this court." †

King's desire to be absolute.

Charles II. was not of a temperament to desire arbitrary power, either through haughtiness and conceit of his station, which he did not greatly display, or through the love of taking into his own hands the direction of public affairs, about which he was in general pretty indifferent. He did not wish, as he told lord Essex, to sit like a Turkish sultan, and sentence men to the bowstring, but could not bear that a set of fellows should inquire into his conduct. ‡ His aim, in fact, was liberty rather than power; it was that immunity from control and censure, in which men of his character place a great part of their happiness. For some years he had cared probably very little about enhancing his prerogative, content with the loyalty, though not quite with the liberality, of his parliament. And had he not been drawn, against his better judgment, into the war with Holland, this harmony might perhaps have been protracted a good deal longer. But the vast expenditure of that war, producing little or no decisive success, and coming unfortunately at a time when trade was not very thriving, and when rents had considerably fallen, exasperated all men against the prodigality of the court, to which they might justly ascribe part of their burthens, and, with the usual miscalculations, believed that much more of them was due. Hence the bill appointing commissioners

* Dalrymple, ii. 5. et post. Temple was not treated very favourably by most of the ministers on his return from concluding the triple alliance: Clifford said to a friend, "Well, for all this noise, we must yet have another war with the Dutch before it be long." Temple's Letters, 123.

† Dalrymple, ii. 12.

‡ Burnet.

of public account, so ungrateful to the king, whose personal reputation it was likely to affect, and whose favourite excesses it might tend to restrain.

He was almost equally provoked by the license of his people's tongues. A court like that of Charles is the natural topic of the idle, as well as the censorious. An administration so ill-conducted could not escape the remarks of a well-educated and intelligent city. There was one method of putting an end to these impertinent comments, or of rendering them innoxious; but it was the last which he would have adopted. Clarendon informs us that the king one day complaining of the freedom, as to political conversation, taken in coffee-houses, he recommended either that all persons should be forbidden by proclamation to resort to them, or that spies should be placed in them to give information against seditious speakers.* The king, he says, liked both expedients; but thought it unfair to have recourse to the latter till the former had given fair warning, and directed him to propose it to the council; but here, sir William Coventry objecting, the king was induced to abandon the measure, much to Clarendon's disappointment, though it probably saved him an additional article in his impeachment. The unconstitutional and arbitrary tenor of this great minister's notions of government is strongly displayed in this little anecdote. Coventry was an enlightened, and, for that age, an upright man, whose enmity Clarendon brought on himself by a marked jealousy of his abilities in council.

Those who stood nearest to the king were not backward to imitate his discontent at the privileges of his people and their representatives. The language of courtiers and court-ladies is always intolerable to honest men, especially that of such courtiers as surrounded the throne of Charles II. It is worst of all amidst public calamities, such as pressed very closely on one another in a part of his reign; the awful pestilence of 1665, the still more ruinous fire of 1666, the fleet burned by the Dutch in the Medway next summer. No one could reproach the king for outward inactivity or indifference during the great fire. But there were some, as

* Life of Clarendon, 357.

Clarendon tells us, who presumed to assure him, "that this was the greatest blessing that God had ever conferred on him, his restoration only excepted; for the walls and gates being now burned and thrown down of that rebellious city, which was always an enemy to the crown, his majesty would never suffer them to repair and build them up again, to be a bit in his mouth and a bridle upon his neck; but would keep all open, that his troops might enter upon them whenever he thought it necessary for his service; there being no other way to govern that rude multitude but by force."* This kind of discourse, he goes on to say, did not please the king. But here we may venture to doubt his testimony; or, if the natural good temper of Charles prevented him from taking pleasure in such atrocious congratulations, we may be sure that he was not sorry to think the city more in his power.

It seems probable that this loose and profligate way of speaking gave rise, in a great degree, to the suspicion that the city had been purposely burned by those who were more enemies to religion and liberty than to the court. The papists stood ready to bear the infamy of every unproved crime; and a committee of the house of commons collected evidence enough for those who were already convinced, that London had been burned by that obnoxious sect. Though the house did not proceed farther, there can be no doubt that the inquiry contributed to produce that inveterate distrust of the court, whose connexions with the popish faction were half known, half conjectured, which gave from this time an entirely new complexion to the parliament. Prejudiced as the commons were, they could hardly have imagined the catholics to have burned the city out of mere malevolence; but must have attributed the crime to some far-spreading plan of subverting the established constitution.†

* Life of Clarendon, 355.

† State Trials, vi. 807. One of the oddest things connected with this fire was, that some persons of the fanatic party had been hanged in April, for a conspiracy to surprise the Tower, murder the duke of Albemarle and others, and then declare for an equal division of lands, &c. In order to effect this, the city was to be fired, and the guards secured in their quarters; and for this the 3d of September following was fixed upon as a lucky day. This is undoubtedly to be read in the London Gazette for April 30. 1666; and it is equally certain that the city was in flames on the 3d of September. But, though the coincidence is curious, it would be very weak to think it more than a coincidence, for the same reason as applies to the sus-

The retention of the king's guards had excited some jealousy, though no complaints seem to have been made of it in parliament; but the sudden levy of a considerable force in 1667, however founded upon a very plausible pretext from the circumstances of the war, lending credit to these dark surmises of the court's sinister designs, gave much greater alarm. The commons, summoned together in July, instantly addressed the king to disband his army as soon as the peace should be made. We learn from the duke of York's private memoirs, that some of those who were most respected for their ancient attachment to liberty, deemed it in jeopardy at this crisis. The earls of Northumberland and Leicester, lord Hollis, Mr. Pierpoint, and others of the old parliamentary party, met to take measures together. The first of these told the duke of York that the nation would not be satisfied with the removal of the chancellor, unless the guards were disbanded, and several other grievances redressed. The duke bade him be cautious what he said, lest he should be obliged to inform the king; but Northumberland replied that it was his intention to repeat the same to the king, which he did accordingly the next day.*

This change in public sentiment gave warning to Charles that he could not expect to reign with as little trouble as he had hitherto experienced; and doubtless the recollection of his father's history did not contribute to cherish the love he sometimes pretended for parliaments.† His brother, more reflecting and more impatient of restraint on royal authority, saw with still greater clearness than the king, that they could

picion which the catholics incurred; that the mere destruction of the city could not have been the object of any party, and that nothing was attempted to manifest any further design.

* Macpherson's Extracts, 38. 49. Life of James, 426.

† ["I am sorry," says Temple, very wisely and virtuously, "his majesty should meet with any thing he did not look for at the opening of this session of parliament; but confess I do not see why his majesty should [not] not only consent, but encourage any inquiries or disquisitions they desire to make into the miscarriages of the late war, as well as he had done already in the matter of accounts. For if it be not necessary, it is a king's care and happiness to content his people. I doubt, as men will never part willingly with their money, unless they be well persuaded it will be employed directly to those ends for which they gave it, so they will never be satisfied with a government, unless they see men are chosen into offices and employments by being fit for them, continued for discharging them well, rewarded for extraordinary merit, and punished for remarkable faults." March 2. 1668. Courtenay's Life of Temple, vol. ii. p. 90.] — 1845.

only keep the prerogative at its desired height by means of intimidation. A regular army was indispensable; but to keep up an army in spite of parliament, or to raise money for its support without parliament, were very difficult undertakings. It seemed necessary to call in a more powerful arm than their own; and, by establishing the closest union with the king of France, to obtain either military or pecuniary succours from him, as circumstances might demand. But there was another and not less imperious motive for a secret treaty. The king, as has been said, though little likely, from the tenor of his life, to feel very strong and lasting impressions of religion, had at times a desire to testify publicly his adherence to the Romish communion. The duke of York had come more gradually to change the faith in which he was educated. He describes it as the result of patient and anxious inquiry; nor would it be possible therefore to fix a precise date for his conversion, which seems to have been not fully accomplished till after the restoration.* He however continued in conformity to the church of England; till, on discovering that the catholic religion exacted an outward communion, which he had fancied not indispensable, he became more uneasy at the restraint that policy imposed on him. This led to a conversation with the king, of whose private opinions and disposition to declare them he was probably informed, and to a close union with Clifford and Arlington, from whom he had stood aloof on account of their animosity against Clarendon. The king and duke held a consultation with those two ministers, and with lord Arundel of Wardour, on the 25th of January, 1669, to

* He tells us himself that it began by his reading a book written by a learned bishop of the church of England to clear her from schism in leaving the Roman communion, which had a contrary effect on him; especially when, at the said bishop's desire, he read an answer to it. This made him inquisitive about the grounds and manner of the reformation. *After his return*, Heylin's History of the Reformation, and the preface to Hooker's Ecclesiastical Polity, thoroughly convinced him that neither the church of England, nor Calvin, nor any of the reformers, had power to do what they did; and he was confident, he said, that whosoever reads those two books with attention and without prejudice, would be of the same opinion. Life of James, i. 629. The duchess of York embraced the same creed as her husband, and, as he tells us, without knowledge of his sentiments, but one year before her death in 1670. She left a paper at her death containing the reasons for her change. See it in Kennet, 320. It is plain that she, as well as the duke, had been influenced by the Romanizing tendency of some Anglican divines.

discuss the ways and methods fit to be taken for the advancement of the catholic religion in these kingdoms. The king spoke earnestly, and with tears in his eyes. After a long deliberation, it was agreed that there was no better way to accomplish this purpose than through France; the house of Austria being in no condition to give any assistance.*

Secret treaty of 1670.

The famous secret treaty, which, though believed on pretty good evidence not long after the time, was first actually brought to light by Dalrymple about half a century since, began to be negotiated very soon after this consultation.† We find allusions to the king's projects in one of his letters to the duchess of Orleans, dated 22d March, 1669.‡ In another of June 6., the methods he was adopting to secure himself in this perilous juncture appear. He was to fortify Plymouth, Hull, and Portsmouth, and to place them in trusty hands. The fleet was under the duke, as lord admiral; the guards and their officers were thought in general well affected§; but his great reliance was on the most christian king. He stipulated for

Its objects.

* Macpherson, 50. Life of James, 414.

† De Witt was apprised of the intrigue between France and England as early as April, 1669, through a Swedish agent at Paris. Temple, 179. Temple himself, in the course of that year, became convinced that the king's views were not those of his people, and reflects severely on his conduct in a letter, December 24. 1669, p. 206. In September, 1670, on his sudden recall from the Hague, De Witt told him his suspicions of a clandestine treaty, 241. He was received on his return coldly by Arlington, and almost with rudeness by Clifford, 244. They knew he would never concur in the new projects. But in 1682, during one of the intervals when Charles was playing false with his brother Louis, the letter, in revenge, let an abbé Primi, in a history of the Dutch war, publish an account of the whole secret treaty, under the name of the count de St. Majolo. This book was immediately suppressed at the instance of the English ambassador; and Primi was sent for a short time to the Bastile. But a pamphlet, published in London just after the Revolution, contains extracts from it. Dalrymple, ii. 80. Somers Tracts, viii. 13. State Tracts, temp. W. III., vol. i. p. 1. Harl. Misc. ii. 387. Œuvres de Louis XIV., vi. 476. It is singular that Hume should have slighted so well authenticated a fact, even before Dalrymple's publication of the treaty; but I suppose he had never heard of Primi's book. [Yet it had been quoted by Bolingbroke, Dissertation on Parties, Letter iv., who alludes also to "other proofs, which have not seen the light." And, in the "Letters on the Study of History," Lett. vii., he is rather more explicit about "the private relations I have read formerly, drawn up by those who were no enemies to such designs, and on the authority of those who were parties to them."] The original treaty has lately been published by Dr. Lingard, from Lord Clifford's cabinet. [Dalrymple had only given a rough draught from the depôt at Versailles, drawn by sir Richard Bealing for the French court. The variations are not very material.]

‡ Dalrymple, ii. 22.

§ Dalrymple, 23. Life of James, 442.

200,000*l.* annually, and for the aid of 6000 French troops.* In return for such important succour, Charles undertook to serve his ally's ambition and wounded pride against the United Provinces. These, when conquered by the French arms, with the co-operation of an English navy, were already shared by the royal conspirators. A part of Zealand fell to the lot of England, the remainder of the Seven Provinces to France, with an understanding that some compensation should be made to the prince of Orange. In the event of any new rights to the Spanish monarchy accruing to the most christian king, at it is worded, (that is, on the death of the king of Spain, a sickly child,) it was agreed that England should assist him with all her force by sea and land, but at his own expense; and should obtain, not only Ostend and Minorca, but, as far as the king of France could contribute to it, such parts of Spanish America as she should choose to conquer.† So strange a scheme of partitioning that vast inheritance was never, I believe, suspected till the publication of the treaty; though Bolingbroke had alluded to a previous treaty of partition between Louis and the emperor Leopold, the complete discovery of which has been but lately made.‡

Each conspirator, in his coalition against the protestant faith and liberties of Europe, had splendid objects in view; but those of Louis seemed by far the more probable of the two, and less liable to be defeated. The full completion of their scheme would have re-

Differences between Charles and Louis as to the mode of its execution.

* The tenor of the article leads me to conclude, that these troops were to be landed in England at all events, in order to secure the public tranquillity, without waiting for any disturbance.

† P. 49.

‡ Bolingbroke has a remarkable passage as to this in his Letters on History (Letter VII.): it may be also alluded to by others. The full details, however, as well as more authentic proofs, were reserved, as I believe, for the publication of Œuvres de Louis XIV., where they will be found in vol. ii. 403. The proposal of Louis to the emperor, in 1667, was, that France should have the Pays Bas, Franche Comté, Milan, Naples, the ports of Tuscany, Navarre, and the Philippine Islands; Leopold taking all the rest. The obvious drift of this was, that France should put herself in possession of an enormous increase of power and territory, leaving Leopold to fight as he could for Spain and America, which were not likely to submit peaceably. The Austrian cabinet understood this; and proposed that they should exchange their shares. Finally, however, it was concluded on the king's terms, except that he was to take Sicily instead of Milan. One article of this treaty was, that Louis should keep what he had conquered in Flanders; in other words, the terms of the treaty of Aix la Chapelle. The ratifications were exchanged 29th Feb. 1668. Louis represents himself as more

united a great kingdom to the catholic religion, and turned a powerful neighbour into a dependent pensioner. But should this fail (and Louis was too sagacious not to discern the chances of failure), he had pledged to him the assistance of an ally in subjugating the republic of Holland, which, according to all human calculation, could not withstand their united efforts; nay, even in those ulterior projects which his restless and sanguine ambition had ever in view, and the success of which would have realized, not indeed the chimera of an universal monarchy, but a supremacy and dictatorship over Europe. Charles, on the other hand, besides that he had no other return to make for the necessary protection of France, was impelled by a personal hatred of the Dutch, and by the consciousness that their commonwealth was the standing reproach of arbitrary power, to join readily in the plan for its subversion. But, looking first to his own objects, and perhaps a little distrustful of his ally, he pressed that his profession of the Roman catholic religion should be the first measure in prosecution of the treaty; and that he should immediately receive the stipulated 200,000*l.*, or at least a part of the money. Louis insisted that the declaration of war against Holland should precede. This difference occasioned a considerable delay; and it was chiefly with a view of bringing round her brother on this point, that the duchess of Orleans took her famous journey to Dover in the spring of 1670. Yet, notwithstanding her influence, which passed for irresistible, he persisted in adhering to the right reserved to him in the draft of the treaty, of choosing his own time for the declaration of his religion; and it was concluded on this footing at Dover, by Clifford, Arundel, and Arlington, on the 22d of May, 1670, during the visit of the duchess of Orleans.*

induced by this prospect than by any fear of the triple alliance, of which he speaks slightingly, to conclude the peace of Aix la Chapelle. He thought that he should acquire a character for moderation which might be serviceable to him, "dans les grands accroissemens que ma fortune pourroit recevoir." Vol. ii. p. 369.

* Dalrymple, 31—57. James gives a different account of this; and intimates that Henrietta, whose visit to Dover he had for this reason been much against, prevailed on the king to change his resolution, and to begin with the war. He gained over Arlington and Clifford. The duke told them it would quite defeat the catholic design, because the king must run in debt, and be at the mercy of his parliament. They answered that, if the war succeeded, it was not much matter

A mutual distrust, however, retarded the further progress of this scheme; one party unwilling to commit himself till he should receive money, the other too cautious to run the risk of throwing it away. There can be no question but that the king of France was right in urging the conquest of Holland as a preliminary of the more delicate business they were to manage in England; and, from Charles's subsequent behaviour, as well as his general fickleness and love of ease, there seems reason to believe that he would gladly have receded from an undertaking of which he must every day have more strongly perceived the difficulties. He confessed, in fact, to Louis's ambassador, that he was almost the only man in his kingdom who liked a French alliance.* The change of religion, on a nearer view, appeared dangerous for himself, and impracticable as a national measure. He had not dared to intrust any of his protestant ministers, even Buckingham, whose indifference in such points was notorious, with this great secret; and, to keep them the better in the dark, a mock negotiation was set on foot with France, and a pretended treaty actually signed, the exact counterpart of the other, except as to religion. Buckingham, Shaftesbury, and Lauderdale were concerned in this simulated treaty, the negotiation for which did not commence till after the original convention had been signed at Dover.†

what people suspected. P. 450. This shows that they looked on force as necessary to compass the design, and that the noble resistance of the Dutch, under the prince of Orange, was that which frustrated the whole conspiracy. "The duke," it is again said, p. 453., "was in his own judgment against entering into this war before his majesty's power and authority in England had been better fixed and less precarious, as it would have been, if the private treaty first agreed on had not been altered." The French court, however, was evidently right in thinking that, till the conquest of Holland should be achieved, the declaration of the king's religion would only weaken him at home. It is gratifying to find the heroic character of our glorious deliverer displaying itself among these foul conspiracies. The prince of Orange came over to England in 1670. He was then very young; and his uncle, who was really attached to him, would have gladly associated him in the design; indeed it had been agreed that he was to possess part of the United Provinces in sovereignty. But Colbert writes that the king had found him so zealous a Dutchman and protestant, that he could not trust him with any part of the secret. He let him know, however, as we learn from Burnet, 382., that he had himself embraced the Romish faith.

* Dalrymple, 57.

† P. 68. Life of James, 444. In this work it is said that even the duchess of Orleans had no knowledge of the real treaty; and that the other originated with Buckingham. But Dalrymple's authority seems far better in this instance.

The court of France having yielded to Charles the point about which he had seemed so anxious, had soon the mortification to discover that he would take no steps to effect it. They now urged that immediate declaration of his religion, which they had for very wise reasons not long before dissuaded. The king of England hung back, and tried so many excuses, that they had reason to suspect his sincerity; not that in fact he had played a feigned part from the beginning, but his zeal for popery having given way to the seductions of a voluptuous and indolent life, he had been led, with the good sense he naturally possessed, to form a better estimate of his resources and of the opposition he must encounter. Meanwhile the eagerness of his ministers had plunged the nation into war with Holland; and Louis, having attained his principal end, ceased to trouble the king on the subject of religion. He received large sums from France during the Dutch war.*

This memorable transaction explains and justifies the strenuous opposition made in parliament to the king and duke of York, and may be reckoned the first act of a drama which ended in the revolution. It is true that the precise terms of this treaty were not authentically known; but there can be no doubt that those who from this time displayed an insuperable jealousy of one brother, and a determined enmity to the other, had proofs, enough for moral conviction, of their deep conspiracy with France against religion and liberty. This suspicion is implied in all the conduct of that parliamentary opposition, and is the apology of much that seems violence and faction, especially in the business of the popish plot and the bill of exclusion. It is of importance also to observe that James II. was not misled and betrayed by false or foolish counsellors, as some would suggest, in his endeavours to subvert the laws, but acted on a plan, long since concerted, and in which he had taken a principal share.

It must be admitted that neither in the treaty itself nor in the few letters which have been published by Dalrymple, do we find any explicit declaration, either that the catholic religion was to be established as the national church, or arbitrary

* Dalrymple, 84, &c.

power introduced in England. But there are not wanting strong presumptions of this design. The king speaks, in a letter to his sister, of finding means to put the proprietors of church lands out of apprehension.* He uses the expression, "rétablir la religion catholique;" which, though not quite unequivocal, seems to convey more than a bare toleration, or a personal profession by the sovereign.† He talks of a negotiation with the court of Rome to obtain the permission of having mass in the vulgar tongue and communion in both kinds, as terms that would render his conversion agreeable to his subjects.‡ He tells the French ambassador, that not only his conscience, but the confusion he saw every day increasing in his kingdom, to the diminution of his authority, impelled him to declare himself a catholic; which, besides the spiritual advantage, he believed to be the only means of restoring the monarchy. These passages, as well as the precautions taken in expectation of a vigorous resistance from a part of the nation, appear to intimate a formal re-establishment of the catholic church; a measure connected, in the king's apprehension, if not strictly with arbitrary power, yet with a very material enhancement of his prerogative. For the profession of an obnoxious faith by the king, as an insulated person, would, instead of strengthening his authority, prove the greatest obstacle to it; as, in the next reign, turned out to be the case. Charles, however, and the duke of York deceived themselves into a confidence that the transition could be effected with no extraordinary difficulty. The king knew the prevailing laxity of religious principles in many about his court, and thought he had reason to rely on others as secretly catholic. Sunderland is mentioned as a young man of talent, inclined to adopt that religion.§ Even the earl of Orrery is spoken of as a catholic in his heart.‖ The duke, who conversed more among divines, was led to hope, from the strange language of the high-church party, that they might readily be persuaded to make what seemed no long step, and come into easy terms of union.¶

* Dalrymple, 23.

† P. 52. The reluctance to let the duke of Buckingham into the secret seems to prove that more was meant than a toleration of the Roman catholic religion, towards which he had always been disposed, and which was hardly a secret at court.

‡ P. 62. 84.

§ P. 81. ‖ P. 33.

¶ "The generality of the church of England men was not at that time very

It was the constant policy of the Romish priests to extenuate the differences between the two churches, and to throw the main odium of the schism on the Calvinistic sects. And many of the Anglicans, in their abhorrence of protestant non-conformists, played into the hands of the common enemy.

Fresh severities against dissenters.

The court, however, entertained great hopes from the depressed condition of the dissenters, whom it was intended to bribe with that toleration under a catholic regimen, which they could so little expect from the church of England. Hence the duke of York was always strenuous against schemes of comprehension, which would invigorate the protestant interest and promote conciliation. With the opposite view of rendering a union among protestants impracticable, the rigorous episcopalians were encouraged underhand to prosecute the non-conformists.* The duke of York took pains to assure Owen, an eminent divine of the independent persuasion, that he looked on all persecution as an unchristian thing, and altogether against his conscience.† Yet the court promoted a renewal of the temporary act, passed in 1664 against conventicles, which was reinforced by the addition of an extraordinary proviso, "That all clauses in the act should be construed most largely and beneficially for suppressing conventicles, and for the justification and encouragement of all persons to be employed in the execution thereof."‡ Wilkins, the most honest of the bishops, opposed this act in the house of lords, notwithstanding the king's personal request that he would be silent.§ Sheldon, and others, who, like him, disgraced the church of England by their unprincipled policy or their passions, not only gave it their earnest support at the time, but did all in their power to enforce its execution.‖ As the king's temper was naturally

averse to the catholic religion; many that went under that name had their religion to choose, and went to church for company's sake." Life of James, p. 442.

* Ibid.

† Macpherson's Extracts, p. 51.

‡ 22 Car. 2. c. 1. Kennet, p. 306. The zeal in the commons against popery tended to aggravate this persecution of the dissenters. They had been led by some furious clergymen to believe the absurdity that there was a good understanding between the two parties.

§ Burnet, p. 272.

‖ Baxter, p. 74. 86. Kennet, p. 311. See a letter of Sheldon, written at this time, to the bishops of his province, urging them to persecute the non-conformists. Harris's Life of Charles II., p. 106. Proofs also are given by this author of the manner in which some, such as Lamplugh and Ward, responded to their primate's wishes.

tolerant, his co-operation in this severe measure would not easily be understood, without the explanation that a knowledge of his secret policy enables us to give. In no long course of time the persecution was relaxed, the imprisoned ministers set at liberty, some of the leading dissenters received pensions, and the king's declaration of a general indulgence held forth an asylum from the law under the banner of prerogative.* Though this is said to have proceeded from the advice of Shaftesbury, who had no concern in the original secret treaty with France, it was completely in the spirit of that compact, and must have been acceptable to the king.

But the factious, fanatical, republican party, (such were the usual epithets of the court at the time, such have ever since been applied by the advocates or apologists of the Stuarts,) had gradually led away by their delusions that parliament of cavaliers; or, in other words, the glaring vices of the king, and the manifestation of designs against religion and liberty, had dispossessed them of a confiding loyalty, which, though highly dangerous from its excess, had always been rather ardent than servile. The sessions had been short, and the intervals of repeated prorogations much longer than usual; a policy not well calculated for that age, where the growing discontents and suspicions of the people acquired strength by the stoppage of the regular channel of complaint. Yet the house of commons, during this period, though unmanageable on the one point of toleration, had displayed no want of confidence in the king nor any animosity towards his administration; notwithstanding the flagrant abuses in the expenditure, which the parliamentary commission of public accounts

Sheldon found a panegyrist quite worthy of him in his chaplain Parker, afterwards bishop of Oxford. This notable person has left a Latin history of his own time, wherein he largely commemorates the archbishop's zeal in molesting the dissenters, and praises him for defeating the scheme of comprehension. P. 25. I observe, that the late excellent editor of Burnet has endeavoured to slide in a word for the primate (note on vol. i. p. 243.), on the authority of that history by bishop Parker, and of Sheldon's Life in the Biographia Britannica. It is lamentable to rest on such proofs. I should certainly not have expected that, in Magdalen college, of all places, the name of Parker would have been held in honour; and as to the Biographia, laudatory as it is of primates in general, (save Tillotson, whom it depreciates,) I find, on reference, that its praise of Sheldon's virtues is grounded on the authority of his epitaph in Croydon church.

* Baxter, 87.

had brought to light, and the outrageous assault on sir John Coventry; a crime notoriously perpetrated by persons employed by the court, and probably by the king's direct order.*

Dutch war.

The war with Holland at the beginning of 1672, so repugnant to English interests, so unwarranted by any provocation, so infamously piratical in its commencement, so ominous of further schemes still more dark and dangerous, finally opened the eyes of all men of integrity. It was accompanied by the shutting up of the exchequer, an avowed bankruptcy at the moment of beginning an expensive war†, and by the declaration of indulgence, or suspension of all penal laws in religion; an assertion of prerogative which seemed without limit. These exorbitances were the more scandalous, that they happened during a very long prorogation. Hence the court so lost the confidence of the house of commons, that, with all the lavish corruption of the following period, it could never regain a secure majority on any important question. The superiority of what was called the country party is referred to the session of February, 1673, in which they compelled the king to recall his proclamation suspending the penal laws, and raised a barrier against the encroachments of popery in the test act.

Declaration of indulgence

The king's declaration of indulgence had been projected by Shaftesbury, in order to conciliate or lull to sleep the protestant dissenters. It redounded, in its immediate effect, chiefly to their benefit; the catholics

* This is asserted by Burnet, and seems to be acknowledged by the duke of York. The court endeavoured to mitigate the effect of the bill brought into the commons, in consequence of Coventry's injury; and so far succeeded, that, instead of a partial measure of protection for the members of the house of commons, as originally designed, (which seemed, I suppose, to carry too marked a reference to the particular transaction,) it was turned into a general act, making it a capital felony to wound with intention to maim or disfigure. But the name of the Coventry act has always clung to this statute. Parl. Hist. 461.

† The king promised the bankers interest at six per cent., instead of the money due to them from the exchequer; but this was never paid till the latter part of William's reign. It may be considered as the beginning of our national debt. It seems to have been intended to follow the shutting up of the exchequer with a still more unwarrantable stretch of power, by granting an injunction to the creditors who were suing the bankers at law. According to North (Examen, p. 38. 47.), lord-keeper Bridgman resigned the great seal rather than comply with this; and Shaftesbury himself, who succeeded him, did not venture, if I understand the passage rightly, to grant an absolute injunction. The promise of interest for their money seems to have been given instead of this more illegal and violent remedy.

already enjoying a connivance at the private exercise of their religion, and the declaration expressly refusing them public places of worship. The plan was most laudable in itself, could we separate the motives which prompted it, and the means by which it was pretended to be made effectual. But in the declaration the king says, "We think ourselves obliged to make use of that supreme power in ecclesiastical matters, which is not only inherent in us, but hath been declared and recognised to be so by several statutes and acts of parliament." "We do," he says, not long afterwards, "declare our will and pleasure to be, that the execution of all and all manner of penal laws in matters ecclesiastical, against whatsoever sort of non-conformists or recusants, be immediately suspended, and they are hereby suspended." He mentions also his intention to license a certain number of places for the religious worship of non-conforming protestants.*

It was generally understood to be an ancient prerogative of the crown to dispense with penal statutes in favour of particular persons, and under certain restrictions. It was undeniable, that the king might, by what is called a "noli prosequi," stop any criminal prosecution commenced in his courts, though not an action for the recovery of a pecuniary penalty, which, by many statutes, was given to the common informer. He might of course set at liberty, by means of a pardon, any person imprisoned, whether upon conviction or by a magistrate's warrant. Thus the operation of penal statutes in religion might in a great measure be rendered ineffectual, by an exercise of undisputed prerogatives; and thus, in fact, the catholics had been enabled, since the accession of the house of Stuart, to withstand the crushing severity of the laws. But a pretension, in explicit terms, to suspend a body of statutes, a command to magistrates not to put them in execution, arrogated a sort of absolute power, which no benefits of the indulgence itself (had they even been less insidiously offered) could induce a lover of constitutional privileges to endure.† Notwithstanding the affected distinction

* Parl. Hist. 515. Kennet, 313.

† Bridgman, the lord-keeper, resigned the great seal, according to Burnet, because he would not put it to the declaration of indulgence, and was succeeded by Shaftesbury.

of temporal and ecclesiastical matters, it was evident that the king's supremacy was as much capable of being bounded by the legislature in one as in the other, and that every law in the statute-book might be repealed by a similar proclamation. The house of commons voted that the king's prerogative, in matters ecclesiastical, does not extend to repeal acts of parliament; and addressed the king to recall his declaration. Whether from a desire to protect the non-conformists in a toleration even illegally obtained, or from the influence of Buckingham among some of the leaders of opposition, it appears from the debates that many of those, who had been in general most active against the court, resisted this vote, which was carried by 168 to 116. The king, in his answer to this address, lamented that the house should question his ecclesiastical power, which had never been done before. This brought on a fresh rebuke; and, in a second address, they positively deny the king's right to suspend any law. "The legislative power," they say, "has always been acknowledged to reside in the king and two houses of parliament." The king, in a speech to the house of lords, complained much of the opposition made by the commons; and found a majority of the former disposed to support him, though both houses concurred in an address against the growth of popery. At length, against the advice of the bolder part of his council, but certainly with a just sense of what he most valued, his ease of mind, Charles gave way to the public voice, and withdrew his declaration.*

opposed by parliament,

and withdrawn.

There was indeed a line of policy indicated at this time,

* Parl. Hist. 517. The presbyterian party do not appear to have supported the declaration, at least Birch spoke against it: Waller, Seymour, sir Robert Howard in its favour. Baxter says, the non-conformists were divided in opinion as to the propriety of availing themselves of the declaration. P. 99. Birch told Pepys, some years before, that he feared some would try for extending the toleration to papists; but the sober party would rather be without it than have it on those terms. Pepys's Diary, Jan. 31. 1668. Parl. Hist. 546. 561. Father Orleans says, that Ormond, Arlington, and some others, advised the king to comply; the duke and the rest of the council urging him to adhere, and Shaftesbury, who had been the first mover of the project, pledging himself for its success: there being a party for the king among the commons, and a force on foot enough to daunt the other side. It was suspected that the women interposed, and prevailed on the king to withdraw his declaration. Upon this, Shaftesbury turned short round, provoked at the king's want of steadiness, and especially at his giving up the point about issuing writs in the recess of parliament.

which, though intolerable to the bigotry and passion of the house, would best have foiled the schemes of the ministry; a legislative repeal of all the penal statutes both against the catholic and the protestant dissenter, as far as regarded the exercise of their religion. It must be evident to any impartial man, that the unrelenting harshness of parliament, from whom no abatement, even in the sanguinary laws against the priests of the Romish church, had been obtained, had naturally, and almost irresistibly, driven the members of that persuasion into the camp of prerogative, and even furnished a pretext for that continual intrigue and conspiracy, which was carried on in the court of Charles II., as it had been in that of his father. A genuine toleration would have put an end to much of this; but, in the circumstances of that age, it could not have been safely granted without an exclusion from those public trusts, which were to be conferred by a sovereign in whom no trust could be reposed.

The act of supremacy, in the first year of Elizabeth, had imposed on all, accepting temporal as well as ecclesiastical offices, an oath denying the spiritual jurisdiction of the pope. But, though the refusal of this oath, when tendered, incurred various penalties, yet it does not appear that any were attached to its neglect, or that the oath was a previous qualification for the enjoyment of office, as it was made by a subsequent act of the same reign for sitting in the house of commons. It was found also by experience that persons attached to the Roman doctrine sometimes made use of strained constructions to reconcile the oath of supremacy to their faith. Nor could that test be offered to peers, who were excepted by a special provision. For these several reasons a more effectual security against popish counsellors, at least in notorious power, was created by the famous test act of 1673, which renders the reception of the sacrament according to the rites of the church of England, and a declaration renouncing the doctrine of transubstantiation, preliminary conditions without which no temporal office of trust can be enjoyed.* In this fundamental article of faith, no compromise or equivocation would be admitted by any member of the church of Rome. And, as the obli-

Test act.

* 25 Car. 2. c. 2. Burnet, p. 490.

gation extended to the highest ranks, this reached the end for which it was immediately designed; compelling, not only the lord-treasurer Clifford, the boldest and most dangerous of that party, to retire from public business, but the duke of York himself, whose desertion of the protestant church was hitherto not absolutely undisguised, to quit the post of lord admiral.*

It is evident that a test might have been framed to exclude the Roman catholic as effectually as the present, without bearing like this on the protestant non-conformist. But, though the preamble of the bill, and the whole history of the transaction, show that the main object was a safeguard against popery, it is probable that a majority of both houses liked it the better for this secondary effect of shutting out the presbyterians still more than had been done by previous statutes of this reign. There took place however a remarkable coalition between the two parties; and many who had always acted as high-church men and cavaliers, sensible at last of the policy of their common adversaries, renounced a good deal of the intolerance and bigotry that had characterised the present parliament. The dissenters, with much prudence or laudable disinterestedness, gave their support to the test act. In return, a bill was brought in, and, after some debate, passed to the lords, repealing in a considerable degree the persecuting laws against their worship.† The upper house, perhaps insidiously, returned it with amendments more favourable to the dissenters, and insisted upon them, after a conference.‡ A sudden prorogation very soon put an end

* The test act began in a resolution, February 28. 1673, that all who refuse to take the oaths and receive the sacrament, according to the rites of the church of England, shall be incapable of all public employments. Parl. Hist. 556. The court party endeavoured to oppose the declaration against transubstantiation, but of course in vain. Id. 561. 592.

The king had pressed his brother to receive the sacrament, in order to avoid suspicion, which he absolutely refused; and this led, he says, to the test. Life of James, p. 482. But his religion was long pretty well known, though he did not cease to conform till 1672.

† Parl. Hist. 526—585. These debates are copied from those published by Anchitel Grey, a member of the commons for thirty years; but his notes, though collectively most valuable, are sometimes so brief and ill expressed, that it is hardly possible to make out their meaning. The court and church party, or rather some of them, seem to have much opposed this bill for the relief of protestant dissenters.

‡ Commons' Journals, 28th and 29th March, 1673. Lords' Journals, 24th and 29th March. The lords were so slow about this bill that the lower house, knowing an adjournment to be in contemplation, sent a message to quicken them, according to a practice not unusual in this reign. Perhaps, on an attentive consideration of the report on the conference (March 29.) it may appear that

to this bill, which was as unacceptable to the court, as it was to the zealots of the church of England. It had been intended to follow it up by another, excluding all who should not conform to the established church, from serving in the house of commons.*

It may appear remarkable that, as if content with these provisions the victorious country party did not remonstrate against the shutting up of the exchequer, nor even wage any direct war against the king's advisers. They voted, on the contrary, a large supply, which, as they did not choose explicitly to recognize the Dutch war, was expressed to be granted for the king's extraordinary occasions.† This moderation, which ought at least to rescue them from the charges of faction and violence, has been censured by some as servile and corrupt; and would really incur censure, if they had not attained the great object of breaking the court measures by other means. But the test act, and their steady protestation against the suspending prerogative, crushed the projects and dispersed the members of the cabal. The king had no longer any minister on whom he could rely, and, with his indolent temper, seems from this time, if not to have abandoned all hope of declaring his change of religion, yet to have seen both that and his other favourite projects postponed without much reluctance. From a real predilection, from the prospect of gain, and partly, no doubt, from some distant views of arbitrary power and a catholic establishment, he persevered a long time in clinging secretly to the interest of France; but his active co-operation in the schemes of 1669 was at an end. In the next session of October, 1673, the commons drove Buckingham from the king's councils; they intimidated Arlington into a change of policy; and, though they did not succeed in removing the duke of Lauderdale, compelled him to confine himself chiefly to the affairs of Scotland.‡

Fall of Shaftesbury and his colleagues.

the lords' amendments had a tendency to let in popish, rather than to favour protestant, dissenters. Parker says that this act of indulgence was defeated by his great hero, archbishop Sheldon, who proposed that the non-conformists should acknowledge the war against Charles I. to be unlawful. Hist. sui temporis, p. 203. of the translation.

* It was proposed, as an instruction to the committee, on the test act, that a clause should be introduced, rendering non-conformists incapable of sitting in the house of commons. This was lost by 163 to 107; but it was resolved that a distinct bill should be brought in for that purpose. 10th March, 1673.

† Kennet, p. 318.

‡ Commons' Journals, 20th Jan. 1674. Parl. Hist. 608. 625 649. Burnet.

CHAPTER XII.

Earl of Danby's Administration — Opposition in the Commons — Frequently corrupt — Character of Lord Danby — Connexion of the popular Party with France — Its Motives on both Sides — Doubt as to their Acceptance of Money — Secret Treaties of the King with France — Fall of Danby — His Impeachment — Questions arising on it — His Commitment to the Tower — Pardon pleaded in Bar — Votes of Bishops — Abatement of Impeachments by Dissolution — Popish Plot — Coleman's Letters — Godfrey's Death — Injustice of Judges on the Trials — Parliament dissolved — Exclusion of Duke of York proposed — Schemes of Shaftesbury and Monmouth — Unsteadiness of the King — Expedients to avoid the Exclusion — Names of Whig and Tory — New Council formed by Sir William Temple — Long Prorogation of Parliament — Petitions and Addresses — Violence of the Commons — Oxford Parliament — Impeachment of Commoners for Treason constitutional — Fitzharris impeached — Proceedings against Shaftesbury and his Colleagues — Triumph of the Court — Forfeiture of Charter of London — And of other Places — Projects of Lord Russell and Sidney — Their Trials — High Tory Principles of the Clergy — Passive Obedience — Some contend for absolute Power — Filmer — Sir George Mackenzie — Decree of University of Oxford — Connexion with Louis broken off — King's death.

Earl of Danby's administration.

THE period of lord Danby's administration, from 1673 to 1678, was full of chicanery and dissimulation on the king's side, of increasing suspiciousness on that of the commons. Forced by the voice of parliament, and the bad success of his arms, into peace with Holland, Charles struggled hard against a co-operation with her in the great confederacy of Spain and the empire to resist the encroachments of France on the Netherlands. Such was in that age the strength of the barrier fortresses, and so heroic the resistance of the prince of Orange, that, notwithstanding the extreme weakness of Spain, there was no moment in that war, when the sincere and strenuous intervention of England would not have compelled Louis XIV. to accept the terms of the treaty of Aix la Chapelle. It was the treacherous attachment of Charles II. to French interests that brought the long congress of Nimeguen to an unfortunate termination ; and, by surrendering so many towns

of Flanders as laid the rest open to future aggression, gave rise to the tedious struggles of two more wars.*

In the behaviour of the house of commons during this period, previously at least to the session of 1678, there seems nothing which can incur much reprehension from those who reflect on the king's character and intentions; unless it be that they granted supplies rather too largely, and did not sufficiently provide against the perils of the time. But the house of lords contained unfortunately an invincible majority for the court, ready to frustrate any legislative security for public liberty. Thus the habeas corpus act, first sent up to that house in 1674, was lost there in several successive sessions. The commons therefore testified their sense of public grievances, and kept alive an alarm in the nation by resolutions and addresses, which a phlegmatic reader is sometimes too apt to consider as factious or unnecessary. If they seem to have dwelt more, in some of these, on the dangers of religion, and less on those of liberty, than we may now think reasonable, it is to be remembered that the fear of popery has always been the surest string to touch for effect on the people; and that the general clamour against that religion was all covertly directed against the duke of York, the most dangerous enemy of every part of our constitution. The real vice of this parliament was not intemperance, but corruption. Clifford, and still more Danby, were masters in an art practised by ministers from the time of James I. (and which indeed can never be unknown where there exists a court and a popular assembly,) that of turning to their use the weapons of mercenary eloquence by office, or blunting their edge by bribery.† Some who had been once prominent in opposition, as sir Robert Howard and sir Richard Temple, became placemen; some, like Garraway and sir Thomas

Opposition in the commons.

Corruption of the parliament.

* Temple's Memoirs.

† Burnet says that Danby bribed the less important members, instead of the leaders; which did not answer so well. But he seems to have been liberal to all. The parliament has gained the name of the pensioned. In that of 1679, sir Stephen Fox was called upon to produce an account of the monies paid to many of their predecessors. Those who belonged to the new parliament endeavoured to defend themselves, and gave reasons for their pensions; but I observe no one says he did not always vote with the court. Parl. Hist. 1137. North admits that great clamour was excited by this discovery; and well it might. See also Dalrymple, ii. 92.

Lee, while they continued to lead the country party, took money from the court for softening particular votes*; many, as seems to have been the case with Reresby, were won by promises, and the pretended friendship of men in power.† On two great classes of questions, France and popery, the commons broke away from all management; nor was Danby unwilling to let his master see their indocility on these subjects. But, in general, till the year 1678, by dint of the means before mentioned, and partly no doubt through the honest conviction of many that the king was not likely to employ any minister more favourable to the protestant religion and liberties of Europe, he kept his ground without any insuperable opposition from parliament.‡

Character of the earl of Danby.

The earl of Danby had virtues as an English minister, which serve to extenuate some great errors and an entire want of scrupulousness in his conduct. Zealous against the church of Roman and the aggrandizement of France, he counteracted, while he seemed to yield to, the prepossessions of his master. If the policy of England before the peace of Nimeguen was mischievous and disgraceful, it would evidently have been far more so, had

* Burnet charges these two leaders of opposition with being bribed by the court to draw the house into granting an enormous supply, as the consideration of passing the test act; and see Pepys, Oct. 6. 1666. Sir Robert Howard and sir Richard Temple were said to have gone over to the court in 1670 through similar inducements. Ralph. Roger North (Examen, p. 456.) gives an account of the manner in which men were brought off from the opposition, though it was sometimes advisable to let them nominally continue in it; and mentions Lee, Garraway, and Meres, all very active patriots, if we trust to the parliamentary debates. But, after all, neither Burnet nor Roger North are wholly to be relied on as to particular instances; though the general fact of an extensive corruption be indisputable.

† This cunning, self-interested man, who had been introduced to the house by lord Russell and lord Cavendish, and was connected with the country party, tells us that Danby sent for him in Feb. 1677, and assured him that the jealousies of that party were wholly without foundation; that, to his certain knowledge, the king meant no other than to preserve the religion and government by law established; that, if the government was in any danger, it was from those who pretended such a mighty zeal for it. On finding him well disposed, Danby took his proselyte to the king, who assured him of his regard for the constitution, and was right loyally believed. Reresby's Memoirs, p. 36.

‡ "There were two things," says bishop Parker, "which, like Circe's cup, bewitched men and turned them into brutes; viz. popery and French interest. If men otherwise sober heard them once, it was sufficient to make them run mad. But, when those things were laid aside, their behaviour to his majesty was with a becoming modesty." P. 244. Whenever the court seemed to fall in with the national interests on the two points of France and popery, many of the country party voted with them on other questions, though more numerous than their own. Temple, p. 458. See, too, Reresby, p. 25. et alibi.

the king and duke of York been abetted by this minister in their fatal predilection for France. We owe to Danby's influence, it must ever be remembered, the marriage of princess Mary to the prince of Orange, the seed of the revolution and the act of settlement — a courageous and disinterested counsel, which ought not to have proved the source of his greatest misfortunes.* But we cannot pretend to say that he was altogether as sound a friend to the constitution of his country, as to her national dignity and interests. I do not mean that he wished to render the king absolute. But a minister, harassed and attacked in parliament, is tempted to desire the means of crushing his opponents, or at least of augmenting his own sway. The mischievous bill that passed the house of lords in 1675, imposing as a test to be taken by both houses of parliament, as well as all holding beneficed offices, a declaration that resistance to persons commissioned by the king was in all cases unlawful, and that they would never attempt any alteration in the government in church or state, was promoted by Danby, though it might possibly originate with others.† It

* The king, according to James himself, readily consented to the marriage of the princess, when it was first suggested in 1675; the difficulty was with her father. He gave at last a reluctant consent; and the offer was made by lords Arlington and Ossory to the prince of Orange, who received it coolly. Life of James, 501. Temple's Memoirs, p. 397. When he came over to England in Oct. 1677, with the intention of effecting the match, the king and duke wished to defer it till the conclusion of the treaty then in negotiation at Nimeguen; but "the obstinacy of the prince, with the assistance of the treasurer, who from that time entered into the measures and interests of the prince, prevailed upon the flexibility of the king to let the marriage be first agreed and concluded." P. 508. [If we may trust Reresby, which is not perhaps always the case, the duke of York had hopes of marrying the princess Mary to the Dauphin; thus rendering England a province of France. Reresby's Memoirs, p. 109.—1845.]

† Kennet, p. 332. North's Examen, p. 61. Burnet. This test was covertly meant against the Romish party, as well as more openly against the dissenters. Life of James, p. 499. Danby set himself up as the patron of the church party and old cavaliers against the two opposing religions; trusting that they were stronger in the house of commons. But the times were so changed that the same men had no longer the same principles, and the house would listen to no measures against non-conformists. He propitiated, however, the prelates, by renewing the persecution under the existing laws, which had been relaxed by the cabal ministry. Baxter, 156. 172. Kennet, 331. Neal, 698. Somers Tracts, vii. 336.

Meanwhile, schemes of comprehension were sometimes on foot; and the prelates affected to be desirous of bringing about an union; but Morley and Sheldon frustrated them all. Baxter, 156. Kennet, 326. Parker, 25. The bishops, however, were not uniformly intolerant: Croft, bishop of Hereford, published, about 1675, a tract that made some noise, entitled the Naked Truth, for the purpose of moderating differences. It is not written with extraordinary ability; but

was apparently meant as a bone of contention among the country party, in which presbyterians and old parliamentarians were associated with discontented cavaliers. Besides the mischief of weakening this party, which indeed the minister could not fairly be expected to feel, nothing could have been devised more unconstitutional, or more advantageous to the court's projects of arbitrary power.

It is certainly possible that a minister who, aware of the dangerous intentions of his sovereign or his colleagues, remains in the cabinet to thwart and countermine them, may serve the public more effectually than by retiring from office; but he will scarcely succeed in avoiding some material sacrifices of integrity, and still less of reputation. Danby, the ostensible adviser of Charles II., took on himself the just odium of that hollow and suspicious policy which appeared to the world. We know indeed that he was concerned, against his own judgment, in the king's secret receipt of money from France, the price of neutrality, both in 1676 and in 1678, the latter to his own ruin.* Could the opposition, though not so well apprized of these transactions as we are, be censured for giving little credit to his assurances of zeal against that power; which, though sincere in him, were so little in unison with the disposition of the court? Had they no cause to dread that the great army suddenly raised in 1677, on pretence of being employed against France, might be turned to some worse purposes more congenial to the king's temper.†

is very candid and well designed, though conceding so much as to scandalize his brethren. Somers Tracts, vii. 268. Biogr. Brit. art. Croft; where the book is extravagantly over praised. Croft was one of the few bishops who, being then very old, advised his clergy to read James II.'s declaration in 1687; thinking, I suppose, though in those circumstances erroneously, that toleration was so good a thing, it was better to have it irregularly than not at all.

* Charles received 500,000 crowns for the long prorogation of parliament, from Nov. 1675 to Feb. 1677. In the beginning of the year 1676, the two kings bound themselves by a formal treaty (to which Danby and Lauderdale, but not Coventry or Williamson, were privy,) not to enter on any treaties but by mutual consent; and Charles promised, in consideration of a pension, to prorogue or dissolve parliament, if they should attempt to force such treaties upon him. Dalrymple, p. 99. Danby tried to break this off, but did not hesitate to press the French cabinet for the money; and 200,000*l.* was paid. The prince of Orange came afterwards through Rouvigny to a knowledge of this secret treaty. P. 117.

† This army consisted of between twenty and thirty thousand men, as fine troops as could be seen (Life of James, p. 512.): an alarming sight to those who denied the lawfulness of any standing army. It is impossible to doubt, from

This invincible distrust of the court is the best apology for that which has given rise to so much censure, the secret connexions formed by the leaders of opposition with Louis XIV., through his ambassadors Barillon and Rouvigny, about the spring of 1678.* They well knew that the king's designs against their liberties had been planned in concert with France, and could hardly be rendered effectual without her aid in money, if not in arms.† If they could draw over this dangerous ally from his side, and convince the king of France that it was not his interest to crush their power, they would at least frustrate the suspected conspiracy, and secure the disbanding of the army;

Connexion of the popular party with France. Its motives on both sides.

Barillon's correspondence in Dalrymple, that the king and duke looked to this force as the means of consolidating the royal authority. This was suspected at home, and very justly: "Many well-meaning men," says Reresby, "began to fear the army now raised was rather intended to awe our own kingdom than to war against France, as had at first been suggested." P. 62. And in a former passage, p. 57., he positively attributes the opposition to the French war in 1678, to "a jealousy that the king indeed intended to raise an army, but never designed to go on with the war; and to say the truth, some of the king's own party were not very sure of the contrary."

* Dalrymple, p. 129. The immediate cause of those intrigues was the indignation of Louis at the princess Mary's marriage. That event which, as we know from James himself, was very suddenly brought about, took the king of France by surprise. Charles apologised for it to Barillon, by saying, "I am the only one of my party, except my brother." (P. 125.) This, in fact, was the secret of his apparent relinquishment of French interests at different times in the latter years of his reign; he found it hard to kick constantly against the pricks, and could employ no minister who went cordially along with his predilections. He seems too at times, as well as the duke of York, to have been seriously provoked at the unceasing encroachments of France, which exposed him to so much vexation at Rome.

The connexion with lords Russell and Hollis began in March, 1678, though some of the opposition had been making advances to Barillon in the preceding November, pp. 129. 131. See also "Copies and Extracts of some Letters written to him from the Earl of Danby," published in 1716; whence it appears that Montagu suspected the intrigues of Barillon, and the mission of Rouvigny, lady Russell's first cousin, for the same purpose, as early as Jan. 1678; and informed Danby of it, pp. 50. 53. 59.

† Courtin, the French ambassador who preceded Barillon, had been engaged through great part of the year 1677 in a treaty with Charles for the prorogation or dissolution of parliament. After a long chaffering, the sum was fixed at 2,000,000 livres; in consideration of which the King of England pledged himself to prorogue parliament from December to April, 1678. It was in consequence of the subsidy being stopped by Louis, in resentment of the princess Mary's marriage, that parliament, which had been already prorogued till April, was suddenly assembled in February. Dalrymple, p. 111. It appears that Courtin had employed French money to bribe members of the commons in 1677 with the knowledge of Charles; assigning as a reason, that Spain and the emperor were distributing money on the other side. In the course of this negotiation, he assured Charles that the king of France was always ready to employ all his forces for the confirmation and augmentation of the royal authority in England, so that he should always be master of his subjects, and not depend upon them.

though at a great sacrifice of the continental policy which they had long maintained, and which was truly important to our honour and safety. Yet there must be degrees in the scale of public utility; and, if the liberties of the people were really endangered by domestic treachery, it was ridiculous to think of saving Tournay and Valenciennes at the expense of all that was dearest at home. This is plainly the secret of that unaccountable, as it then seemed, and factious opposition, in the year 1678; which cannot be denied to have served the ends of France, and thwarted the endeavours of lord Danby and sir William Temple to urge on the uncertain and half-reluctant temper of the king into a decided course of policy.* Louis, in fact, had no desire to see the king of England absolute over his people, unless it could be done so much by his own help as to render himself the real master of both. In the estimate of kings, or of such kings as Louis XIV. all limitations of sovereignty, all co-ordinate authority of estates and parliaments, are not only derogatory to the royal dignity, but injurious to the state itself, of which they distract the councils and enervate the force. Great armies, prompt obedience, unlimited power over the national resources, secrecy in council, rapidity in execution, belong to an energetic and enlightened despotism: we should greatly err in supposing

* See what Temple says of this, p. 460.; the king raised 20,000 men in the spring of 1678, and seemed ready to go into the war; but all was spoiled by a vote, on Clarges's motion, that no money should be granted till satisfaction should be made as to religion. This irritated the king so much that he determined to take the money which France offered him; and he afterwards almost compelled the Dutch to sign the treaty; so much against the prince of Orange's inclinations, that he has often been charged, though unjustly, with having fought the battle of St. Denis after he knew that the peace was concluded. Danby also, in his vindication (published in 1679, and again in 1710: see State Trials, ii. 634.), lays the blame of discouraging the king from embarking in the war on this vote of the commons. And the author of the Life of James II. says very truly, that the commons "were in reality more jealous of the king's power than of the power of France; for, notwithstanding all their former warm addresses for hindering the growth of the power of France, when the king had no army, now that he had one, they passed a vote to have it immediately disbanded; and the factious party, which was then prevalent among them, made it their only business to be rid of the duke, to pull down the ministers, and to weaken the crown." P. 512.

In defence of the commons it is to be urged that, if they had any strong suspicion of the king's private intrigues with France for some years past, as in all likelihood they had, common prudence would teach them to distrust his pretended desire for war with her; and it is, in fact, most probable, that his real object was to be master of a considerable army.

that Louis XIV. was led to concur in projects of subverting our constitution from any jealousy of its contributing to our prosperity. He saw, on the contrary, in the perpetual jarring of the kings and parliaments, a source of feebleness and vacillation in foreign affairs, and a field for intrigue and corruption. It was certainly far from his design to see a republic, either in name or effect, established in England; but an unanimous loyalty, a spontaneous submission to the court, was as little consonant to his interests; and, especially if accompanied with a willing return of the majority to the catholic religion, would have put an end to his influence over the king, and still more certainly over the duke of York.* He had long been sensible of the advantage to be reaped from a malecontent party in England. In the first years after the restoration, he kept up a connexion with the disappointed commonwealth's men, while their courage was yet fresh and unsubdued; and in the war of 1665 was very nearly exciting insurrections both in England and Ireland. † These schemes of course were suspended, as he grew into closer friendship with Charles, and saw a surer method of preserving an ascendancy over the kingdom. But, as soon as the princess Mary's marriage, contrary to the king of England's promise, and to the plain intent of all their clandestine negotiations, displayed his faithless and uncertain character to the French cabinet, they determined to make the patriotism, the passion, and the corruption of the house of commons, minister to their resentment and ambition.

The views of lord Hollis and lord Russell in this clandestine intercourse with the French ambassador were sincerely patriotic and honourable: to detach France from the king; to crush the duke of York and popish faction; to procure the disbanding of the army, the dissolution of a corrupted parlia-

* The memorial of Blanchard to the prince of Orange, quoted by Dalrymple, p. 201., contains these words: "Le roi auroit été bien faché qu'il eut été absolu dans ses états; l'un de ses plus constants maximes depuis son rétablissement ayant été, de le diviser d'avec son parlement, et de se servir tantôt de l'un, tantôt de l'autre, toujours par argent pour parvenir à ses fins."

† Ralph, p. 116. Œuvres de Louis XIV. ii. 204. and v. 67., where we have a curious and characteristic letter of the king to d'Estrades in Jan. 1662, when he had been provoked by some high language Clarendon had held about the right of the flag.

ment, the dismissal of a bad minister.* They would indeed have displayed more prudence in leaving these dark and dangerous paths of intrigue to the court which was practised in them. They were concerting measures with the natural enemy of their country, religion, honour, and liberty; whose obvious policy was to keep the kingdom disunited that it might be powerless; who had been long abetting the worst designs of our own court, and who could never be expected to act against popery and despotism, but for the temporary ends of his ambition. Yet, in the very critical circumstances of that period, it was impossible to pursue any course with security; and the dangers of excessive circumspection and adherence to general rules may often be as formidable as those of temerity. The connexion of the popular party with France may very probably have frustrated the sinister intentions of the king and duke, by compelling the reduction of the army, though at the price of a great sacrifice of European policy.† Such may be, with unprejudiced men, a sufficient apology for the conduct of lord Russell and lord Hollis, the most public-spirited and high-minded characters of their age, in this extraordinary and unnatural alliance. It would have been unworthy of their virtue to have gone into so desperate an intrigue with no better aim than that of ruining lord Danby; and of this I think we may fully acquit them. The nobleness of Russell's disposition beams forth in

* The letters of Barillon in Dalrymple, pp. 134. 136. 140., are sufficient proofs of this. He imputes to Danby in one place, p. 142., the design of making the king absolute, and says: "M. le duc d'York se croit perdu pour sa religion, si l'occasion présente ne lui sert à soumettre l'Angleterre; c'est une entreprise fort hardie, et dont le succès est fort douteux." Of Charles himself he says: "Le roi d'Angleterre balance encore à se porter à l'extrémité; son humeur répugne fort au dessein de changer le gouvernement. Il est néanmoins entrainé par M. le duc d'York et par le grand trésorier; mais dans le fond il aimeroit mieux que la paix le mît en état de demeurer en repos, et rétablir ses affaires, c'est-à-dire, un bon revenu; et je crois qu'il ne se soucie pas beaucoup d'être plus absolu qu'il est. Le duc et le trésorier connoissent bien à qui ils ont affaire, et craignent d'être abandonnés par le roi d'Angleterre aux premiers obstacles considérables qu'ils trouveront au dessein de relever l'autorité royale en Angleterre." On this passage it may be observed, that there is reason to believe there was no co-operation, but rather a great distrust, at this time, between the duke of York and lord Danby. But Barillon had no doubt taken care to infuse into the minds of the opposition those suspicions of that minister's designs.

† Barillon appears to have favoured the opposition rather than the duke of York, who urged the keeping up of the army. This was also the great object of the king, who very reluctantly disbanded it in Jan. 1679. Dalrymple, 207, &c.

all that Barillon has written of their conferences. Yet, notwithstanding the plausible grounds of his conduct, we can hardly avoid wishing that he had abstained from so dangerous an intercourse, which led him to impair, in the eyes of posterity, by something more like faction than can be ascribed to any other part of his parliamentary life, the consistency and ingenuousness of his character.*

Doubt as to the acceptance of money by the popular party.

I have purposely mentioned lord Russell and lord Hollis apart from others who were mingled in the same intrigues of the French ambassador, both because they were among the first with whom he tampered, and because they are honourably distinguished by their abstinence from all pecuniary remuneration, which Hollis refused, and which Barillon did not presume to offer to Russell. It appears however from this minister's accounts of the money he had expended in this secret service of the French crown, that, at a later time, namely about the end of 1680, many of the leading members of opposition, sir Thomas Littleton, Mr. Garraway, Mr. Hampden, Mr. Powle, Mr. Sacheverell, Mr. Foley, received sums of 500 or 300 guineas, as testimonies of the king of France's munificence and favour. Among others, Algernon Sidney, who, though not in parliament, was very active out of it, is more than once mentioned. Chiefly because the name of Algernon Sidney had been associated with the most stern and elevated virtue, this statement was received with great reluctance; and many have ventured to call the truth of these pecuniary gratifications in question. This is certainly a bold surmise; though Barillon is known to have been a man of luxurious and expensive habits, and his demands for more money on account of the English court, which continually occur in his correspondence with Louis, may lead to a suspicion that he would be in some measure a gainer by it. This however might possibly be the case without actual peculation. But it must be observed that there are two classes of those who are alleged to have received presents through his hands; one, of such as were in actual communication with himself;

* This delicate subject is treated with great candour as well as judgment by lord John Russell, in his Life of William Lord Russell.

another, of such as sir John Baber, a secret agent, had prevailed upon to accept it. Sidney was in the first class; but, as to the second, comprehending Littleton, Hampden, Sacheverell, in whom it is, for different reasons, as difficult to suspect pecuniary corruption as in him, the proof is manifestly weaker, depending only on the assertion of an intriguer that he had paid them the money. The falsehood either of Baber or Barillon would acquit these considerable men. Nor is it to be reckoned improbable that persons employed in this clandestine service should be guilty of a fraud, for which they could evidently never be made responsible. We have indeed a remarkable confession of Coleman, the famous intriguer executed for the popish plot, to this effect. He deposed in his examination before the house of commons, in November, 1678, that he had received last session of Barillon 2500*l.* to be distributed among members of parliament, which he had converted to his own use.* It is doubtless possible that Coleman, having actually expended this money in the manner intended, bespoke the favour of those whose secret he kept by taking the discredit of such a fraud on himself. But it is also possible that he spoke the truth. A similar uncertainty hangs over the transactions of sir John Baber. Nothing in the parliamentary conduct of the abovementioned gentlemen in 1680 corroborates the suspicion of an intrigue with France, whatever may have been the case in 1678.

I must fairly confess, however, that the decided bias of my own mind is on the affirmative side of this question; and that principally because I am not so much struck, as some have been, by any violent improbability in what Barillon wrote to his court on the subject. If indeed we were to read that Algernon Sidney had been bought over by Louis XIV. or Charles II. to assist in setting up absolute monarchy in England, we might fairly oppose our knowledge of his inflexible and haughty character, of his zeal, in life and death, for republican liberty. But there is, I presume, some moral distinction between the acceptance of a bribe to desert or betray our principles and that of a trifling present for

* Parl. Hist. 1035.; Dalrymple, 200.

acting in conformity to them. The one is, of course, to be styled corruption; the other is repugnant to a generous and delicate mind, but too much sanctioned by the practice of an age far less scrupulous than our own, to have carried with it any great self-reproach or sense of degradation. It is truly inconceivable that men of such property as sir Thomas Littleton or Mr. Foley should have accepted 300 or 500 guineas, the sums mentioned by Barillon, as the price of apostasy from those political principles to which they owed the esteem of their country, or of an implicit compliance with the dictates of France. It is sufficiently discreditable to the times in which they lived, that they should have accepted so pitiful a gratuity; unless indeed we should in candour resort to an hypothesis which seems not absurd, that they agreed among themselves not to offend Louis, or excite his distrust, by a refusal of this money. Sidney indeed was, as there is reason to think, a distressed man; he had formerly been in connexion with the court of France*, and had persuaded himself that the countenance of that power might one day or other be afforded to his darling scheme of a commonwealth; he had contracted a dislike to the prince of Orange, and consequently to the Dutch alliance, from the same governing motive: is it strange that one so circumstanced should have accepted a small gratification from the king of France which implied no dereliction of his duty as an Englishman, or any sacrifice of political integrity? And I should be glad to be informed by the idolaters of Algernon Sidney's name, what we know of him from authentic and contemporary sources which renders this incredible.

* Louis XIV. tells us, that Sidney had made proposals to France in 1666 for an insurrection, and asked 100,000 crowns to effect it; which was thought too much for an experiment. He tried to persuade the ministers, that it was against the interest of France that England should continue a monarchy. Œuvres de Louis XIV. ii. 204. [Sidney's partiality to France displays itself in his Letters to Saville, in 1679, published by Hollis. They evince also a blind credulity in the popish plot. The whole of Sidney's conduct is inconsistent with his having possessed either practical good sense, or a just appreciation of the public interests; and his influence over the whig party appears to have been entirely mischievous, though he was not only a much better man than Shaftesbury, which is no high praise, but than the greater number of that faction, as they must be called, notwithstanding their services to liberty. A Tract on Love, by Algernon Sidney, in Somers Tracts, viii. 612., displays an almost Platonic elegance and delicacy of mind. —1845.]

Secret treaties of the king with France.

France, in the whole course of these intrigues, held the game in her hands. Mistress of both parties, she might either embarrass the king through parliament, if he pretended to an independent course of policy, or cast away the latter, when he should return to his former engagements. Hence, as early as May, 1678, a private treaty was set on foot between Charles and Louis, by which the former obliged himself to a keep a neutrality, if the allies should not accept the terms offered by France, to recall all his troops from Flanders within two months, to disband most of his army and not to assemble his parliament for six months; in return he was to receive 6,000,000 livres. This was signed by the king himself on May 27.; none of his ministers venturing to affix their names.* Yet at this time he was making outward professions of an intention to carry on the war. Even in this secret treaty, so thorough was his insincerity, he meant to evade one of its articles, that of disbanding his troops. In this alone he was really opposed to the wishes of France; and her pertinacity in disarming him seems to have been the chief source of those capricious changes of his disposition, which we find for three or four years at this period.† Louis again appears not only to have mistrusted the king's own inclinations after the prince of Orange's marriage, and his ability to withstand the eagerness of the nation for war, but to have apprehended that he might become absolute by means of his army, without standing indebted for it to his ancient ally. In this point therefore he faithfully served the popular party. Charles used every endeavour to evade this condition; whether it were that he still entertained hopes of attaining arbitrary power through intimidation, or that, dreading the violence of the house of commons, and ascribing it rather to a republican conspiracy than to his own misconduct, he looked to a military force as his security. From this motive we may

* Dalrymple, 162.

† His exclamation at Barillon's pressing the reduction of the army to 8000 men is well known: "God's fish! are all the king of France's promises to make me master of my subjects come to this! or does he think that a matter to be done with 8000 men!" Temple says, "He seemed at this time (May, 1678,) more resolved to enter into the war than I had ever before seen or thought him."

account for his strange proposal to the French king of a league in support of Sweden, by which he was to furnish fifteen ships and 10,000 men, at the expense of France, during three years, receiving six millions for the first year, and four for each of the two next. Louis, as is highly probable, betrayed this project to the Dutch government, and thus frightened them into that hasty signature of the treaty of Nimeguen, which broke up the confederacy, and accomplished the immediate objects of his ambition. No longer in need of the court of England, he determined to punish it for that duplicity, which none resent more in others than those who are accustomed to practise it. He refused Charles the pension stipulated by the private treaty, alleging that its conditions had not been performed; and urged on Montagu, with promises of indemnification, to betray as much as he knew of that secret, in order to ruin lord Danby.*

Fall of Danby. His impeachment.

The ultimate cause of this minister's fall may thus be deduced from the best action of his life; though it ensued immediately from his very culpable weakness in aiding the king's inclinations towards a sordid bargaining with France. It is well known that the famous letter to Montagu, empowering him to make an offer of neutrality for the price of 6,000,000 livres, was not only written by the king's express order, but that Charles attested this with his own signature in a postscript.

This bears date five days after an act had absolutely passed to raise money for carrying on the war; a circumstance worthy of particular attention, as it both puts an end to every pretext or apology which the least scrupulous could venture to urge in behalf of this negotiation, and justifies the whig party of England in an invincible distrust, an inexpiable hatred, of so perfidious a cozener as filled the throne. But, as he was beyond their reach, they exercised a constitutional right in the impeachment of his responsible minister. For responsible he surely was; though, strangely mistaking the obligations of an English statesman, Danby seems to fancy in his printed defence that the king's order would be sufficient warrant to justify obedience in any case not literally

* Dalrymple, 178. et post.

unlawful. "I believe," he says, "there are very few subjects but what would take it ill not to be obeyed by their servants; and their servants might as justly expect their master's protection for their obedience." The letter to Montagu, he asserts, "was written by the king's command, upon the subject of peace and war, wherein his majesty alone is at all times sole judge, and ought to be obeyed not only by any of his ministers of state, but by all his subjects." * Such were, in that age, the monarchical or tory maxims of government, which the impeachment of this minister contributed in some measure to overthrow. As the king's authority for the letter to Montagu was an undeniable fact, evidenced by his own hand-writing, the commons in impeaching lord Danby went a great way towards establishing the principle that no minister can shelter himself behind the throne by pleading obedience to the orders of his sovereign. He is considered, in the modern theory of the constitution, answerable for the justice, the honesty, the utility of all measures emanating from the crown, as well as for their legality; and thus the executive administration is rendered subordinate, in all great matters of policy, to the superintendence and virtual control of the two houses of parliament. It must at the same time be admitted that, through the heat of honest indignation and some less worthy passions on the one hand, through uncertain and crude principles of constitutional law on the other, this just and necessary impeachment of the earl of Danby was not so conducted as to be exempt from all reproach. The charge of high treason for an offence manifestly amounting only to misdemeanour, with the purpose, not perhaps of taking the life of the accused, but at least of procuring some punishment beyond the law †, with the strange mixture of articles, as to which there was no presumptive proof, or which were evidently false, such as concealment of the popish plot, gave such a

* Memoirs relating to the Impeachment of the Earl of Danby, 1710, pp. 151. 227. State Trials, vol. xi.

† The violence of the next house of commons, who refused to acquiesce in Danby's banishment, to which the lords had changed their bill of attainder, may seem to render it very doubtful whether they would have spared his life. But it is to be remembered that they were exasperated by the pardon he had clandestinely obtained, and pleaded in bar of their impeachment.

character of intemperance and faction to these proceedings, as may lead superficial readers to condemn them altogether.* The compliance of Danby with the king's corrupt policy had been highly culpable, but it was not unprecedented; it was even conformable to the court standard of duty; and as it sprang from too inordinate a desire to retain power, it would have found an appropriate and adequate chastisement in exclusion from office. We judge perhaps somewhat more favourably of lord Danby than his contemporaries at that juncture were warranted to do; but even then he was rather a minister to be pulled down than a man to be severely punished. His one great and undeniable service to the protestant and English interests should have palliated a multitude of errors. Yet this was the main-spring and first source of the intrigue that ruined him.

Questions arising on the impeachment. Danby's commitment to the Tower.

The impeachment of lord Danby brought forward several material discussions on that part of our constitutional law, which should not be passed over in this place. 1. As soon as the charges presented by the commons at the bar of the upper house had been read, a motion was made that the earl should withdraw; and another afterwards, that he should be committed to the Tower: both of which were negatived by considerable majorities.† This refusal to commit on a charge of treason had created a dispute between the two houses in the instance of lord Clarendon.‡ In that case, however, one of the articles of impeachment did actually contain an unquestionable treason. But it was contended with much more force on the present occasion, that if the commons, by merely using the word traitorously, could alter the character of offences which, on their own showing, amounted but to misdemeanours, the boasted certainty of the law in matters of treason would be at an end; and unless it were meant that the lords should pass sentence in such a case against the received rules of law, there could be no pretext for their

* The impeachment was carried by 179 to 116, Dec. 19. A motion, Dec. 21. to leave out the word traitorously, was lost by 179 to 141. Eighteen peers entered their protests; Halifax, Essex, Shaftesbury, &c.

† Lords' Journals, Dec. 26. 1678.

‡ State Trials, vi. 351. et post. Hatsell's Precedents, iv. 176.

refusing to admit the accused to bail. Even in Strafford's case, which was a condemned precedent, they had a general charge of high treason upon which he was committed; while the offences alleged against Danby were stated with particularity, and upon the face of the articles could not be brought within any reasonable interpretation of the statutes relating to treason. The house of commons faintly urged a remarkable clause in the act of Edward III., which provides that, in case of any doubt arising as to the nature of an offence charged to amount to treason, the judges should refer it to the sentence of parliament; and maintained that this invested the two houses with a declaratory power to extend the penalties of the law to new offences which had not been clearly provided for in its enactments. But, though something like this might possibly have been in contemplation with the framers of that statute, and precedents were not absolutely wanting to support the construction, it was so repugnant to the more equitable principles of criminal law which had begun to gain ground, that even the heat of faction did not induce the commons to insist upon it. They may be considered however as having carried their point; for, though the prorogation and subsequent dissolution of the present parliament ensued so quickly that nothing more was done in the matter, yet when the next house of commons revived the impeachment, the lords voted to take Danby into custody without any further objection.* It ought not to be inferred from hence, that they were wrong in refusing to commit; nor do I conceive, notwithstanding the latter precedent of lord Oxford, that any rule to the contrary is established. In any future case it ought to be open to debate, whether articles of impeachment pretending to contain a charge of high treason do substantially set forth overt acts of such a crime; and, if the house of lords shall be of opinion, either by consulting the judges or otherwise, that no treason is specially alleged, they should, notwithstanding any technical words, treat the offence as a misdemeanour, and admit the accused to bail. †

* Lords' Journals, April 16.

† "The lord privy seal, Anglesea, in a conference between the two houses," said, "that, in the transaction of this affair, were two great points gained by this house of commons: the first was, that

2. A still more important question arose as to the king's right of pardon upon a parliamentary impeachment. Danby, who had absconded on the unexpected revival of these proceedings in the new parliament, finding that an act of attainder was likely to pass against him, in consequence of his flight from justice, surrendered himself to the usher of the black rod; and, on being required to give in his written answer to the charges of the commons, pleaded a pardon, secretly obtained from the king, in bar of the prosecution.* The commons resolved that the pardon was illegal and void, and ought not to be pleaded in bar of the impeachment of the commons of England. They demanded judgment at the lords' bar against Danby, as having put in a void plea. They resolved, with that culpable violence which distinguished this and the succeeding house of commons, in order to deprive the accused of the assistance of counsel, that no commoner whatsoever should presume to maintain the validity of the pardon pleaded by the earl of Danby without their consent, on pain of being accounted a betrayer of the liberties of the commons of England.† They denied the right of the bishops to vote on the validity of this pardon. They demanded the appointment of a committee from both houses to regulate the form and manner of proceeding on this impeachment, as well as on that of the five lords accused of participation in the popish plot. The upper house gave some signs of a vacillating and temporizing spirit, not by any means unaccountable. They acceded, after a first

Pardon pleaded in bar.

impeachments made by the commons in one parliament continued from session to session, and parliament to parliament, notwithstanding prorogations or dissolutions: the other point was, that in cases of impeachments, upon special matter shown, if the modesty of the party directs him not to withdraw, the lords admit that of right they ought to order him to withdraw, and that afterwards he ought to be committed. But he understood that the lords did not intend to extend the points of withdrawing and committing to general impeachments without special matter alleged; else they did not know how many might be picked out of their house on a sudden."

Shaftesbury said, indecently enough, that they were as willing to be rid of the earl of Danby as the commons; and cavilled at the distinction between general and special impeachments. Commons' Journals, April 12. 1679. On the impeachment of Scroggs for treason, in the next parliament, it was moved to commit him; but the previous question was carried, and he was admitted to bail; doubtless because no sufficient matter was alleged. Twenty peers protested. Lords' Journals, Jan. 7. 1681.

* Lords' Journals, April 25. Parl. Hist. 1121, &c.

† Lords' Journals, May 9. 1679.

refusal, to the proposition of a committee, though manifestly designed to encroach on their own exclusive claim of judicature.* But they came to a resolution that the spiritual lords had a right to sit and vote in parliament in capital cases, until judgment of death shall be pronounced.† The commons of course protested against this vote ‡; but a prorogation soon dropped the curtain over their differences; and Danby's impeachment was not acted upon in the next parliament.

Votes of bishops.

There seems to be no kind of pretence for objecting to the votes of the bishops on such preliminary questions as may arise in an impeachment of treason. It is true that ancient custom has so far engrafted the provisions of the ecclesiastical law on our constitution, that they are bound to withdraw when judgment of life or death is pronounced; though even in this they always do it with a protestation of their right to remain. This, once claimed as a privilege of the church, and reluctantly admitted by the state, became, in the lapse of ages, an exclusion and badge of inferiority. In the constitutions of Clarendon, under Henry II., it is enacted, that the bishops and others holding spiritual benefices "in capite" should give their attendance at trials in parliament, till it come to sentence of life or member. This, although perhaps too ancient to have authority as statute law, was a sufficient evidence of the constitutional usage, where nothing so material could be alleged on the other side. And, as the original privilege was built upon nothing better than the narrow superstitions of the canon law, there was no reasonable pretext for carrying the exclusion of the spiritual lords farther than certain and constant precedents required. Though it was true, as the enemies of lord Danby urged, that by voting for the validity of his pardon, they would in effect determine

* Lords' Journals, May 10. and 11. After the former vote 50 peers, out of 107 who appear to have been present, entered their dissent; and another, the earl of Leicester, is known to have voted with the minority. This unusual strength of opposition, no doubt, produced the change next day.

† May 13. Twenty-one peers were entered as dissentient. The commons inquired whether it were intended by this that the bishops should vote on the pardon of Danby, which the upper house declined to answer, but said they could not vote on the trial of the five popish lords, May 15. 17. 27.

‡ See the report of a committee in Journals, May 26. or Hatsell's Precedents, iv. 374.

the whole question in his favour, yet there seemed no serious reason, considering it abstractedly from party views, why they should not thus indirectly be restored for once to a privilege, from which the prejudices of former ages alone had shut them out.

The main point in controversy, whether a general or special pardon from the king could be pleaded in answer to an impeachment of the commons, so as to prevent any further proceedings in it, never came to a regular decision. It was evident that a minister who had influence enough to obtain such an indemnity, might set both houses of parliament at defiance; the pretended responsibility of the crown's advisers, accounted the palladium of our constitution, would be an idle mockery, if not only punishment could be averted, but inquiry frustrated. Even if the king could remit the penalties of a guilty minister's sentence upon impeachment, it would be much, that public indignation should have been excited against him, that suspicion should have been turned into proof, that shame and reproach, irremissible by the great seal, should avenge the wrongs of his country. It was always to be presumed that a sovereign, undeceived by such a judicial inquiry, or sensible to the general voice it roused, would voluntarily, or at least prudently, abandon an unworthy favourite. Though it might be admitted that long usage had established the royal prerogative of granting pardons under the great seal, even before trial, and that such pardons might be pleaded in bar, (a prerogative indeed which ancient statutes, not repealed, though gone into disuse, or rather in no time acted upon, had attempted to restrain,) yet we could not infer that it extended to cases of impeachment. In ordinary criminal proceedings by indictment the king was before the court as prosecutor, the suit was in his name; he might stay the process at his pleasure, by entering a "noli prosequi;" to pardon, before or after judgment, was a branch of the same prerogative; it was a great constitutional trust, to be exercised at his discretion. But in an appeal, that is, an accusation of felony, brought by the injured party, or his next of blood, a proceeding wherein the king's name did not appear, it was undoubted that he could not remit the capital sentence. The same principle seemed applicable to an impeachment at the suit of the

commons of England, demanding justice from the supreme tribunal of the other house of parliament. It could not be denied that James had remitted the whole sentence upon lord Bacon. But impeachments were so unusual at that time, and the privileges of parliament so little out of dispute, that no great stress could be laid on this precedent.

Such must have been the course of arguing, strong on political, and specious on legal grounds, which induced the commons to resist the plea put in by lord Danby. Though this question remained in suspense on the present occasion, it was finally decided by the legislature in the act of settlement; which provides that no pardon under the great seal of England be pleadable to an impeachment of the commons in parliament.* These expressions seem tacitly to concede the crown's right of granting a pardon after sentence; which, though perhaps it could not well be distinguished in point of law from a pardon pleadable in bar, stands on a very different footing, as has been observed above, with respect to constitutional policy. Accordingly, upon the impeachment of the six peers who had been concerned in the rebellion of 1715, the house of lords, after sentence passed, having come to a resolution on debate that the king had a right to reprieve in cases of impeachment, addressed him to exercise that prerogative as to such of them as should deserve his mercy; and three of the number were in consequence pardoned.†

Abatement of impeachments by dissolution.

3. The impeachment of Danby first brought forward another question of hardly less magnitude, and remarkable as one of the few great points in constitutional law, which have been discussed and finally settled within the memory of the present generation: I mean the continuance of an impeachment by the commons from one parliament to another. Though this has been put at rest by a determination altogether consonant to maxims of expediency, it seems proper in this place to show briefly the grounds upon which the argument on both sides rested.

In the earlier period of our parliamentary records, the

* 13 W. III. c. 2.

† Parl. Hist. vii. 283. Mr. Lechmere, a very ardent whig, then solicitor-general, and one of the managers on the impeachment, had most confidently denied this prerogative. Id. 283.

business of both houses, whether of a legislative or judicial nature, though often very multifarious, was despatched, with the rapidity natural to comparatively rude times, by men impatient of delay, unused to doubt, and not cautious in the proof of facts or attentive to the subtleties of reasoning. The session, generally speaking, was not to terminate till the petitions in parliament for redress had been disposed of, whether decisively or by reference to some more permanent tribunal. Petitions for alteration of the law, presented by the commons, and assented to by the lords, were drawn up into statutes by the king's council just before the prorogation or dissolution. They fell naturally to the ground, if the session closed before they could be submitted to the king's pleasure. The great change that took place in the reign of Henry VI., by passing bills complete in their form through the two houses instead of petitions, while it rendered manifest to every eye that distinction between legislative and judicial proceedings which the simplicity of older times had half concealed, did not affect this constitutional principle. At the close of a session, every bill then in progress through parliament became a nullity, and must pass again through all its stages before it could be tendered for the royal assent. No sort of difference existed in the effect of a prorogation and a dissolution; it was even maintained that a session made a parliament.

During the fifteenth and sixteenth centuries, writs of error from inferior courts to the house of lords became far less usual than in the preceding age; and when they occurred, as error could only be assigned on a point of law appearing on the record, they were quickly decided with the assistance of the judges. But, when they grew more frequent, and especially when appeals from the chancellor, requiring often a tedious examination of depositions, were brought before the lords, it was found that a sudden prorogation might often interrupt a decision; and the question arose, whether writs of error, and other proceedings of a similar nature, did not, according to precedent or analogy, cease, or in technical language abate, at the close of a session. An order was accordingly made by the house on March 11. 1673, that "the lords committees for privileges should inquire whether an appeal to this house either by writ of error or petition, from the pro-

ceedings of any other court being depending, and not determined in one session of parliament, continue in statu quo unto the next session of parliament, without renewing the writ of error or petition, or beginning all anew." The committee reported on the 29th of March, after mis-reciting the order of reference to them in a very remarkable manner, by omitting some words and interpolating others, so as to make it far more extensive than it really was*, that upon the consideration of precedents, which they specify, they came to a resolution that "businesses depending in one parliament or session of parliament have been continued to the next session of the same parliament, and the proceedings thereupon have remained in the same state in which they were left when last in agitation." The house approved of this resolution, and ordered it accordingly.†

This resolution was decisive as to the continuance of ordinary judicial business beyond the termination of a session. It was still open to dispute whether it might not abate by a dissolution. And the peculiar case of impeachment, to which, after the dissolution of the long parliament in 1678, every one's attention was turned, seemed to stand on different grounds. It was referred therefore to the committee of privileges, on the 11th of March, 1679, to consider whether petitions of appeal which were presented to this house in the last parliament be still in force to be proceeded on. Next day it is referred to the same committee, on a report of the matter of fact as to the impeachments of the earl of Danby and the five popish lords in the late parliament, to consider of the state of the said impeachments and all the incidents relating thereto, and to report to the house. On the 18th of March lord Essex reported from the committee, that, "upon perusal of the judgment of this house of the 29th of March, 1673, they are of opinion, that in all cases of appeals and writs of error they continue, and are to be proceeded on, in statu quo, as they stood at the dissolution of the last parliament, without beginning de novo . . . . . And, upon

* Instead of the words in the order, "from the proceedings of any other court," the following are inserted, "or any other business wherein their lordships act as in a court of judicature, and not in their legislative capacity." The importance of this alteration as to the question of impeachment is obvious.

† Lords' Journals.

consideration had of the matter referred to their lordships concerning the state of the impeachments brought up from the house of commons the last parliament, &c. . . . . they are of opinion that the dissolution of the last parliament doth not alter the state of the impeachments brought up by the commons in that parliament." This report was taken into consideration next day by the house; and after a debate, which appears from the journals to have lasted some time, and the previous question moved and lost, it was resolved to agree with the committee.*

This resolution became for some years the acknowledged law of parliament. Lord Stafford, at his trial in 1680, having requested that his counsel might be heard as to the point, whether impeachments could go from one parliament to another, the house took no notice of this question; though they consulted the judges about another which he had put, as to the necessity of two witnesses to every overt act of treason.† Lord Danby and chief-justice Scroggs petitioned the lords in the Oxford parliament, one to have the charges against him dismissed, the other to be bailed; but neither take the objection of an intervening dissolution.‡ And lord Danby, after the dissolution of three successive parliaments since that in which he was impeached, having lain for three years in the Tower, when he applied to be enlarged on bail by the court of king's bench in 1682, was refused by the judges, on the ground of their incompetency to meddle in a parliamentary impeachment; though, if the prosecution were already at an end, he would have been entitled to an absolute discharge. On Jefferies becoming chief justice of the king's bench, Danby was admitted to bail.§ But in the parliament of 1685, the impeached lords having petitioned the house, it was resolved, that the order of the 19th of March, 1679, be reversed and annulled as to impeachments; and they were consequently released from their recognizances.‖

* Lords' Journals. Seventy-eight peers were present.

† Id. 4th Dec. 1680.

‡ Lords' Journ. March 24. 1681. The very next day the commons sent a message to demand judgment on the impeachment against him. Com. Journ. March 25.

§ Shower's Reports, ii. 335. "He was bailed to appear at the lords' bar the first day of the then next parliament." The catholic lords were bailed the next day. This proves that the impeachment was not held to be at an end.

‖ Lords' Journals, May 22. 1685.

The first of these two contradictory determinations is not certainly free from that reproach which so often contaminates our precedents of parliamentary law, and renders an honest man reluctant to show them any greater deference than is strictly necessary. It passed during the violent times of the popish plot; and a contrary resolution would have set at liberty the five catholic peers committed to the Tower, and enabled them probably to quit the kingdom before a new impeachment could be preferred. It must be acknowledged, at the same time, that it was borne out, in a considerable degree, by the terms of the order of 1673, which seems liable to no suspicion of answering a temporary purpose; and that the court party in the house of lords were powerful enough to have withstood any flagrant innovation in the law of parliament. As for the second resolution, that of 1685, which reversed the former, it was passed in the very worst of times; and, if we may believe the protest, signed by the earl of Anglesea and three other peers, with great precipitation and neglect of usual forms. It was not however annulled after the revolution; but, on the contrary, received what may seem at first sight a certain degree of confirmation, from an order of the house of lords in 1690, on the petitions of lords Salisbury and Peterborough, who had been impeached in the preceding parliament, to be discharged; which was done, after reading the resolutions of 1679 and 1685, and a long debate thereon. But as a general pardon had come out in the mean time, by which the judges held that the offences imputed to these two lords had been discharged, and as the commons showed no disposition to follow up their impeachment against them, no parliamentary reasoning can perhaps be founded on this precedent.* In the case of the duke of Leeds, impeached by the commons in 1695, no further proceedings were had; but the lords did not make an order for his discharge from the accusation till five years after three dissolutions had intervened; and grounded it upon the commons not proceeding with the impeachment.

* Upon considering the proceedings in the house of lords on this subject, Oct. 6. and 30. 1690, and especially the protest signed by eight peers on the latter day, there can be little doubt that their release had been chiefly grounded on the act of grace, and not on the abandonment of the impeachment.

They did not, however, send a message to inquire if the commons were ready to proceed, which, according to parliamentary usage, would be required in case of a pending impeachment. The cases of lords Somers, Orford, and Halifax were similar to that of the duke of Leeds, except that so long a period did not intervene. These instances therefore rather tend to confirm the position, that impeachments did not ipso facto abate by a dissolution, notwithstanding the reversal of the order of 1679. In the case of the earl of Oxford, it was formally resolved in 1717, that an impeachment does not determine by a prorogation of parliament; an authority conclusive to those who maintain that no difference exists in the law of parliament between the effects of a prorogation and a dissolution. But it is difficult to make all men consider this satisfactory.

The question came finally before both houses of parliament in 1791, a dissolution having intervened during the impeachment of Mr. Hastings; an impeachment which, far unlike the rapid proceedings of former ages, had already been for three years before the house of lords, and seemed likely to run on to an almost interminable length. It must have been abandoned in despair, if the prosecution had been held to determine by the late dissolution. The general reasonings, and the force of precedents on both sides, were urged with great ability, and by the principal speakers in both houses; the lawyers generally inclining to maintain the resolution of 1685, that impeachments abate by a dissolution, but against still greater names which were united on the opposite side. In the end, after an ample discussion, the continuance of impeachments, in spite of a dissolution, was carried by very large majorities; and this decision, so deliberately taken, and so free from all suspicion of partiality, (the majority in neither house, especially the upper, bearing any prejudice against the accused person,) as well as so consonant to principles of utility and constitutional policy, must for ever have set at rest all dispute upon the question.

The year 1678, and the last session of the parliament that had continued since 1661, were memorable for the great national delusion of the popish plot. For national it was undoubtedly to be called, and by no means

Popish plot.

confined to the whig or opposition party, either in or out of parliament, though it gave them much temporary strength. And though it were a most unhappy instance of the credulity begotten by heated passions and mistaken reasoning, yet there were circumstances, and some of them very singular in their nature, which explain and furnish an apology for the public error, and which it is more important to point out and keep in mind, than to inveigh, as is the custom in modern times, against the factiousness and bigotry of our ancestors. For I am persuaded that we are far from being secure from similar public delusions, whenever such a concurrence of coincidences and seeming probabilities shall again arise, as misled nearly the whole people of England in the popish plot.*

It is first to be remembered that there was really and truly a popish plot in being, though not that which Titus Oates and his associates pretended to reveal, — not merely in the sense of Hume, who, arguing from the general spirit of proselytism in that religion, says there is a perpetual conspiracy against all governments, protestant, Mahometan, and pagan, but one alert, enterprising, effective, in direct operation against the established protestant religion in England. In this plot the king, the duke of York, and the king of France were chief conspirators; the Romish priests, and especially the jesuits, were eager co-operators. Their machinations and their hopes, long-suspected, and in a general sense known, were divulged by the seizure and publication of Coleman's letters. "We have here," he says, in one of these, "a mighty work upon our hands, no less than the conversion of three kingdoms, and by that perhaps the utter subduing of a pestilent heresy, which has a long time domineered over this northern world. There were never such hopes since the death of our queen Mary as now in our days. God hath given us a prince, who is become (I may say by miracle) zealous of being the author and instrument of so glorious a work; but the opposition we are sure

Coleman's letters.

* Bishop Parker is not wrong in saying that the house of commons had so long accustomed themselves to strange fictions about popery, that, upon the first discovery of Oates's plot, they readily believed every thing he said; for they had long expected whatever he declared. Hist. of his own Time, p. 248.

to meet with is also like to be great; so that it imports us to get all the aid and assistance we can." These letters were addressed to Father la Chaise, confessor of Louis XIV., and displayed an intimate connexion with France for the great purpose of restoring popery. They came to light at the very period of Oates's discovery; and though not giving it much real confirmation, could hardly fail to make a powerful impression on men unaccustomed to estimate the value and bearings of evidence.*

The conspiracy supposed to have been concerted by the jesuits at St. Omer, and in which so many English catholics were implicated, chiefly consisted, as is well known, in a scheme of assassinating the king. Though the obvious falsehood and absurdity of much that the witnesses deposed in relation to this plot render it absolutely incredible, and fully acquit those unfortunate victims of iniquity and prejudice, it could not appear at the time an extravagant supposition, that an eager intriguing faction should have considered the king's life a serious obstacle to their hopes. Though as much attached in heart as his nature would permit to the catholic religion, he was evidently not inclined to take any effectual measures in its favour; he was but one year older than his brother, on the contingency of whose succession all their hopes rested, since his heiress was not only brought up in the protestant faith, but united to its most strenuous defender. Nothing could have been more anxiously wished at St. Omer than the death of Charles; and it does not seem improbable that the atrocious fictions of Oates may have been originally suggested by some actual, though vague, projects of assassination, which he had heard in discourse among the ardent spirits of that college.

The popular ferment which this tale, however undeserving of credit, excited in a predisposed multitude, was naturally wrought to a higher pitch by the very extraordinary circumstances of sir Edmondbury

Murder of sir Edmondbury Godfrey.

* Parl. Hist. 1024. 1035. State Trials, vii. 1. Kennet, 327. 337. 351. North's Examen, 129. 177. Ralph, 386. Burnet, i. 555. Scroggs tried Coleman with much rudeness and partiality; but his summing up in reference to the famous passage in the letters is not deficient in acuteness. In fact, this not only convicted Coleman, but raised a general conviction of the truth of a plot — and a plot there was, though not Oates's.

Godfrey's death. Even at this time, although we reject the imputation thrown on the catholics, and especially on those who suffered death for that murder, it seems impossible to frame any hypothesis which can better account for the facts that seem to be authenticated. That he was murdered by those who designed to lay the charge on the papists, and aggravate the public fury, may pass with those who rely on such writers as Roger North*, but has not the slightest corroboration from any evidence; nor does it seem to have been suggested by the contemporary libellers of the court party. That he might have had, as an active magistrate, private enemies, whose revenge took away his life, which seems to be Hume's conjecture, is hardly more satisfactory; the enemies of a magistrate are not likely to have left his person unplundered, nor is it usual for justices of the peace, merely on account of the discharge of their ordinary duties, to incur such desperate resentment. That he fell by his own hands was doubtless the suggestion of those who aimed at discrediting the plot; but it is impossible to reconcile this with the marks of violence which are so positively sworn to have appeared on his neck; and, on a later investigation of the subject in the year 1682, when the court had become very powerful, and a belief in the plot had grown almost a mark of disloyalty, an attempt made to prove the self-murder of Godfrey, in a trial before Pemberton, failed altogether; and the result of the whole evidence, on that occasion, was strongly to confirm the supposition that he had perished by the hands of assassins.† His death remains at this moment a problem for which no tolerably satisfactory solution can be offered. But at the time, it was a very natural presumption to connect it with the plot, wherein he had not only taken the deposition of Oates, a circumstance not in itself highly important, but was supposed to have received the confidential communications of Coleman.‡

* Examen, p. 196.

† R. v. Farwell and others. State Trials, viii. 1361. They were indicted for publishing some letters to prove that Godfrey had killed himself. They defended themselves by calling witnesses to prove the truth of the fact, which, though in a case of libel, Pemberton allowed. But their own witnesses proved that Godfrey's body had all the appearance of being strangled.

The Roman catholics gave out, at the time of Godfrey's death, that he had killed himself; and hurt their own cause by foolish lies. North's Examen, p. 200.

‡ It was deposed by a respectable

Another circumstance, much calculated to persuade ordinary minds of the truth of the plot, was the trial of Reading, a Romish attorney, for tampering with the witnesses against the accused catholic peers, in order to make them keep out of the way.* As such clandestine dealing with witnesses creates a strong, and perhaps with some too strong, a presumption of guilt, where justice is sure to be uprightly administered, men did not make a fair distinction as to times when the violence of the court and jury gave no reasonable hope of escape; and when the most innocent party would much rather procure the absence of a perjured witness than trust to the chance of disproving his testimony.

There was indeed good reason to distrust the course of justice. Never were our tribunals so disgraced by the brutal manners and iniquitous partiality of the bench as in the latter years of this reign. The State Trials, none of which appear to have been published by the prisoners' friends, bear abundant testimony to the turpitude of the judges. They explained away and softened the palpable contradictions of the witnesses for the crown, insulted and threatened those of the accused, checked all cross-examination, assumed the truth of the charge throughout the whole of every trial.† Injustice of judges on the trials.

witness, that Godfrey entertained apprehensions on account of what he had done as to the plot, and had said, "On my conscience, I believe I shall be the first martyr." State Trials, vii. 168. These little additional circumstances, which are suppressed by later historians, who speak of the plot as unfit to impose on any but the most bigoted fanatics, contributed to make up a body of presumptive and positive evidence, from which human belief is rarely withheld.

It is remarkable that the most acute and diligent historian we possess for those times, Ralph, does not in the slightest degree pretend to account for Godfrey's death; though, in his general reflections on the plot, p. 555., he relies too much on the assertions of North and l'Estrange.

* State Trials, vii. 259. North's Examen, 240.

† State Trials, vol. vii. passim. On the trial of Green, Berry, and Hill, for Godfrey's murder, part of the story for the prosecution was, that the body was brought to Hill's lodgings on the Saturday, and remained there till Monday. The prisoner called witnesses who lodged in the same house, to prove that it could not have been there without their knowledge. Wild, one of the judges, assuming, as usual, the truth of the story as beyond controversy, said it was very suspicious that they should see or hear nothing of it; and another, Dolben, told them it was well they were not indicted. Id. 199. Jones, summing up the evidence on sir Thomas Gascoigne's trial at York, (an aged catholic gentleman, most improbably accused of accession to the plot,) says to the jury: "Gentlemen, you have the king's witness on his oath; he that testifies against him is barely on his word, and he is a papist;" Id. 1039.: thus deriving an argument from an iniquitous rule, which, at that time, prevailed in our law, of refusing to hear the prisoner's witnesses upon oath. Gascoigne, however, was acquitted.

It would swell this note to an unwar-

One Whitbread, a jesuit, having been indicted with several others, and the evidence not being sufficient, Scroggs discharged the jury of him, but ordered him to be kept in custody till more proof might come in. He was accordingly indicted again for the same offence. On his pleading that he had been already tried, Scroggs and North had the effrontery to deny that he had been ever put in jeopardy, though the witnesses for the crown had been fully heard, before the jury were most irregularly and illegally discharged of him on the former trial. North said he had often known it done, and it was the common course of law. In the course of this proceeding, Bedloe, who had deposed nothing explicit against the prisoner on the former trial, accounted for this by saying, it was not then convenient; an answer with which the court and jury were content.*

It is remarkable that, although the king might be justly surmised to give little credence to the pretended plot, and the duke of York was manifestly affected in his interests by the heats it excited, yet the judges most subservient to the court, Scroggs, North, Jones, went with all violence into the popular cry, till, the witnesses beginning to attack the queen, and to menace the duke, they found it was time to rein in, as far as they could, the passions they had instigated.† Pemberton, a more honest man in political matters, showed a remarkable intemperance and unfairness in all trials relating to popery. Even in that of lord Stafford in 1680, the last, and perhaps the worst, proceeding under this delusion, though the court had a standing majority in the house of lords, he was con-

rantable length, were I to extract so much of the trials as might fully exhibit all the instances of gross partiality in the conduct of the judges. I must, therefore, refer my readers to the volume itself, a standing monument of the necessity of the revolution; not only as it rendered the judges independent of the crown, but as it brought forward those principles of equal and indifferent justice, which can never be expected to flourish but under the shadow of liberty.

* State Trials, 119. 315. 344.

† Roger North, whose long account of the popish plot is, as usual with him, a medley of truth and lies, acuteness and absurdity, represents his brother, the chief-justice, as perfectly immaculate in the midst of this degradation of the bench. The State Trials however show that he was as partial and unjust towards the prisoners as any of the rest, till the government thought it necessary to interfere. The moment when the judges veered round, was on the trial of sir George Wakeman, physician to the queen. Scroggs, who had been infamously partial against the prisoners upon every former occasion, now treated Oates and Bedloe as they deserved, though to the aggravation of his own disgrace. State Trials, vii. 619—686.

victed by fifty-five peers against thirty-one; the earl of Nottingham, lord-chancellor, the duke of Lauderdale, and several others of the administration voting him guilty, while he was acquitted by the honest Hollis and the acute Halifax.* So far was the belief in the popish plot, or the eagerness in hunting its victims to death, from being confined to the whig faction, as some writers have been willing to insinuate. None had more contributed to rouse the national outcry against the accused, and create a firm persuasion of the reality of the plot, than the clergy in their sermons, even the most respectable of their order, Sancroft, Sharp, Barlow, Burnet, Tillotson, Stillingfleet; inferring its truth from Godfrey's murder or Coleman's letter, calling for the severest laws against catholics, and imputing to them the fire of London, nay, even the death of Charles I.†

Though the duke of York was not charged with participation in the darkest schemes of the popish conspirators, it was evident that his succession was the great aim of their endeavours, and evident also that he had been engaged in the more real and undeniable intrigues of Coleman. His accession to the throne, long viewed with just apprehension, now seemed to threaten such perils to every part of the constitution, as ought not supinely to be waited for, if any means could be devised to obviate them. This gave rise to the bold measure of the exclusion bill, too bold indeed for the spirit of the country, and the rock on which English liberty was nearly shipwrecked. In the long parliament, full

Exclusion of duke of York proposed.

* Lords' Journals, 7th December. State Trials, 1552. Parl. Hist. 1229. Stafford, though not a man of much ability, had rendered himself obnoxious as a prominent opposer of all measures intended to check the growth of popery. His name appears constantly in protests upon such occasions; as, for instance, March 3. 1678, against the bill for raising money for a French war. Reresby praises his defence very highly, p. 108. The duke of York, on the contrary, or his biographer, observes: "Those who wished lord Stafford well, were of opinion that, had he managed the advantages which were given him with dexterity, he would have made the greatest part of his judges ashamed to condemn him; but it was his misfortune to play his game worst, when he had the best cards." P. 637.

† I take this from extracts out of those sermons, contained in the Roman catholic pamphlet printed in 1687, and entitled Good Advice to the Pulpits. The protestant divines did their cause no good by misrepresentation of their adversaries, and by their propensity to rudeness and scurrility. The former fault indeed existed in a much greater degree on the opposite side, but by no means the latter. See also a treatise by Barlow, published in 1679, entitled, Popish Principles pernicious to Protestant Princes.

as it was of pensioners and creatures of court influence, nothing so vigorous would have been successful. Even in the bill which excluded catholic peers from sitting in the house of lords, a proviso, exempting the duke of York from its operation, having been sent down from the other house, passed by a majority of two voices.* But the zeal they showed against Danby induced the king to put an end to this parliament of seventeen years' duration; an event long ardently desired by the popular party, who foresaw their ascendancy in the new elections.† The next house of commons accordingly came together with an ardour not yet quenched by corruption; and after reviving the impeachments commenced by their predecessors, and carrying a measure long in agitation, a test‡ which shut the catholic peers out of

Parliament dissolved.

* Parl. Hist. 1040.

† See Marvell's "Seasonable Argument to persuade all the grand Juries in England to petition for a new Parliament." He gives very bad characters of the principal members on the court side; but we cannot take for granted all that comes from so unscrupulous a libeller. Sir Harbottle Grimstone had first thrown out, in the session of 1675, that a standing parliament was as great a grievance as a standing army, and that an application ought to be made to the king for a dissolution. This was not seconded; and met with much disapprobation from both sides of the house. Parl. Hist. vii. 64. But the country party, in two years' time, had changed their views, and were become eager for a dissolution. An address to that effect was moved in the house of lords, and lost by only two voices, the duke of York voting for it. Id. 800. This is explained by a passage in Coleman's letters, where that intriguer expresses his desire to see parliament dissolved, in the hope that another would be more favourable to the toleration of catholics. This must mean that the dissenters might gain an advantage over the rigorous church of England men, and be induced to come into a general indulgence.

‡ This test, 30 Car. 2. stat. 2., is the declaration subscribed by members of both houses of parliament on taking their seats, that there is no transubstantiation of the elements in the Lord's Supper; and that the invocation of saints, as practised in the church of Rome, is idolatrous. The oath of supremacy was already taken by the commons, though not by the lords; and it is a great mistake to imagine that catholics were legally capable of sitting in the lower house before the act of 1679. But it had been the aim of the long parliament in 1642 to exclude them from the house of lords; and this was of course revived with greater eagerness, as the danger from their influence grew more apparent. A bill for this purpose passed the commons in 1675, but was thrown ont by the peers. Journals, May 14. Nov. 8. It was brought in again in the spring of 1678. Parl. Hist. 990. In the autumn of the same year it was renewed, when the lords agreed to the oath of supremacy, but omitted the declaration against transubstantiation, so far as their own house was affected by it. Lords' Journals, Nov. 20. 1678. They also excepted the duke of York from the operation of the bill; which exception was carried in the commons by two voices. Parl. Hist. 1040. The duke of York and seven more lords protested.

The violence of those times on all sides will account for this theological declaration; but it is more difficult to justify its retention at present. Whatever influence a belief in the pope's supremacy may exercise upon men's politics, it is hard to see how the doctrine of transubstantiation can directly affect them; and surely he who renounces the former, can-

parliament, went upon the exclusion bill. Their dissolution put a stop to this; and in the next parliament the lords rejected it.*

The right of excluding an unworthy heir from the succession was supported not only by the plain and fundamental principles of civil society, which establish the interest of the people to be the paramount object of political institutions, but by those of the English constitution. It had always been the better opinion among lawyers, that the reigning king with consent of parliament was competent to make any changes in the inheritance of the crown; and this, besides the acts passed under Henry VIII. empowering him to name his successor, was expressly enacted, with heavy penalties against such as should contradict it, in the thirteenth year of Elizabeth. The contrary doctrine indeed, if pressed to its legitimate consequences, would have shaken all the statutes that limit the prerogative; since, if the analogy of entails in private inheritances were to be resorted to, and the existing legislature should be supposed incompetent to alter the line of succession, they could as little impair as they could alienate, the indefeasible rights of the heir; nor could he be bound by restrictions to which he had never given his assent. It seemed strange to maintain that the parliament could reduce a future king of England to the condition of a doge of Venice, by shackling and taking away his authority, and yet could not divest him of a title which they could render little better than

not be very dangerous on account of his adherence to the latter. Nor is it less extraordinary to demand, from any of those who usually compose a house of commons, the assertion that the practice of the church of Rome in the invocation of saints is idolatrous; since, even on the hypothesis that a country gentleman has a clear notion of what is meant by idolatry, he is, in many cases, wholly out of the way of knowing what the church of Rome, or any of its members, believe or practise. The invocation of saints, as held and explained by that church in the council of Trent, is surely not idolatrous, with whatever error it may be charged; but the practice at least of uneducated Roman catholics seems fully to justify the declaration; understanding it to refer to certain superstitions, countenanced or not eradicated by their clergy. I have sometimes thought that the legislator of a great nation sets off oddly by solemnly professing theological positions about which he knows nothing, and swearing to the possession of property which he does not enjoy. [1827.]

* The second reading of the exclusion bill was carried, May 21. 1679, by 207 to 128. The debates are in Parliamentary History, 1125, et post. In the next parliament it was carried without a division. Sir Leoline Jenkins alone seems to have taken the high ground, that "parliament cannot disinherit the heir of the crown; and that, if such an act should pass, it would be invalid in itself." Id. 1191.

a mockery. Those accordingly who disputed the legislative omnipotence of parliament did not hesitate to assert that statutes infringing the prerogative were null of themselves. With the court lawyers conspired the clergy, who pretended these matters of high policy and constitutional law to be within their province, and, with hardly an exception, took a zealous part against the exclusion. It was indeed a measure repugnant to the common prejudices of mankind; who, without entering on the abstract competency of parliament, are naturally accustomed in an hereditary monarchy to consider the next heir as possessed of a right, which, except through necessity, or notorious criminality, cannot be justly divested. The mere profession of a religion different from the established, does not seem, abstractedly considered, an adequate ground for unsettling the regular order of inheritance. Yet such was the narrow bigotry of the sixteenth and seventeenth centuries, which died away almost entirely among protestants in the next, that even the trifling differences between Lutherans and Calvinists had frequently led to alternate persecutions in the German states, as a prince of one or the other denomination happened to assume the government. And the Romish religion, in particular, was in that age of so restless and malignant a character, that unless the power of the crown should be far more strictly limited than had hitherto been the case, there must be a very serious danger from any sovereign of that faith; and the letters of Coleman, as well as other evidences, made it manifest that the duke of York was engaged in a scheme of general conversion, which, from his arbitrary temper and the impossibility of succeeding by fair means, it was just to apprehend, must involve the subversion of all civil liberty. Still this was not distinctly perceived by persons at a distance from the scene, imbued, as most of the gentry were, with the principles of the old cavaliers, and those which the church had inculcated. The king, though hated by the dissenters, retained much of the affections of that party, who forgave the vices they deplored, to his father's memory and his personal affability. It appeared harsh and disloyal to force his consent to the exclusion of a brother in whom he saw no crime, and to avoid which he offered every possible

expedient.* There will always be found in the people of England a strong unwillingness to force the reluctance of their sovereign—a latent feeling, of which parties in the heat of their triumphs are seldom aware, because it does not display itself until the moment of re-action. And although, in the less settled times before the revolution, this personal loyalty was highly dangerous, and may still, no doubt, sometimes break out so as to frustrate objects of high import to the public weal, it is on the whole a salutary temper for the conservation of the monarchy, which may require such a barrier against the encroachments of factions and the fervid passions of the multitude.

Schemes of Shaftesbury and Monmouth.

The bill of exclusion was drawn with as much regard to the inheritance of the duke of York's daughters as they could reasonably demand, or as any lawyer engaged for them could have shown; though something different seems to be insinuated by Burnet. It provided that the imperial crown of England should descend to and be enjoyed by such person or persons successively during the life of the duke of York, as should have inherited or enjoyed the same in case he were naturally dead. If the princess of Orange was not expressly named, (which, the bishop tells us, gave a jealousy, as though it were intended to keep that matter still undetermined,) this silence was evidently justified by the possible contingency of the birth of a son to the duke, whose right there was no intention in the framers of the bill to defeat. But a large part of the opposition had unfortunately other objects in view. It had been the great error of those who withstood the arbitrary counsels of Charles II. to have admitted into their closest confidence, and in a considerable degree to the management of their party, a man so destitute of all honest principle as the earl of Shaftesbury. Under his contaminating influence, their passions became more untractable, their connexions more seditious and democratical, their schemes more revolutionary; and they broke away more and more from the line of national opinion, till a fatal

* While the exclusion bill was passing the commons, the king took the pains to speak himself to almost every lord, to dissuade him from assenting to it when it should come up; telling them, at the same time, let what would happen, he would never suffer such a villanous bill to pass. Life of James, 553.

re-action involved themselves in ruin, and exposed the cause of public liberty to its most imminent peril. The countenance and support of Shaftesbury brought forward that unconstitutional and most impolitic scheme of the duke of Monmouth's succession. There could hardly be a greater insult to a nation used to respect its hereditary line of kings, than to set up the bastard of a prostitute, without the least pretence of personal excellence or public services, against a princess of known virtue and attachment to the protestant religion. And the effrontery of this attempt was aggravated by the libels eagerly circulated to dupe the credulous populace into a belief of Monmouth's legitimacy. The weak young man, lured on to destruction by the arts of intriguers and the applause of the multitude, gave just offence to sober-minded patriots, who knew where the true hopes of public liberty were anchored, by a kind of triumphal procession through parts of the country, and by other indications of a presumptuous ambition.*

* Ralph, p. 498. The atrocious libel, entitled, "An Appeal from the Country to the City," published in 1679, and usually ascribed to Ferguson, (though said in Biogr. Brit. art. L'Estrange, to be written by Charles Blount,) was almost sufficient of itself to excuse the return of public opinion towards the throne. State Tracts, temp. Car. II.; Ralph, i. 476.; Parl. Hist. iv. Appendix. The king is personally struck at in this tract with the utmost fury; the queen is called Agrippina, in allusion to the infamous charges of Oates; Monmouth is held up as the hope of the country. "He will stand by you, therefore you ought to stand by him. He who hath the worst title always makes the best king." One Harris was tried for publishing this pamphlet. The jury at first found him guilty of selling'; an equivocal verdict, by which they probably meant to deny, or at least to disclaim, any assertion of the libellous character of the publication. But Scroggs telling them it was their province to say guilty or not guilty, they returned a verdict of guilty. State Trials, vii. 925.

Another arrow dipped in the same poison was a "Letter to a Person of Honour concerning the Black Box." Somers Tracts, viii. 189. The story of a contract of marriage between the king and Mrs. Waters, Monmouth's mother, concealed in a black box, had lately been current; and the former had taken pains to expose its falsehood by a public examination of the gentleman whose name had been made use of. This artful tract is intended to keep up the belief of Monmouth's legitimacy, and even to graft it on the undeniable falsehood of that tale; as if it had been purposely fabricated to delude the people, by setting them on a wrong scent. See also another libel of the same class, p. 197.

Though Monmouth's illegitimacy is past all question, it has been observed by Harris, that the princess of Orange, in writing to her brother about Mrs. Waters, in 1655, twice names her as his wife. Thurloe, i. 665., quoted in Harris's Lives, iv. 168. But though this was a scandalous indecency on her part, it proves no more than that Charles, like other young men in the heat of passion, was foolish enough to give that appellation to his mistress; and that his sister humoured him in it.

Sidney mentions a strange piece of Monmouth's presumption. When he went to dine with the city in October, 1680, it was remarked that the bar, by which the heralds denote illegitimacy, had been taken off the royal arms on his coach. Letters to Saville, p. 54.

If any apology can be made for the encouragement given by some of the whig party (for it was by no means general) to the pretensions of Monmouth, it must be found in their knowledge of the king's affection for him, which furnished a hope that he might more easily be brought in to the exclusion of his brother for the sake of so beloved a child than for the prince of Orange. And doubtless there was a period when Charles's acquiescence in the exclusion did not appear so unattainable as, from his subsequent line of behaviour, we are apt to consider it. It appears from the recently published life of James, that in the autumn of 1680 the embarrassment of the king's situation, and the influence of the duchess of Portsmouth, who had gone over to the exclusionists, made him seriously deliberate on abandoning his brother.* Whether from natural instability of judgment, from the steady adherence of France to the duke of York, or from observing the great strength of the tory party in the house of lords, where the bill was rejected by a majority of 63 to 30, he soon returned to his former disposition. It was long however before he treated James with perfect cordiality. Conscious of his own insincerity in religion, which the duke's bold avowal of an obnoxious creed seemed to reproach, he was provoked at bearing so much of the odium, and incurring so many of the difficulties, which attended a profession that he had not ventured to make. He told Hyde, before the dissolution of the parliament of 1680, that it would not be in his power to protect his brother any longer, if he did not conform and go to church.† Hyde himself, and the duke's other friends, had never ceased to urge him on this subject. Their importunity was renewed by the king's order, even after the dissolution of the Oxford parliament; and it seems to have been the firm persuasion of most about the court that he could only be preserved by conformity to the protestant

Unsteadiness of the king.

* Life of James, 592. et post. Compare Dalrymple, p. 265. et post. Barillon was evidently of opinion that the king would finally abandon his brother. Sunderland joined the duchess of Portsmouth, and was one of the thirty peers who voted for the bill in November, 1680. James charges Godolphin also with deserting him, p. 615. But his name does not appear in the protest signed by twenty-five peers; though that of the privy seal, Lord Anglesea, does. The duchess of Portsmouth sat near the commons at Stafford's trial, "dispensing her sweetmeats and gracious looks among them." P. 638.

† Life of James, p. 657.

religion. He justly apprehended the consequences of a refusal; but, inflexibly conscientious on this point, he braved whatever might arise from the timidity or disaffection of the ministers and the selfish fickleness of the king.

In the apprehensions excited by the king's unsteadiness and the defection of the duchess of Portsmouth, he deemed his fortuness so much in jeopardy, as to have resolved on exciting a civil war, rather than yield to the exclusion. He had already told Barillon that the royal authority could be re-established by no other means.* The episcopal party in Scotland had gone such lengths that they could hardly be safe under any other king. The catholics of England were of course devoted to him. With the help of these he hoped to show himself so formidable that Charles would find it his interest to quit that cowardly line of politics, to which he was sacrificing his honour and affections. Louis, never insensible to any occasion of rendering England weak and miserable, directed his ambassador to encourage the duke in this guilty project with the promise of assistance.† It seems to have been prevented by the wisdom or public spirit of Churchill, who pointed out to Barillon the absurdity of supposing that the duke could stand by himself in Scotland. This scheme of lighting up the flames of civil war in three kingdoms, for James's private advantage, deserves to be more remarked than it has hitherto been at a time when his apologists seem to have become numerous. If the designs of Russell and Sidney for the preservation of their country's liberty are blamed as rash and unjustifiable, what name shall we give to the project of maintaining the pretensions of an individual by means of rebellion and general bloodshed?

It is well known that those who took a concern in the maintenance of religion and liberty, were much divided as to the best expedients for securing them; some, who thought the exclusion too violent, dangerous, or impracticable, preferring the enactment of limitations on the prerogatives of a catholic king. This had begun in fact from the court,

* Il est persuadé que l'autorité royale ne se peut rétablir en Angleterre que par une guerre civile. Aug. 19. 1680. Dalrymple, 265.

† Dalrymple, 277. Nov. 1680.

who passed a bill through the house of lords in 1677, for the security, as it was styled, of the protestant religion. This provided that a declaration and oath against transubstantiation should be tendered to every king within fourteen days after his accession; that, on his refusal to take it, the ecclesiastical benefices in the gift of the crown should vest in the bishops, except that the king should name to every vacant see one out of three persons proposed to him by the bishops of the province. It enacted also, that the children of a king refusing such a test should be educated by the archbishop and two or three more prelates. This bill dropped in the commons; and Marvell speaks of it as an insidious stratagem of the ministry.* It is more easy, however, to give hard names to a measure originating with an obnoxious government, than to prove that it did not afford a considerable security to the established church, and impose a very remarkable limitation on the prerogative. But the opposition in the house of commons had probably conceived their scheme of exclusion, and would not hearken to any compromise. As soon as the exclusion became the topic of open discussion, the king repeatedly offered to grant every security that could be demanded consistently with the lineal succession. Hollis, Halifax, and for a time Essex, as well as several eminent men in the lower house, were in favour of limitations.† But those which they intended to insist upon, were such encroachments on the constitutional authority of the crown, that, except a title and revenue, which Charles thought more valuable than all the rest, a popish king would enjoy no one attribute of royalty. The king himself, on the 30th of April, 1679, before the heats

Expedients to avoid the exclusion.

* Marvell's Growth of Popery, in State Tracts, temp. Car. II. p. 98. Parl. Hist. 853. The second reading was carried by 127 to 88. Serjeant Maynard, who was probably not in the secrets of his party, seems to have been surprised at their opposition. An objection with Marvell, and not by any means a bad one, would have been that the children of the royal family were to be consigned for education to the sole government of bishops. The duke of York, and thirteen other peers, protested against this bill, not all of them from the same motives, as may be collected from their names. Lords' Journals, 13th and 15th March, 1679.

† Lords Russell and Cavendish, sir W. Coventry, and sir Thomas Littleton, seem to have been in favour of limitations. Lord J. Russell, p. 42. Ralph, 446. Sidney's Letters, p. 32. Temple and Shaftesbury, for opposite reasons, stood alone in the council against the scheme of limitations. Temple's Memoirs.

on the subject had become so violent as they were the next year, offered not only to secure all ecclesiastical preferments from the control of a popish successor, but to provide that the parliament in being at a demise of the crown, or the last that had been dissolved, should immediately sit and be indissoluble for a certain time; that none of the privy council, nor judges, lord-lieutenant, deputy-lieutenant, nor officer of the navy, should be appointed during the reign of a catholic king, without consent of parliament. He offered at the same time most readily to consent to any further provision that could occur to the wisdom of parliament, for the security of religion and liberty consistently with the right of succession. Halifax, the eloquent and successful opponent of the exclusion, was the avowed champion of limitations. It was proposed, in addition to these offers of the king, that the duke, in case of his accession, should have no negative voice on bills; that he should dispose of no civil or military posts without the consent of parliament; that a council of forty-one, nominated by the two houses, should sit permanently during the recess or interval of parliament, with power of appointing to all vacant offices, subject to the future approbation of the lords and commons.* These extraordinary innovations would, at least for the time, have changed our constitution into a republic; and justly appeared to many persons more revolutionary than an alteration in the course of succession. The duke of York looked on them with dismay; Charles indeed privately declared that he would never consent to such infringements of the prerogative.† It is not however easy to perceive how he could have escaped from the necessity of adhering to his own propositions, if the house of commons would have relinquished the bill of exclusion. The prince of Orange, who was doubtless in secret not averse to the latter measure, declared strongly against the plan of restrictions, which a protestant successor might not find it practicable to shake off. Another expedient, still more ruinous to James than that of limitations, was what the court itself suggested in the Oxford parliament, that, the

* Commons' Journals, 23d Nov. 1680, 8th Jan. 1681.

† Life of James, 634. 671. Dalrymple, p. 307.

duke retaining the title of king, a regent should be appointed, in the person of the princess of Orange, with all the royal prerogatives; nay, that the duke, with his pageant crown on his head, should be banished from England during his life. * This proposition, which is a great favourite with Burnet, appears liable to the same objections as were justly urged against a similar scheme at the revolution. It was certain that in either case James would attempt to obtain possession of power by force of arms; and the law of England would not treat very favourably those who should resist an acknowledged king in his natural capacity, while the statute of Henry VII. would, legally speaking, afford a security to the adherents of a de facto sovereign.

Upon the whole, it is very unlikely, when we look at the general spirit and temper of the nation, its predilection for the ancient laws, its dread of commonwealth and fanatical principles, the tendency of the upper ranks to intrigue and corruption, the influence and activity of the church, the bold counsels and haughty disposition of James himself, that either the exclusion, or such extensive limitations as were suggested in lieu of it, could have been carried into effect with much hope of a durable settlement. It would, I should conceive, have been practicable to secure the independence of the judges, to exclude unnecessary placemen and notorious pensioners from the house of commons, to render the distribution of money among its members penal, to remove from the protestant dissenters, by a full toleration, all temptation to favour the court, and, above all, to put down the standing army. Though none perhaps of these provisions would have prevented the attempts of this and the next reign to introduce arbitrary power, they would have rendered them still more grossly illegal; and, above all, they would have saved that

* Dalrymple, p. 301. Life of James, 660. 671. The duke gave himself up for lost when he heard of the clause in the king's speech declaring his readiness to hearken to any expedient but the exclusion. Birch and Hampden, he says, were in favour of this; but Fitzharris's business set the house in a flame, and determined them to persist in their former scheme. Reresby says, p. 19., confirmed by Parl. Hist. 132., it was supported by sir Thomas Littleton, who is said to have been originally against the bill of exclusion, as well as sir William Coventry. Sidney's Letters, p. 32. It was opposed by Jones, Winnington, Booth, and, if the Parliamentary History be right, by Hampden and Birch.

unhappy revolution of popular sentiment which gave the court encouragement and temporary success.

Names of Whig and Tory.

It was in the year 1679 that the words Whig and Tory were first heard in their application to English factions; and, though as senseless as any cant terms that could be devised, they became instantly as familiar in use as they have since continued. There were then indeed questions in agitation, which rendered the distinction more broad and intelligible than it has generally been in later times. One of these, and the most important, was the bill of exclusion; in which, as it was usually debated, the republican principle, that all positive institutions of society are in order to the general good, came into collision with that of monarchy, which rests on the maintenance of a royal line, as either the end, or at least the necessary means, of lawful government. But, as the exclusion was confessedly among those extraordinary measures, to which men of tory principles are sometimes compelled to resort in great emergencies, and which no rational whig espouses at any other time, we shall better perhaps discern the formation of these grand political sects in the petitions for the sitting of parliament, and in the counter addresses of the opposite party.

New council formed by sir William Temple.

In the spring of 1679, Charles established a new privy council, by the advice of sir William Temple, consisting in great part of those eminent men in both houses of parliament, who had been most prominent in their opposition to the late ministry.* He publicly declared his resolution to govern entirely by the advice of this council and that of parliament. The duke of York was kept in what seemed a sort of exile at Brussels.† But the just

* Temple's Memoirs. He says their revenues in land or offices amounted to 300,000*l.* per annum; whereas those of the house of commons seldom exceeded 400,000*l.* The king objected much to admitting Halifax; but himself proposed Shaftesbury, much against Temple's wishes. The funds in Holland rose on the news. Barillon was displeased, and said it was making "des états, et non des conseils;" which was not without weight, for the king had declared he would take no measure, nor even choose any new counsellor, without their consent. But the extreme disadvantage of the position in which this placed the crown, rendered it absolutely certain that it was not submitted to with sincerity. Lady Portsmouth told Barillon, the new ministry was formed in order to get money from parliament. Another motive, no doubt, was to prevent the exclusion bill.

† Life of James, 558. On the king's sudden illness, Aug. 22. 1679, the ruling ministers, Halifax, Sunderland, and Essex, alarmed at the anarchy which might

suspicion attached to the king's character prevented the commons from placing much confidence in this new ministry; and, as frequently happens, abated their esteem for those who, with the purest intentions, had gone into the council.* They had soon cause to perceive that their distrust had not been excessive. The ministers were constantly beaten in the house of lords; an almost certain test, in our government, of the court's insincerity.† The parliament was first prorogued, then dissolved; against the advice, in the latter instance, of the majority of that council by whom the king had pledged himself to be directed. A new parliament, after being summoned to meet in October, 1679, was prorogued for a twelvemonth without the avowed concurrence of any member of the council. Lord Russell, and others of the honester party, withdrew from a board where their presence was only asked in mockery or deceit; and the whole specious scheme of Temple came to nothing before the conclusion of the year which had seen it displayed.‡ Its author, chagrined at the disappointment of his patriotism and his vanity, has sought the causes of failure in the folly of Monmouth and perverseness of Shaftesbury. He was not aware, at least in their full extent, of the king's intrigues at this period. Charles, who had been induced to take those whom he most disliked into

Long prorogation of parliament.

come on his death, of which Shaftesbury and Monmouth would profit, sent over for the duke; but soon endeavoured to make him go into Scotland; and, after a struggle against the king's tricks to outwit them, succeeded in this object. Id. p. 570. et post.

* Temple. Reresby, p. 89. "So true it is," he says, "that there is no wearing the court and country livery together." Thus also Algernon Sidney, in his letters to Saville, p. 16.—"The king certainly inclines not to be so stiff as formerly in advancing only those that exalt prerogative; but the earl of Essex, and some others that are coming into play thereupon, cannot avoid being suspected of having intentions different from what they have hitherto professed." He ascribed the change of ministry at this time to Sunderland. "If he and two more [Essex and Halifax] can well agree among themselves, I believe they will have the management of almost all business, and may bring much honour to themselves and good to our nation." April 21. 1679. But he writes afterwards, Sept. 8., that Halifax and Essex were become very unpopular, p. 50. "The bare being preferred," says secretary Coventry, "maketh some of them suspected, though not criminal." Lord J. Russell's Life of Lord Russell, p. 90.

† See the protests in 1679, passim.

‡ Temple's Memoirs. Life of James, 581. [An article in the London Gazette, Jan. 30. 1680, is rather amusing. "This evening the lord Russell, the lord Cavendish, sir Henry Capel, and Mr. Powle, prayed his Majesty to give them leave to withdraw from the council-board. To which his Majesty was pleased to answer: 'With all his heart.'"—1845.]

his council, with the hope of obtaining money from parliament, or of parrying the exclusion bill, and had consented to the duke of York's quitting England, found himself enthralled by ministers whom he could neither corrupt nor deceive; Essex, the firm and temperate friend of constitutional liberty in power as he had been out of it, and Halifax, not yet led away by ambition or resentment from the cause he never ceased to approve. He had recourse therefore to his accustomed refuge, and humbly implored the aid of Louis against his own council and parliament. He conjured his patron not to lose this opportunity of making England for ever dependent upon France. These are his own words, such at least as Barillon attributes to him.* In pursuance of this overture, a secret treaty was negotiated between the two kings; whereby, after a long haggling, Charles, for a pension of 1,000,000 livres annually during three years, obliged himself not to assemble parliament during that time. This negotiation was broken off, through the apprehensions of Hyde and Sunderland, who had been concerned in it, about the end of November, 1679, before the long prorogation which is announced in the Gazette by a proclamation of December 11th. But, the resolution having been already taken not to permit the meeting of parliament, Charles persisted in it as the only means of escaping the bill of exclusion, even when deprived of the pecuniary assistance to which he had trusted.

Though the king's behaviour on this occasion exposed the fallacy of all projects for reconciliation with the house of commons, it was very well calculated for his own ends; nor was there any part of his reign wherein he acted with so much prudence, as from this time to the dissolution of the Oxford parliament. The scheme concerted by his adversaries, and already put in operation, of pouring in petitions from every part of the kingdom for the meeting of parliament, he checked in the outset by a proclamation, artfully drawn up by chief-justice North; which, while it kept clear of any thing so palpably unconstitutional as a prohibition of petitions, served the purpose of manifesting the king's dislike

* Dalrymple, pp. 230. 237.

to them, and encouraged the magistrates to treat all attempts that way as seditious and illegal, while it drew over the neutral and lukewarm to the safer and stronger side.* Then were first ranged against each other the hosts of Whig and Tory, under their banners of liberty or loyalty; each zealous, at least in profession, to maintain the established constitution, but the one seeking its security by new maxims of government, the other by an adherence to the old.† It must be admitted that petitions to the king from bodies of his subjects, intended to advise or influence him in the exercise of his undoubted prerogatives, such as the time of calling parliament together, familiar as they may now have become, had no precedent, except one in the dark year 1640, and were repugnant to the ancient principles of our monarchy. The cardinal maxim of Toryism is, that the king ought to exercise all his lawful prerogatives without the interference, or unsolicited advice, even of parliament, much less of the people. These novel efforts therefore were met by addresses from most of the grand juries, from the magistrates at quarter sessions, and from many corporations, expressing not merely their entire confidence in the king, but their *abhorrence* of the petitions for the assembling of parliament; a term which, having been casually used in one address, became the watchword of the whole party.‡ Some allowance must be made for the exertions made by the court, especially through the judges of assize, whose charges to grand juries were always of a political nature. Yet there can be no doubt that the strength of the tories manifested itself beyond expectation. Sluggish and silent in its fields, like the animal which it has taken for its type, the deep-rooted loyalty of the English gentry to the crown may escape a superficial observer, till some circumstance calls forth an indignant and furious energy.

Petitions and addresses.

* See Roger North's account of this court stratagem. Examen of Kennet, 546. The proclamation itself, however, in the Gazette, 12th Dec. 1679, is more strongly worded than we should expect from North's account of it, and is by no means limited to *tumultuous* petitions.

† [The name of Whig, meaning sour milk, as is well known, is said to have originated in Scotland in 1648, and was given to those violent covenanters, who opposed the duke of Hamilton's invasion of England, in order to restore Charles I. Somers Tracts, viii. 349. Tory was a similar nickname for some of the wild Irish in Ulster.—1845.]

‡ London Gazettes of 1680, passim.

The temper shown in 1680 was not according to what the late elections would have led men to expect, not even to that of the next elections for the parliament at Oxford. A large majority returned on both these occasions, and that in the principal counties as much as in corporate towns, were of the whig principle. It appears that the ardent zeal against popery in the smaller freeholders must have overpowered the natural influence of the superior classes. The middling and lower orders, particularly in towns, were clamorous against the duke of York and the evil counsellors of the crown. But with the country gentlemen, popery was scarce a more odious word than fanaticism; the memory of the late reign and of the usurpation was still recent, and in the violence of the commons, in the insolence of Monmouth and Shaftesbury, in the bold assaults upon hereditary right, they saw a faint image of that confusion which had once impoverished and humbled them. Meanwhile the king's dissimulation was quite sufficient for these simple loyalists; the very delusion of the popish plot raised his name for religion in their eyes, since his death was the declared aim of the conspirators; nor did he fail to keep alive this favourable prejudice by letting that imposture take its course, and by enforcing the execution of the penal laws against some unfortunate priests.*

Violence of the commons.

It is among the great advantages of a court in its contention with the asserters of popular privileges, that it can employ a circumspect and dissembling policy, which is never found on the opposite side. The demagogues of faction, or the aristocratic leaders of a numerous assembly, even if they do not feel the influence of the passions they excite, which is rarely the case, are urged onwards by their headstrong followers, and would both lay themselves open to the suspicion of unfaithfulness and damp the spirit of their party, by a wary and temperate course of proceeding. Yet that incautious violence, to which ill-judging men are tempted by the possession of power, must in every

* David Lewis was executed at Usk for saying mass, Aug. 27. 1679. State Trials, vii. 256. Other instances occur in the same volume; see especially pp. 811. 839. 849. 857. Pemberton was more severe and unjust towards these unfortunate men than Scroggs. The king, as his brother tells us, came unwillingly into these severities to prevent worse. Life of James, 583.

case, and especially where the power itself is deemed an usurpation, cast them headlong. This was the fatal error of that house of commons which met in October, 1680; and to this the king's triumph may chiefly be ascribed. The addresses declaratory of abhorrence of petitions for the meeting of parliament were doubtless intemperate with respect to the petitioners; but it was preposterous to treat them as violations of privilege. A few precedents, and those in times of much heat and irregularity, could not justify so flagrant an encroachment on the rights of the private subject, as the commitments of men for a declaration so little affecting the constitutional rights and functions of parliament.* The expulsion of Withens, their own member, for promoting one of these addresses, though a violent measure, came in point of law within their acknowledged authority.† But it was by no means a generally received opinion in that age, that the house of commons had an unbounded jurisdiction, directly or indirectly, over their constituents. The lawyers, being chiefly on the side of prerogative, inclined at least to limit very greatly this alleged power of commitment for breach of privilege or contempt of the house. It had very rarely, in fact, been exerted, except in cases of serving legal process on members or other molestation, before the long parliament of Charles I.; a time absolutely discredited by one party, and confessed by every reasonable man to be full of innovation and violence. That the commons had no right of judicature was admitted; was it compatible, many might urge, to principles of reason and justice, that they could, merely by using the words contempt or breach of privilege in a warrant, deprive the subject of that liberty which the recent statute of Habeas Corpus had secured against the highest ministers of the crown? Yet one Thompson, a clergyman at Bristol, having preached some virulent sermons, wherein he had traduced the memory of Hampden for refusing the payment of ship-money, and spoken disrespectfully of queen Elizabeth, as well as insulted those who petitioned for the sitting of

* Journals, passim. North's Examen, 377. 561.

† They went a little too far however when they actually seated sir William Waller in Withens's place for Westminster. Ralph, 514.

parliament, was sent for in custody of the serjeant to answer at the bar for his high misdemeanor against the privileges of that house; and was afterwards compelled to find security for his forthcoming to answer to an impeachment voted against him on these strange charges.* Many others were brought to the bar, not only for the crime of abhorrence, but for alleged misdemeanors still less affecting the privileges of parliament, such as remissness in searching for papists. Sir Robert Cann, of Bristol, was sent for in custody of the serjeant-at-arms, for publicly declaring that there was no popish, but only a presbyterian plot. A general panic mingled with indignation, was diffused through the country, till one Stawell, a gentleman of Devonshire, had the courage to refuse compliance with the speaker's warrant; and the commons, who hesitated at such a time to risk an appeal to the ordinary magistrates, were compelled to let this contumacy go unpunished. If indeed we might believe the journals of the house, Stawell was actually in custody of the serjeant, though allowed a month's time on account of sickness. This was most probably a subterfuge to conceal the truth of the case.†

These encroachments under the name of privilege were exactly in the spirit of the long parliament, and revived too forcibly the recollection of that awful period. It was commonly in men's mouths, that 1641 was come about again. There appeared indeed for several months a very imminent danger of civil war. I have already mentioned the projects of the duke of York, in case his brother had given way to the exclusion bill. There could be little reason to doubt that many of the opposite leaders were ready to try the question by arms. Reresby has related a conversation he had with lord Halifax immediately after the rejection of the bill, which shows the expectation of that able statesman, that the differences about the succession would end in civil war.‡ The just abhorrence good men entertain for such a calamity excites their indignation against those who conspicuously bring it

* Journals, Dec. 24. 1680.

† Parl. Hist. i. 174.

‡ Reresby's Memoirs, 106. Lord Halifax and he agreed, he says, on consideration, that the court party were not only the most numerous, but the most active and wealthy part of the nation.

on. And, however desirous some of the court might be to strengthen the prerogative by quelling a premature rebellion, the commons were, in the eyes of the nation, far more prominent in accelerating so terrible a crisis. Their votes in the session of November, 1680, were marked by the most extravagant factiousness.* Their conduct in the short parliament held at Oxford in March, 1681, served still more to alienate the peaceable part of the community. That session of eight days was marked by the rejection of a proposal to vest all effective power during the duke of York's life in a regent, which, as has been already observed, was by no means a secure measure, and by a much less justifiable attempt to screen the author of a treasonable libel from punishment under the pretext of impeaching him at the bar of the upper house. It seems difficult not to suspect that the secret instigations of Barillon, and even his gold, had considerable influence on some of those who swayed the votes of this parliament.

Oxford parliament.

Though the impeachment of Fitzharris, to which I have just alluded, was in itself a mere work of temporary faction, it brought into discussion a considerable question in our constitutional law, which deserves notice, both on account of its importance, and because a popular writer has advanced an untenable proposition on the subject. The commons impeached this man of high treason. The lords voted, that he should be proceeded against at common law. It was resolved, in consequence, by the lower house, "that it is the undoubted right of the commons in parliament assembled, to impeach before the lords in parliament any peer or commoner for treason, or any other crime or misdemeanor: and that the refusal of

Impeachment of commoners for treason constitutional.

Fitzharris impeached.

* It was carried by 219 to 95 (17th Nov.), to address the king to remove lord Halifax from his councils and presence for ever. They resolved, nem. con., that no member of that house should accept of any office or place of profit from the crown, or any promise of one, during such time as he should continue a member; and that all offenders herein should be expelled. 30th Dec. They passed resolutions against a number of persons by name, whom they suspected to have advised the king not to pass the bill of exclusion. 7th Jan. 1680. They resolved unanimously (10th Jan.), that it is the opinion of this house, that the city of London was burnt in the year 1666 by the papists, designing thereby to introduce popery and arbitrary power into this kingdom. They were going on with more resolutions in the same spirit, when the usher of the black rod appeared to prorogue them. Parl. Hist.

the lords to proceed in parliament upon such impeachment is a denial of justice, and a violation of the constitution of parliament."* It seems indeed difficult to justify the determination of the lords. Certainly the declaration in the case of sir Simon de Bereford, who, having been accused by the king, in the fourth year of Edward III. before the lords, of participating in the treason of Roger Mortimer, that noble assembly protested, "with the assent of the king in full parliament, that albeit they had taken upon them, as judges of the parliament in the presence of the king, to render judgment, yet the peers, who then were or should be in time to come, were not bound to render judgment upon others than peers, nor had power to do so; and that the said judgment thus rendered should never be drawn to example or consequence in time to come, whereby the said peers of the land might be charged to judge others than their peers, contrary to the laws of the land;" certainly, I say, this declaration, even if it amounted to a statute, concerning which there has been some question†, was not necessarily to be interpreted as applicable to impeachments at the suit of the commons, wherein the king is no ways a party. There were several precedents in the reign of Richard II. of such impeachments for treason. There had been more than one in that of Charles I. The objection indeed was so novel, that chief-justice Scroggs, having been impeached for treason in the last parliament, though he applied to be admitted to bail, had never insisted on so decisive a plea to the jurisdiction. And if the doctrine, adopted by the lords, were to be carried to its just consequences, all impeachment of commoners must be at an end; for no distinction is taken in the above declaration as to Bereford between treason and misdemeanor. The peers had indeed lost, except during the session of parliament, their ancient privilege in cases of misdemeanor, and were subject to the verdict of a jury; but the principle was exactly the same, and the right of judging commoners upon impeach-

* Commons' Journals, March 26. 1681.

† Parl. Hist. ii. 54. Lord Hale doubted whether this were a statute. But the judges, in 1689, on being consulted by the lords, inclined to think that it was one; arguing, I suppose, from the words "in full parliament," which have been held to imply the presence and assent of the commons.

ment for corruption or embezzlement, which no one called in question, was as much an exception from the ordinary rules of law as in the more rare case of high treason. It is hardly necessary to observe, that the 29th section of Magna Charta, which establishes the right of trial by jury, is by its express language solely applicable to the suits of the crown.

This very dangerous and apparently unfounded theory, broached upon the occasion of Fitzharris's impeachment by the earl of Nottingham, never obtained reception; and was rather intimated than avowed in the vote of the lords, that he should be proceeded against at common law. But after the revolution, the commons having impeached sir Adam Blair and some others of high treason, a committee was appointed to search for precedents on this subject; and after full deliberation, the house of lords came to a resolution, that they would proceed on the impeachments.* The inadvertent position therefore of Blackstone†, that a commoner cannot be impeached for high treason, is not only difficult to be supported upon ancient authorities, but contrary to the latest determination of the supreme tribunal.

Proceedings against Shaftesbury and College.

No satisfactory elucidation of the strange libel for which Fitzharris suffered death has yet been afforded. There is much probability in the supposition that it was written at the desire of some in the court, in order to cast odium on their adversaries; a very common stratagem of unscrupulous partisans.‡ It caused an impression unfavourable to the whigs in the nation. The court made a dexterous use of that extreme credulity, which has been supposed characteristic of the English, though it belongs at least equally to every other people. They seized into their hands the very engines of delusion that had been turned against them. Those perjured witnesses, whom Shaftesbury had hallooed on through all the infamy of the popish plot, were now arrayed in the same court to swear treason and

* Hatsell's Precedents, iv. 54., and Appendix, 347. State Trials, viii. 236., and xii. 1218.

† Commentaries, vol. iv. c. 19.

‡ Ralph, 564. et post. State Trials, 223. 427. North's Examen, 274. Fitzharris was an Irish papist, who had evidently had interviews with the king through lady Portsmouth. One Hawkins, afterwards made dean of Chichester for his pains, published a narrative of this case full of falsehoods.

conspiracy against him.* Though he escaped by the resoluteness of his grand jury, who refused to find a bill of indictment on testimony which they professed themselves to disbelieve, and which was probably false; yet this extraordinary deviation from the usual practice did harm rather than otherwise to the general cause of his faction. The judges had taken care that the witnesses should be examined in open court, so that the jury's partiality, should they reject such positive testimony, might become glaring. Doubtless it is, in ordinary cases, the duty of a grand juror to find a bill upon the direct testimony of witnesses, where they do not contradict themselves or each other, and where their evidence is not palpably incredible or contrary to his own knowledge.† The oath of that inquest is forgotten, either where they render themselves, as seems too often the case, the mere conduit-pipes of accusation, putting a prisoner in jeopardy upon such slender evidence as does not call upon him for a defence; or where, as we have sometimes known in political causes, they frustrate the ends of justice by rejecting indictments which are fully substantiated by testimony. Whether the grand jury of London, in their celebrated ignoramus on the indictment preferred against Shaftesbury, had sufficient grounds for their incredulity, I will not pretend to determine.‡ There

* State Trials, viii. 759. Roger North's remark on this is worthy of him: "having sworn false, as it is manifest some did before to one purpose, it is more likely they swore true to the contrary." Examen, p. 117. And sir Robert Sawyer's observation to the same effect is also worthy of him. On College's trial, Oates, in his examination for the prisoner, said, that Turberville had changed sides; Sawyer, as counsel for the crown, answered, "Dr. Oates, Mr. Turberville has not changed sides, you have; he is still a witness for the king, you are against him." State Trials, viii. 639.

The opposite party were a little perplexed by the necessity of refuting testimony they had relied upon. In a dialogue, entitled Ignoramus Vindicated, it is asked, why were Dr. Oates and others believed against the papists? and the best answer the case admits is given: "Because his and their testimony was backed by that undeniable evidence of Coleman's papers, Godfrey's murder, and a thousand other pregnant circumstances, which makes the case much different from that when people, of very suspected credit, swear the grossest improbabilities." But the same witness, it is urged, had lately been believed against the papists. "What! then," replies the advocate of Shaftesbury, "may not a man be very honest and credible at one time, and six months after, by necessity, subornation, malice, or twenty ways, become a notorious villain?"

† The true question for a grand juror to ask himself seems to be this; Is the evidence such as that, if the prisoner can prove nothing to the contrary, he ought to be convicted? However, where any considerable doubt exists as to this, as a petty juror ought to acquit, so a grand juror ought to find the indictment.

‡ Roger North and the prerogative writers in general, speak of this inquest as a scandalous piece of perjury, enough

was probably no one man among them, who had not implicitly swallowed the tales of the same witnesses in the trials for the plot. The nation however in general, less bigoted, or at least more honest in their bigotry, than those London citizens, was staggered by so many depositions to a traitorous conspiracy, in those who had pretended an excessive loyalty to the king's person.* Men unaccustomed to courts of justice are naturally prone to give credit to the positive oaths of witnesses. They were still more persuaded, when, as in the trial of College at Oxford, they saw this testimony sustained by the approbation of a judge (and that judge a decent person who gave no scandal), and confirmed by the verdict of a jury. The gross iniquity practised towards the prisoner in that trial was not so generally bruited as his conviction.† There is in England a remarkable confidence in our judicial proceedings, in part derived from their publicity, and partly from the indiscriminate manner in which jurors are usually summoned. It must be owned that the administration of the two last Stuarts was calculated to show how easily this confiding temper might be the dupe of an insidious ambition.

to justify the measures soon afterwards taken against the city. But Ralph, who, at this period of history, is very impartial, seems to think the jury warranted by the absurdity of the depositions. It is to be remembered that the petty juries had shown themselves liable to intimidation, and that the bench was sold to the court. In modern times, such an ignoramus could hardly ever be justified. There is strong reason to believe, that the court had recourse to subornation of evidence against Shaftesbury. Ralph, 140. et post. And the witnesses were chiefly low Irishmen, in whom he was not likely to have placed confidence. As to the association found among Shaftesbury's papers, it was not signed by himself, nor, as I conceive, treasonable, only binding the associators to oppose the duke of York, in case of his coming to the crown. State Trials, viii. 786. See also 827. and 835.

* If we may believe James II., the populace hooted Shaftesbury when he was sent to the Tower. Macpherson, 124. Life of James, 688. This was an improvement on the *odit damnatos*. They rejoiced however much more, as he owns, at the ignoramus, p. 714.

† See College's case in State Trials, viii. 549.; and Hawles's remarks on it, 723. Ralph, 626. It is one of the worst pieces of judicial iniquity that we find in the whole collection. The written instructions he had given to his counsel before the trial were taken away from him, in order to learn the grounds of his defence. North and Jones, the judges before whom he was tried, afforded him no protection. But besides this, even if the witnesses had been credible, it does not appear to me that the facts amounted to treason. Roger North outdoes himself in his justification of the proceedings on this trial. Examen, p. 587. What would this man have been in power, when he writes thus in a sort of proscription twenty years after the revolution! But in justice it should be observed, that his portraits of North and Jones, Id. 512. and 517., are excellent specimens of his inimitable talent for Dutch painting.

Triumph of the court.

The king's declaration of the reasons that induced him to dissolve the last parliament, being a manifesto against the late majority of the house of commons, was read in all churches. The clergy scarcely waited for this pretext to take a zealous part for the crown. Every one knows their influence over the nation in any cause which they make their own. They seemed to change the war against liberty into a crusade. They re-echoed from every pulpit the strain of passive obedience, of indefeasible hereditary right, of the divine origin and patriarchal descent of monarchy. Now began again the loyal addresses, more numerous and ardent than in the last year, which overspread the pages of the London Gazette for many months. These effusions stigmatize the measures of the three last parliaments, dwelling especially on their arbitrary illegal votes against the personal liberty of the subject. Their language is of course not alike; yet amidst all the ebullitions of triumphant loyalty, it is easy in many of them to perceive a lurking distrust of the majesty to which they did homage, insinuated to the reader in the marked satisfaction with which they allude to the king's promise of calling frequent parliaments and of governing by the laws.*

The whigs, meantime, so late in the heyday of their pride, lay, like the fallen angels, prostrate upon the fiery lake. The scoffs and gibes of libellers, who had trembled before the resolutions of the commons, were showered upon their heads. They had to fear, what was much worse than the insults of these vermin, the perjuries of mercenary informers suborned by their enemies to charge false conspiracies against them, and sure of countenance from the contaminated benches of justice. The court, with an artful policy, though with detestable wickedness, secured itself against its only great danger, the suspicion of popery, by the sacrifice of Plunket, the titular archbishop of Dublin.† The execution of this worthy

* London Gazette, 1681, passim. Ralph, 592., has spoken too strongly of their servility, as if they showed a disposition to give up altogether every right and privilege to the crown. This may be true in a very few instances, but is by no means their general tenor. They are exactly high tory addresses, and nothing more.

† State Trials, viii. 447. Chief-justice Pemberton, by whom he was tried, had strong prejudices against the papists, though well enough disposed to serve the court in some respects.

and innocent person cannot be said to have been extorted from the king in a time of great difficulty, like that of lord Stafford. He was coolly and deliberately permitted to suffer death, lest the current of loyalty, still sensitive and suspicious upon the account of religion, might be somewhat checked in its course. Yet those who heap the epithets of merciless, inhuman, sanguinary, on the whig party for the impeachment of lord Stafford, in whose guilt they fully believed, seldom mention, without the characteristic distinction of "good-natured," that sovereign, who permitted the execution of Plunket, of whose innocence he was assured.*

Forfeiture of the charter of London, and of other places.

The hostility of the city of London, and of several other towns, towards the court, degenerating no doubt into a factious and indecent violence, gave a pretext for the most dangerous aggression on public liberty that occurred in the present reign. The power of the democracy in that age resided chiefly in the corporations. These returned, exclusively or principally, a majority of the representatives of the commons. So long as they should be actuated by that ardent spirit of protestantism and liberty

* The king, James says in 1679, was convinced of the falsehood of the plot, "while the seeming necessity of his affairs made this unfortunate prince, for so he may well be termed in this conjuncture, think he could not be safe but by consenting every day to the execution of those he knew in his heart to be most innocent; and as for that notion of letting the law take its course, it was such a piece of casuistry as had been fatal to the king his father," &c. 562. If this was blamable in 1679, how much more in 1681?

Temple relates, that having objected to leaving some priests to the law, as the house of commons had desired in 1679, Halifax said he would tell every one he was a papist, if he did not concur; and that the plot must be treated as if it were true, whether it was so or not: p. 339. (folio edit.) A vile maxim indeed! But as Halifax had never showed any want of candour or humanity, and voted lord Stafford not guilty next year, we may doubt whether Temple has represented this quite exactly.

In reference to lord Stafford, I will here notice that lord John Russell, in a passage deserving very high praise, has shown rather too much candour in censuring his ancestor (p. 140.) on account of the support he gave (if in fact he did so, for the evidence seems weak) to the objection raised by the sheriffs, Bethell and Cornish, with respect to the mode of Stafford's execution. The king having remitted all the sentence except the beheading, these magistrates thought fit to consult the house of commons. Hume talks of Russell's seconding this "barbarous scruple," as he calls it, and imputes it to faction. But, notwithstanding the epithet, it is certain that the only question was between death by the cord and the axe; and if Stafford had been guilty, as lord Russell was convinced, of a most atrocious treason, he could not deserve to be spared the more ignominious punishment. The truth is, which seems to have escaped both these writers, that if the king could remit a part of the sentence upon a parliamentary impeachment, it might considerably affect the question whether he could not grant a pardon, which the commons had denied.

which prevailed in the middling classes, there was little prospect of obtaining a parliament that would co-operate with the Stuart scheme of government. The administration of justice was very much in the hands of their magistrates; especially in Middlesex, where all juries are returned by the city sheriffs. It was suggested therefore by some crafty lawyers that a judgment of forfeiture obtained against the corporation of London would not only demolish that citadel of insolent rebels, but intimidate the rest of England by so striking an example. True it was, that no precedent could be found for the forfeiture of corporate privileges. But general reasoning was to serve instead of precedents; and there was a considerable analogy in the surrenders of the abbeys under Henry VIII., if much authority could be allowed to that transaction. An information, as it is called, quo warranto, was accordingly brought into the court of king's bench against the corporation. Two acts of the common council were alleged as sufficient misdemeanours to warrant a judgment of forfeiture; one, the imposition of certain tolls on goods brought into the city markets, by an ordinance or by-law of their own; the other, their petition to the king in December, 1679, for the sitting of parliament, and its publication throughout the country.* It would be foreign to the purpose of this work to inquire whether a corporation be in any case subject to forfeiture, the affirmative of which seems to have been held by courts of justice since the revolution; or whether the exaction of tolls in their markets, in consideration of erecting stalls and standings, were within the competence of the city of London; or, if not so, whether it were such an offence as could legally incur the penalty of a total forfeiture and disfranchisement; since it was manifest that the crown made use only of this additional pretext, in order to punish the corporation for its address to the king. The language indeed of their petition had been uncourtly, and what the adherents of prerogative would call insolent; but it was at the worst rather a misdemeanour for which the persons concerned might be responsible than a breach of the trust reposed in the corporation. We are not, however, so

* See this petition, Somers Tracts, viii. 144.

much concerned to argue the matter of law in this question, as to remark the spirit in which the attack on this stronghold of popular liberty was conceived. The court of king's bench pronounced judgment of forfeiture against the corporation; but this judgment, at the request of the attorney-general, was only recorded; the city continued in appearance to possess its corporate franchises, but upon submission to certain regulations; namely, that no mayor, sheriff, recorder, or other chief officer, should be admitted until approved by the king; that in the event of his twice disapproving their choice of a mayor, he should himself nominate a fit person, and the same in case of sheriffs, without waiting for a second election; that the court of aldermen, with the king's permission, might remove any one of their body; that they should have a negative on the elections of common councilmen, and in case of disapproving a second choice, have themselves the nomination. The corporation submitted thus to purchase the continued enjoyment of its estates, at the expense of its municipal independence; yet, even in the prostrate condition of the whig party, the question to admit these regulations was carried by no great majority in the common councils.* The city was of course absolutely subservient to the court from this time to the revolution.

After the fall of the capital, it was not to be expected that towns less capable of defence should stand out. Informations quo warranto were brought against several corporations; and a far greater number hastened to anticipate the assault by voluntary surrenders. It seemed to be recognised as law by the judgment against London, that any irregularity or misuse of power in a corporation might incur a sentence of forfeiture; and few could boast that they were invulnerable at every point. The judges of assize in their circuits prostituted their influence and authority to forward this and every other encroachment of the crown. Jefferies, on the northern circuit in 1684, to use the language of Charles II.'s most unblushing advocate, "made all the charters, like the walls of Jericho, fall down before him, and returned laden with surrenders, the spoils of towns."† They received, instead, new

* State Trials, viii. 1039—1340. Ralph, 717. The majority was but 104 to 86; a division honourable to the spirit of the citizens.

† North's Examen, 626.

charters, framing the constitution of these municipalities on a more oligarchical model, and reserving to the crown the first appointment of those who were to form the governing part of the corporation. These changes were gradually brought about in the last three years of Charles's reign, and in the beginning of the next.

Projects of lord Russell and Sidney.

There can be nothing so destructive to the English constitution, not even the introduction of a military force, as the exclusion of the electoral body from their franchises. The people of this country are, by our laws and constitution, bound only to obey a parliament duly chosen; and this violation of charters, in the reigns of Charles and James, appears to be the great and leading justification of that event which drove the latter from the throne. It can therefore be no matter of censure, in a moral sense, that some men of pure and patriotic virtue, mingled, it must be owned, with others of a far inferior temper, began to hold consultations as to the best means of resisting a government, which, whether to judge from these proceedings, or from the language of its partisans, was aiming without disguise at an arbitrary power. But as resistance to established authority can never be warrantable until it is expedient, we could by no means approve any schemes of insurrection that might be projected in 1682, unless we could perceive that there was a fair chance of their success. And this we are not led, by what we read of the spirit of those times, to believe. The tide ran violently in another direction; the courage of the whigs was broken; their adversaries were strong in numbers and in zeal. But from hence it is reasonable to infer that men like lord Essex and lord Russell, with so much to lose by failure, with such good sense, and such abhorrence of civil calamity, would not ultimately have resolved on the desperate issue of arms, though they might deem it prudent to form estimates of their strength, and to knit together a confederacy which absolute necessity might call into action. It is beyond doubt that the supposed conspirators had debated among themselves the subject of an insurrection, and poised the chances of civil war. Thus much the most jealous lawyer, I presume, will allow might be done, without risking the penalties of trea-

son. They had, however, gone farther; and by concerting measures in different places as well as in Scotland, for a rising, though contingently, and without any fixed determination to carry it into effect, most probably (if the whole business had been disclosed in testimony) laid themselves open to the law, according to the construction it has frequently received. There is a considerable difficulty, after all that has been written, in stating the extent of their designs; but I think we may assume, that a wide-spreading and formidable insurrection was for several months in agitation.* But the difficulties and hazards of the enterprise had already caused lord Russell and lord Essex to recede from the desperate counsels of Shaftesbury; and but for the unhappy detection of the conspiracy and the perfidy of lord Howard, these two noble persons, whose lives were untimely lost to their country, might have survived to join the banner and support the throne of William. It is needless to observe that the minor plot, if we may use that epithet in reference to the relative dignity of the conspirators, for assassinating the king and the duke of York, had no immediate connexion with the schemes of Russell, Essex, and Sidney. †

But it is by no means a consequence from the admission we have made, that the evidence adduced on lord Russell's trial was sufficient to justify his conviction.‡ Their trial.

* Lady Russell's opinion was, that "it was no more than what her lord confessed, talk — and it is possible that talk going so far as to consider, if a remedy for supposed evils might be sought, how it could be formed." Life of Lord Russell, p. 266. It is not easy, however, to talk long in this manner about the *how* of treason, without incurring the penalties of it.

† See this business well discussed by the acute and indefatigable Ralph, p. 722., and by lord John Russell, p. 253. See also State Trials, ix. 358., et post. There appears no cause for doubting the reality of what is called the Rye-house plot. The case against Walcot, Id. 519., was pretty well proved; but his own confession completely hanged him and his friends too. His attainder was reversed after the revolution, but only on account of some technical errors, not essential to the merits of the case.

‡ State Trials, ix. 577. Lord Essex cut his throat in the Tower. He was a man of the most excellent qualities, but subject to constitutional melancholy which overcame his fortitude; an event the more to be deplored, as there seems to have been no possibility of his being convicted. A suspicion, as is well known, obtained credit with the enemies of the court, that lord Essex was murdered; and some evidence was brought forward by the zeal of one Braddon. The late editor of the State Trials seems a little inclined to revive this report, which even Harris (Life of Charles, p. 352.) does not venture to accredit; and I am surprised to find lord John Russell observe, "It would be idle, at the present time, to pretend to give any opinion on the subject." P. 182. This I can by no means admit. We have, on the one side, some testimonies by children, who frequently invent and persist in falsehoods with no

It appears to me that lord Howard, and perhaps Rumsey, were unwilling witnesses; and that the former, as is frequently the case with those who betray their friends in order to save their own lives, divulged no more than was extracted by his own danger. The testimony of neither witness, especially Howard, was given with any degree of that precision which is exacted in modern times; and, as we now read the trial, it is not probable that a jury in later ages would have found a verdict of guilty, or would have been advised to it by the court. But, on the other hand, if lord Howard were really able to prove more than he did, which I much suspect, a better conducted examination would probably have elicited facts unfavourable to the prisoner, which at present do not appear. It may be doubtful whether any overt act of treason is distinctly proved against lord Russell, except his concurrence in the project of a rising at Taunton, to which Rumsey deposes. But this depending on the oath of a single witness, could not be sufficient for a conviction.

Pemberton, chief-justice of the common pleas, tried this illustrious prisoner with more humanity than was usually displayed on the bench; but, aware of his precarious tenure in office, he did not venture to check the counsel for the crown, Sawyer and Jefferies, permitting them to give a great body of hearsay evidence, with only the feeble and useless remark that it did not affect the prisoner.* Yet he checked

conceivable motive. But, on the other hand, we are to suppose that Charles II. and the duke of York caused a detestable murder to be perpetrated on one towards whom they had never shown any hostility, and in whose death they had no interest. Each of these princes had faults enough; but I may venture to say that they were totally incapable of such a crime. One of the presumptive arguments of Braddon, in a pamphlet published long afterwards, is, that the king and his brother were in the Tower on the morning of Lord Essex's death. If this leads to any thing, we are to believe that Charles the Second, like the tyrant in a Grub-Street tragedy, came to kill his prisoner with his own hands. Any man of ordinary understanding (which seems not to have been the case with Mr. Braddon) must perceive that the circumstance tends to repel suspicion rather than the contrary. See the whole of this, including Braddon's pamphlet, in State Trials, ix. 1127. [I am sorry to read in an article of the Edinburgh Review by an eloquent friend: "Essex added a yet sadder and more fearful story to the bloody chronicles of the Tower." Macaulay's Essays, iii. 93., and Edinburgh Review, 1838. For though this may imply no more than his suicide, it will generally be construed in another sense. And surely the critical judgment cannot be satisfied with evidence, which might weigh, as I have heard it did, with the pardonable prejudices of a descendant. —1845.]

* State Trials, 615. Sawyer told lord Russell, when he applied to have his trial put off, that he would not have given the king an hour's notice to save his life.

lord Anglesea, when he offered similar evidence for the defence. In his direction to the jury, it deserves to be remarked that he by no means advanced the general proposition, which better men have held, that a conspiracy to levy war is in itself an overt act of compassing the king's death; limiting it to cases where the king's person might be put in danger, in the immediate instance, by the alleged scheme of seizing his guards. * His language indeed, as recorded in the printed trial, was such as might have produced a verdict of acquittal from a jury tolerably disposed towards the prisoner; but the sheriffs, North and Rich, who had been illegally thrust into office, being men wholly devoted to the prerogative, had taken care to return a panel in whom they could confide.†

The trial of Algernon Sidney, at which Jefferies, now raised to the post of chief-justice of the king's bench, presided, is as familiar to all my readers as that of lord Russell.‡ Their names have been always united in grateful veneration and sympathy. It is notorious that Sidney's conviction was obtained by a most illegal distortion of the evidence. Besides lord Howard, no living witness could be produced to the conspiracy for an insurrection; and though Jefferies permitted two others to prepossess the jury by a second-hand story, he was compelled to admit that their testimony could not directly affect the prisoner.§ The attorney-general therefore had re-

Id. 582. Yet he could not pretend that the prisoner had any concern in the assassination plot.

* The act annulling lord Russell's attainder recites him to have been "wrongfully convicted by partial and unjust constructions of law." State Trials, ix. 695. Several pamphlets were published after the revolution by sir Robert Atkins and sir John Hawles against the conduct of the court in this trial, and by sir Bartholomew Shower in behalf of it. These are in the State Trials. But Holt, by laying down the principle of constructive treason in Ashton's case, established for ever the legality of Pemberton's doctrine, and indeed carried it a good deal farther.

† There seems little doubt, that the juries were packed through a conspiracy of the sheriffs with Burton and Graham, solicitors for the crown. State Trials, ix. 932. These two men ran away at the revolution; but Roger North vindicates their characters, and those who trust in him may think them honest.

‡ State Trials, ix. 818.

§ Id. 846. Yet in summing up the evidence, he repeated all West and Keeling had thus said at second-hand, without reminding the jury that it was not legal testimony. Id. 899. It would be said by his advocates, if any are left, that these witnesses must have been left out of the question, since there could otherwise have been no dispute about the written paper. But they were undoubtedly intended to prop up Howard's evidence, which had been so much shaken by his previous declaration, that he knew of no conspiracy.

course to a paper found in his house, which was given in evidence, either as an overt act of treason by its own nature, or as connected with the alleged conspiracy; for though it was only in the latter sense that it could be admissible at all, yet Jefferies took care to insinuate, in his charge to the jury, that the doctrines it contained were treasonable in themselves, and without reference to other evidence. In regard to truth, and to that justice which cannot be denied to the worst men in their worst actions, I must observe that the common accusation against the court in this trial, of having admitted insufficient proof by the mere comparison of hand-writing, though alleged, not only in most of our historians, but in the act of parliament reversing Sidney's attainder, does not appear to be well founded; the testimony to that fact, unless the printed trial is falsified in an extraordinary degree, being such as would be received at present.* We may allow also that the passages from this paper, as laid in the indictment, containing very strong assertions of the right of the people to depose an unworthy king, might by possibility, if connected by other evidence with the conspiracy itself, have been admissible as presumptions for the jury to consider whether they had been written in furtherance of that design. But when they came to be read on the trial with their context, though only with such parts of that as the attorney-general

* This is pointed out, perhaps for the first time, in an excellent modern law-book, Phillipps's Law of Evidence. Yet the act for the reversal of Sidney's attainder declares in the preamble, that "the paper, supposed to be his hand-writing, was not proved by the testimony of any one witness to be written by him, but the jury was directed to believe it by comparing it with other writings of the said Algernon." State Trials, 997. This does not appear to have been the case; and though Jefferies is said to have garbled the manuscript trial before it was printed, (for all the trials, at this time, were published by authority, which makes them much better evidence against the judges than for them,) yet he can hardly have substituted so much testimony without its attracting the notice of Atkins and Hawles, who wrote after the revolution. However, in Hayes's case, State Trials, x. 312., though the prisoner's hand-writing to a letter was proved in the usual way by persons who had seen him write, yet this letter was also shown to the jury, along with some of his acknowledged writing, for the purpose of their comparison. [See also the trial of the seven bishops. Id. xii. 295.] It is possible, therefore, that the same may have been done on Sidney's trial, though the circumstance does not appear. Jefferies indeed says, "comparison of hands was allowed for good proof in Sidney's case." Id. 313. But I do not believe that the expression was used in that age so precisely as it is at present; and it is well known to lawyers that the rules of evidence on this subject have only been distinctly laid down within the memory of the present generation.

chose to produce out of a voluminous manuscript, it was clear that they belonged to a theoretical work on government, long since perhaps written, and incapable of any bearing upon the other evidence.*

The manifest iniquity of this sentence upon Algernon Sidney, as well as the high courage he displayed throughout these last scenes of his life, have inspired a sort of enthusiasm for his name, which neither what we know of his story, nor the opinion of his contemporaries, seem altogether to warrant. The crown of martyrdom should be suffered perhaps to exalt every virtue, and efface every defect in patriots, as it has often done in saints. In the faithful mirror of history, Sidney may lose something of this lustre. He possessed no doubt a powerful, active, and undaunted mind, stored with extensive reading on the topics in which he delighted. But having proposed one only object for his political conduct, the establishment of a republic in England, his pride and inflexibility, though they gave a dignity to his character, rendered his views narrow and his temper unaccommodating. It was evident to every reasonable man that a republican government, being adverse to the prepossessions of a great majority of the people, could only be brought about and maintained by the force of usurpation. Yet for this idol of his speculative hours, he was content to sacrifice the liberties of Europe, to plunge the country in civil war, and even to stand indebted to France for protection. He may justly be suspected of having been the chief promoter of the dangerous cabals with Barillon; nor could any tool of Charles's court be more sedulous in representing the aggressions of Louis XIV. in the Netherlands as indifferent to our honour and safety.

Sir Thomas Armstrong, who had fled to Holland on the detection of the plot, was given up by the States. A sentence of outlawry, which had passed against him in his absence, is equivalent, in cases of treason, to a conviction of the crime. But the law allows the space of one year, during which the party may surrender himself to take his trial. Armstrong, when brought before the court, insisted on this right, and demanded a trial. Nothing could be more evident, in point

* See Harris's Lives, v. 347.

of law, than that he was entitled to it. But Jefferies, with inhuman rudeness, treated his claim as wholly unfounded, and would not even suffer counsel to be heard in his behalf. He was executed accordingly without trial.* But it would be too prolix to recapitulate all the instances of brutal injustice, or of cowardly subserviency, which degraded the English lawyers of the Stuart period, and never so infamously as in these last years of Charles II. From this prostitution of the tribunals, from the intermission of parliaments, and the steps taken to render them in future mere puppets of the crown, it was plain that all constitutional securities were at least in abeyance; and those who felt themselves most obnoxious, or whose spirit was too high to live in an enslaved country, retired to Holland as an asylum in which they might wait the occasion of better prospects, or, at the worst, breathe an air of liberty.

Meanwhile the prejudice against the whig party, which had reached so great a height in 1681, was still farther enhanced by the detection of the late conspiracy. The atrocious scheme of assassination, alleged against Walcot and some others who had suffered, was blended by the arts of the court and clergy, and by the blundering credulity of the gentry, with those less heinous projects ascribed to lord Russell and his associates.† These projects, if true in their full extent, were indeed such as men honestly attached to the government of their country could not fail to disapprove. For this purpose, a declaration full of malicious insinuations was ordered to be read in all churches.‡ It was generally commented upon, we may make no question, in one of those loyal discourses, which, trampling on all truth, charity, and moderation, had no other scope than to inflame the hearers against non-conforming protestants, and to throw obloquy on the constitutional privileges of the subject.

It is not my intention to censure, in any strong sense of

* State Trials, x. 105.

† The grand jury of Northamptonshire, in 1683, "present it as very expedient and necessary for securing the peace of this country, that all ill-affected persons may give security for the peace;" specifying a number of gentlemen of the first families, as the names of Montagu, Langham, &c. show. Somers Tracts, viii. 409.

‡ Ralph, p. 768. Harris's Lives, v. 321.

the word, the Anglican clergy at this time for their assertion of absolute non-resistance, so far as it was done without calumny and insolence towards those of another way of thinking, and without self-interested adulation of the ruling power. Their error was very dangerous, and had nearly proved destructive of the whole constitution; but it was one which had come down with high recommendation, and of which they could only perhaps be undeceived, as men are best undeceived of most errors, by experience that it might hurt themselves. It was the tenet of their homilies, their canons, their most distinguished divines and casuists; it had the apparent sanction of the legislature in a statute of the present reign. Many excellent men, as was shown after the revolution, who had never made use of this doctrine as an engine of faction or private interest, could not disentangle their minds from the arguments or the authority on which it rested. But by too great a number it was eagerly brought forward to serve the purposes of arbitrary power, or at best to fix the wavering protestantism of the court by professions of unimpeachable loyalty. To this motive, in fact, we may trace a good deal of the vehemence with which the non-resisting principle had been originally advanced by the church of England under the Tudors, and was continually urged under the Stuarts. If we look at the tracts and sermons published by both parties after the restoration, it will appear manifest that the Romish and Anglican churches, bade, as it were, against each other for the favour of the two royal brothers. The one appealed to its acknowledged principles, while it denounced the pretensions of the holy see to release subjects from their allegiance, and the bold theories of popular government which Mariana and some other Jesuits had promulgated. The others retaliated on the first movers of the Reformation, and expatiated on the usurpation of lady Jane Grey, not to say Elizabeth, and the republicanism of Knox or Calvin.

High tory principles of the clergy.

From the era of the exclusion-bill especially, to the death of Charles II., a number of books were published in favour of an indefeasible hereditary right of the crown, and of absolute non-resistance. These were however of two very different classes. The authors of the first, who were

Passive obedience.

perhaps the more numerous, did not deny the legal limitations of monarchy. They admitted that no one was bound to concur in the execution of unlawful commands. Hence the obedience they deemed indispensable was denominated passive; an epithet, which in modern usage, is little more than redundant, but at that time made a sensible distinction. If all men should confine themselves to this line of duty, and merely refuse to become the instruments of such unlawful commands, it was evident that no tyranny could be carried into effect. If some should be wicked enough to co-operate against the liberties of their country, it would still be the bounden obligation of Christians to submit. Of this, which may be reckoned the moderate party, the most eminent were Hickes in a treatise called Jovian, and Sherlock in his case of resistance to the supreme powers.* To this also must

* This book of Sherlock, printed in 1684, is the most able treatise on that side. His proposition is, that "sovereign princes, or the supreme power in any nation, in whomsoever placed, is in all cases irresistible." He infers from the statute 13 Car. 2. declaring it unlawful, under any pretence, to wage war, even defensive, against the king, that the supreme power is in him; for he who is unaccountable and irresistible is supreme. There are some, he owns, who contend that the higher powers mentioned by St. Paul meant the law, and that when princes violate the laws we may defend their legal authority against their personal usurpations. He answers this very feebly. "No law can come into the notion and definition of supreme and sovereign powers; such a prince is under the direction, but cannot possibly be said to be under the government of the law, because there is no superior power to take cognizance of his breach of it, and a law has no authority to govern where there is no power to punish." P. 114. "These men think," he says, p. 126., "that all civil authority is founded in consent, as if there were no natural lord of the world, or all mankind came free and independent into the world. This is a contradiction to what at other times they will grant, that the institution of civil power and authority is from God; and indeed if it be not, I know not how any prince can justify the taking away the life of any man, whatever crime he has been guilty of. For no man has power of his own life, and therefore cannot give this power to another; which proves that the power of capital punishments cannot result from mere consent, but from a superior authority, which is lord of life and death." This is plausibly urged, and is not refuted in a moment. He next comes to an objection, which eventually he was compelled to admit, with some discredit to his consistency and disinterestedness. "'Is the power of victorious rebels and usurpers from God? Did Oliver Cromwell receive his power from God? then it seems it was unlawful to resist him too, or to conspire against him; then all those loyal subjects who refused to submit to him when he had got the power in his hands were rebels and traitors.' To this I answer, that the most prosperous rebel is not the higher powers, while our natural prince, to whom we owe obedience and subjection, is in being. And therefore, though such men may get the power into their hands by God's permission, yet not by God's ordinance; and he who resists them does not resist the ordinance of God, but the usurpations of men. In hereditary kingdoms, the king never dies, but the same minute that the natural person of one king dies, the crown descends upon the next of blood; and therefore he who rebelleth against the

have belonged archbishop Sancroft, and the great body of non-juring clergy who had refused to read the declaration of indulgence under James II., and whose conduct in that respect would be utterly absurd, except on the supposition that there existed some lawful boundaries of the royal authority.

Some contend for absolute power.

But besides these men, who kept some measures with the constitution, even while, by their slavish tenets, they laid it open to the assaults of more intrepid enemies, another and a pretty considerable class of writers did not hesitate to avow their abhorrence of all limitations upon arbitrary power. Brady went back to the primary sources of our history, and endeavoured to show that Magna Charta, as well as every other constitutional law, were but rebellious encroachments on the ancient uncontrollable imprescriptible prerogatives of the monarchy. His writings, replete with learning and acuteness, and in some respects with just remarks, though often unfair and always partial, naturally produced an effect on those who had been accustomed to value the constitution rather for its presumed antiquity, than its real excellence. But the author most in vogue with the partisans of despotism was sir Robert Filmer. He had lived before the civil war, but his posthumous writings came to light about this period. They contain an elaborate vindication of what was called the patriarchal scheme of government, which, rejecting with scorn that original contract whence human society had been supposed to spring, derives all legitimate authority from that of primogeniture, the next heir being king by divine right, and as incapable of being restrained in his sovereignty, as of being excluded from it. "As kingly power," he says, "is by the law of God, so hath it no inferior power to limit it. The father of a family governs by no other law than his own

Sir Robert Filmer.

father, and murders him, continues a rebel in the reign of the son, which commences with his father's death. It is otherwise, indeed, where none can pretend a greater title to the crown than the usurper, for there possession of power seems to give a right." P. 127.

Sherlock began to preach in a very different manner as soon as James showed a disposition to set up his own church. "It is no act of loyalty," he told the house of commons, May 29. 1685, "to accommodate or compliment away our religion and its legal securities." Good Advice to the Pulpits.

will, not by the laws and wills of his sons and servants."* "The direction of the law is but like the advice and direction which the king's council gives the king, which no man says is a law to the king."† "General laws," he observes, "made in parliament, may, upon known respects to the king, by his authority be mitigated or suspended upon causes only known to him; and by the coronation oath, he is only bound to observe good laws, of which he is the judge."‡ "A man is bound to obey the king's command against law, nay, in some cases, against divine laws."§ In another treatise, entitled the Anarchy of a Mixed or Limited Monarchy, he inveighs, with no kind of reserve or exception, against the regular constitution; setting off with an assumption that the parliament of England was originally but an imitation of the States General of France, which had no further power than to present requests to the king.‖

These treatises of Filmer obtained a very favourable reception. We find the patriarchal origin of government frequently mentioned in the publications of this time as an undoubted truth. Considered with respect to his celebrity rather than his talents, he was not, as some might imagine, too ignoble an adversary for Locke to have combated. Another person, far superior to Filmer in political eminence, undertook at the same time an unequivocal defence of absolute monarchy. This was sir George Mackenzie, the famous lord advocate of Scotland. In his Jus Regium, published in 1684, and dedicated to the university of Oxford, he maintains, that "monarchy in its nature is absolute, and consequently these pretended limitations are against the nature of monarchy."¶ "Whatever proves monarchy to be an excellent government, does by the same reason prove absolute monarchy to be the best government; for if monarchy be to be commended, because it prevents divisions, then a limited monarchy, which allows the people a share, is not to be commended, because it occasions them; if monarchy be commended, because there is more expe-

Sir George Mackenzie.

* P. 81. † P. 95.
‡ P. 98. 100. § P. 100.
‖ This treatise, subjoined to one of greater length, entitled the Freeholder's Grand Inquest, was published in 1679; but the Patriarcha not till 1685.
¶ P. 39.

dition, secrecy, and other excellent qualities to be found in it, then absolute monarchy is to be commended above a limited one, because a limited monarch must impart his secrets to the people, and must delay the noblest designs, until malicious and factious spirits be either gained or overcome; and the same analogy of reason will hold in reflecting upon all other advantages of monarchy, the examination whereof I dare trust to every man's own bosom."* We can hardly, after this, avoid being astonished at the effrontery, even of a Scots crown lawyer, when we read in the preface to this very treatise of Mackenzie, "Under whom can we expect to be free from arbitrary government, when we were and are afraid of it under king Charles I. and king Charles II.?"

It was at this time that the university of Oxford published their celebrated decree against pernicious books and damnable doctrines, enumerating as such above twenty propositions, which they anathematized as false, seditious, and impious. The first of these is, that all civil authority is derived originally from the people; the second, that there is a compact, tacit or express, between the king and his subjects: and others follow of the same description. They do not explicitly condemn a limited monarchy, like Filmer, but evidently adopt his scheme of primogenitary right, which is, perhaps, almost incompatible with it. Nor is there the slightest intimation that the university extended their censure to such praises of despotic power as have been quoted in the last pages.† This decree was publicly burned by an order of the house of lords in 1709; nor does there seem to have been a single dissent in that body to a step that cast such a stigma on the university. But the disgrace of the offence was greater than that of the punishment.

Decree of the university of Oxford.

We can frame no adequate conception of the jeopardy in which our liberties stood under the Stuarts, especially in this particular period, without attending to this spirit of servility which had been so sedulously excited. It seemed as if England was about to play the scene which Denmark had not long since exhibited, by a spontaneous surrender of its con-

* P. 46. † Collier, 902.; Somers Tracts, viii. 420.

stitution. And although this loyalty were much more on the tongue than in the heart, as the next reign very amply disclosed, it served at least to deceive the court into a belief that its future steps would be almost without difficulty. It is uncertain whether Charles would have summoned another parliament. He either had the intention, or professed it in order to obtain money from France, of convoking one at Cambridge in the autumn of 1681.* But after the scheme of new-modelling corporations began to be tried, it was his policy to wait the effects of this regeneration. It was better still, in his judgment, to dispense with the commons altogether. The period fixed by law had elapsed nearly twelve months before his death; and we have no evidence that a new parliament was in contemplation. But Louis, on the other hand, having discontinued his annual subsidy to the king in 1684, after gaining Strasburg and Luxemburg by his connivance, or rather co-operation†, it would not have been easy to avoid a recurrence to the only lawful source of revenue. The king of France, it should be observed, behaved towards Charles as men usually treat the low tools by whose corruption they have obtained any end. During the whole course of their long negotiations, Louis, though never the dupe of our wretched monarch, was compelled to endure his shuffling evasions, and pay dearly for his base compliances. But when he saw himself no longer in need of them, it seems to have been in revenge that he permitted the publication of the secret treaty of 1670, and withdrew his pecuniary aid. Charles deeply resented both these marks of desertion in his ally. In addition to them, he discovered the intrigues of the French ambassadors with his

Connexion with Louis broken off.

* Dalrymple, appendix, 8.; Life of James, 691. He pretended to come into a proposal of the Dutch for an alliance with Spain and the empire against the fresh encroachments of France, and to call a parliament for that purpose, but with no sincere intention, as he assured Barillon. "Je n'ai aucune intention d'assembler le parlement; ces sont des diables qui veulent ma ruine." Dalrymple, 15.

† He took 100,000 livres for allowing the French to seize Luxemburg; after this he offered his arbitration, and on Spain's refusal, laid the fault on her, though already bribed to decide in favour of France. Lord Rochester was a party in all these base transactions. The acquisition of Luxemburg and Strasburg was of the utmost importance to Louis, as they gave him a predominating influence over the four Rhenish electors, through whom he hoped to procure the election of the dauphin as king of the Romans. Id. 36.

malecontent commons. He perceived, also, that by bringing home the duke of York from Scotland, and restoring him, in defiance of the test act, to the privy council, he had made the presumptive heir of the throne, possessed as he was of superior steadiness and attention, too near a rival to himself. These reflections appear to have depressed his mind in the latter months of his life, and to have produced that remarkable private reconciliation with the duke of Monmouth, through the influence of lord Halifax, which, had he lived, would very probably have displayed one more revolution in the uncertain policy of this reign.* But a death, so sudden and inopportune as to excite suspicions of poison in some most nearly connected with him, gave a more decisive character to the system of government.† King's death.

* Dalrymple, appendix, 74.; Burnet; Mazure, Hist. de la Révolution de 1688, i. 340. 372. This is confirmed by, or rather confirms, the very curious notes found in the duke of Monmouth's pocket-book when he was taken after the battle of Sedgemoor, and published in the appendix to Welwood's Memoirs. Though we should rather see more external evidence of their authenticity than, so far as I know, has been produced, they have great marks of it in themselves; and it is not impossible that, after the revolution, Welwood may have obtained them from the secretary of state's office.

† It is mentioned by Mr. Fox, as a tradition in the duke of Richmond's family, that the duchess of Portsmouth believed Charles II. to have been poisoned. This I find confirmed in a letter read on the trial of Francis Francia, indicted for treason in 1715. "The duchess of Portsmouth, who is at present here, gives a great deal of offence, as I am informed, by pretending to prove that the late king James had poisoned his brother Charles; it was not expected, that after so many years' retirement in France, she should come hither to revive that vulgar report, which at so critical a time cannot be for any good purpose." State Trials, xv. 948. It is almost needless to say that the suspicion was wholly unwarrantable.

I have since been informed, on the best authority, that Mr. Fox did not derive his authority from a tradition in the duke of Richmond's family, that of his own mother, as his editor had very naturally conjectured, but from his father, the first lord Holland, who, while a young man travelling in France, had become acquainted with the duchess of Portsmouth.

CHAPTER XIII.

ON THE STATE OF THE CONSTITUTION UNDER CHARLES II.

Effect of the Press — Restrictions upon it before and after the Restoration — Licensing Acts — Political Writings checked by the Judges — Instances of illegal Proclamations not numerous — Juries fined for Verdicts — Question of their Right to return a general Verdict — Habeas Corpus Act passed — Differences between Lords and Commons — Judicial Powers of the Lords historically traced — Their Pretensions about the Time of the Restoration — Resistance made by the Commons — Dispute about their original Jurisdiction — And that in Appeals from Courts of Equity — Question of the exclusive Right of the Commons as to Money-bills — Its History — The Right extended farther — State of the Upper House under the Tudors and Stuarts — Augmentation of the Temporal Lords — State of the Commons — Increase of their Members — Question as to Rights of Election — Four different Theories as to the original Principle — Their Probability considered.

IT may seem rather an extraordinary position, after the last chapters, yet is strictly true, that the fundamental privileges of the subject were less invaded, the prerogative swerved into fewer excesses, during the reign of Charles II. than in any former period of equal length. Thanks to the patriotic energies of Selden and Eliot, of Pym and Hampden, the constitutional boundaries of royal power had been so well established that no minister was daring enough to attempt any flagrant and general violation of them. The frequent session of parliament, and its high estimation of its own privileges, furnished a security against illegal taxation. Nothing of this sort has been imputed to the government of Charles, the first king of England, perhaps, whose reign was wholly free from such a charge. And as the nation happily escaped the attempts that were made after the restoration, to revive the star-chamber and high-commission courts, there were no means of chastising political delinquencies, except through the regular tribunals of justice, and through the verdict of a jury. Ill as the one were often constituted, and submissive as the other might

often be found, they afforded something more of a guarantee, were it only by the publicity of their proceedings, than the dark and silent divan of courtiers and prelates, who sat in judgment under the two former kings of the house of Stuart. Though the bench was frequently subservient, the bar contained high-spirited advocates, whose firm defence of their clients the judges often reproved, but no longer affected to punish. The press, above all, was in continual service. An eagerness to peruse cheap and ephemeral tracts on all subjects of passing interest had prevailed ever since the reformation. These had been extraordinarily multiplied from the meeting of the long parliament. Some thousand pamphlets of different descriptions, written between that time and the restoration, may be found in the British Museum; and no collection can be supposed to be perfect. It would have required the summary process and stern severity of the court of star-chamber to repress this torrent, or reduce it to those bounds which a government is apt to consider as secure. But the measures taken with this view under Charles II. require to be distinctly noticed.

In the reign of Henry VIII., when the political importance of the art of printing, especially in the great question of the reformation, began to be apprehended, it was thought necessary to assume an absolute control over it, partly by the king's general prerogative, and still more by virtue of his ecclesiastical supremacy.* Thus it became usual to grant by letters patent the exclusive right of printing the Bible or religious books, and afterwards all others. The privilege of keeping presses was limited to the members of the stationers' company, who were bound by regulations established in the reign of Mary by the star-

Effect of the press. Restrictions upon it before and after the restoration.

* It was said in 18 Car. 2. (1666) that "the king by the common law hath a general prerogative over the printing press; so that none ought to print a book for public use without his license." This seems however to have been in the argument of counsel; but the court held that a patent to print law-books exclusively was no monopoly. Carter's Reports, 89. "Matters of state and things that concern the government," it is said in another case, "were never left to any man's liberty to print that would." 1 Mod. Rep. 258. Kennet informs us that several complaints having been made, of Lilly's Grammar, the use of which had been prescribed by the royal ecclesiastical supremacy, it was thought proper in 1664 that a new public form of grammar should be drawn up and *approved in convocation*, to be enjoined by the royal authority. One was accordingly brought in by Bishop Pearson, but the matter dropped. Life of Charles II. 274.

chamber, for the contravention of which they incurred the speedy chastisement of that vigilant tribunal. These regulations not only limited the number of presses, and of men who should be employed on them, but subjected new publications to the previous inspection of a licenser. The long parliament did not hesitate to copy this precedent of a tyranny they had overthrown; and by repeated ordinances against unlicensed printing, hindered, as far as in them lay, this great instrument of political power from serving the purposes of their adversaries. Every government, however popular in name or origin, must have some uneasiness from the great mass of the multitude, some vicissitudes of public opinion to apprehend; and experience shows that republics, especially in a revolutionary season, shrink as instinctively, and sometimes as reasonably, from an open license of the tongue and pen, as the most jealous court. We read the noble apology of Milton for the freedom of the press with admiration; but it had little influence on the parliament to whom it was addressed.

Licensing acts.

It might easily be anticipated, from the general spirit of lord Clarendon's administration, that he would not suffer the press to emancipate itself from these established shackles.* A bill for the regulation of printing failed in 1661, from the commons' jealousy of the peers, who had inserted a clause exempting their own houses from search.† But next year a statute was enacted, which, reciting "the well-government and regulating of printers and printing-presses to be matter of public care and concernment, and that by the general licentiousness of the late times many evil-disposed persons had been encouraged to print and sell heretical and seditious books," prohibits every private person from printing any book or pamphlet, unless entered with the stationers' company, and duly licensed in the following manner: to wit, books of law by the chancellor or one of the chief-justices, of history and politics by the secretary of state,

* We find an order of council, June 7. 1660, that the stationers' company do seize and deliver to the secretary of state all copies of Buchanan's History of Scotland, and De Jure Regni apud Scotos, "which are very pernicious to monarchy, and injurious to his majesty's blessed progenitors." Kennet's Register, 176. This was beginning early.

† Commons' Journals, July 29. 1661.

of heraldry by the kings at arms, of divinity, physic, or philosophy, by the bishops of Canterbury or London, or, if printed at either university, by its chancellor. The number of master-printers was limited to twenty: they were to give security, to affix their names, and to declare the author, if required by the licenser. The king's messengers, by warrant from a secretary of state, or the master and wardens of the stationers' company, were empowered to seize unlicensed copies wherever they should think fit to search for them, and, in case they should find any unlicensed book suspected to contain matters contrary to the church or state, they were to bring them to the two bishops before mentioned, or one of the secretaries. No books were allowed to be printed out of London, except in York and in the universities. The penalties for printing without license were of course heavy.* This act was only to last three years; and after being twice renewed (the last time until the conclusion of the first session of the next parliament), expired consequently in 1679; an era when the house of commons were happily in so different a temper that any attempt to revive it must have proved abortive. During its continuance, the business of licensing books was entrusted to sir Roger L'Estrange, a well-known pamphleteer of that age, and himself a most scurrilous libeller in behalf of the party he espoused, that of popery and despotic power. It is hardly necessary to remind the reader of the objections that were raised to one or two lines in Paradise Lost.

Though a previous license ceased to be necessary, it was held by all the judges, having met for this purpose (if we believe chief-justice Scroggs), by the king's command, that all books scandalous to the government or to private persons may be seized, and the authors or those exposing them punished: and that all writers of false news, though not scandalous or seditious, are indictable on that account.† But in a subsequent trial he informs the jury that, "when by the king's command we were to give in our opinion what was to be done in point of regulation of the press, we did all subscribe that to print or publish any news, books, or pamphlets of news whatsoever, is illegal; that it is

Political writings checked by the judges.

* 14 Car. 2. c. 33.

† State Trials, vii. 929.

a manifest intent to the breach of the peace, and they may be proceeded against by law as an illegal thing.* Suppose now that this thing is not scandalous, what then? If there had been no reflection in this book at all, yet it is *illicite;* and the author ought to be convicted for it. And that is for a public notice to all people, and especially printers and booksellers, that they ought to print no book or pamphlet of news whatsoever without authority." The pretended libel in this case was a periodical pamphlet, entitled the Weekly Pacquet of Advice from Rome; being rather a virulent attack on popery than serving the purpose of a newspaper. These extraordinary propositions were so far from being loosely advanced, that the court of king's bench proceeded to make an order, that the book should no longer be printed or published by any person whatsoever.† Such an order was evidently beyond the competence of that court, were even the prerogative of the king in council as high as its warmest advocates could strain it. It formed accordingly one article of the impeachment voted against Scroggs in the next session.‡ Another was for issuing general warrants (that is, warrants wherein no names are mentioned,) to seize seditious libels and apprehend their authors.§ But this impeachment having fallen to the ground, no check was put to general warrants, at least from the secretary of state, till the famous judgment of the court of common pleas in 1763.

Instances of illegal proclamations not numerous.

Those encroachments on the legislative supremacy of parliament, and on the personal rights of the subject, by means of proclamations issued from the privy council, which had rendered former princes of both

* This declaration of the Judges is recorded in the following passage of the London Gazette, May 5. 1680: — "This day the judges made their report to his majesty in council, in pursuance of an order of this board, by which they unanimously declare that his majesty may by law prohibit the printing and publishing of all news-books and pamphlets of news whatsoever not licensed by his majesty's authority, as manifestly tending to the breach of the peace and disturbance of the kingdom. Whereupon his majesty was pleased to direct a proclamation to be prepared for the restraining the printing of news-books and pamphlets of news without leave." Accordingly such a proclamation appears in the Gazette of May 17.

† State Trials, vii. 1127.; viii. 184. 197. Even North seems to admit that this was a stretch of power. Examen, 564.

‡ State Trials, viii. 163.

§ It seems that these warrants, though usual, were known to be against the law. State Trials, vii. 949. 956. Possibly they might have been justified under the words of the licensing act, while that was in force; and having been thus introduced, were not laid aside.

the Tudor and Stuart families almost arbitrary masters of their people, had fallen with the odious tribunal by which they were enforced. The king was restored to nothing but what the law had preserved to him. Few instances appear of illegal proclamations in his reign. One of these, in 1665, required all officers and soldiers who had served in the armies of the late usurped powers to depart the cities of London and Westminster, and not to return within twenty miles of them before the November following. This seems connected with the well-grounded apprehension of a republican conspiracy.* Another, immediately after the fire of London, directed the mode in which houses should be rebuilt, and enjoined the lord mayor and other city magistrates to pull down whatsoever obstinate and refractory persons might presume to erect upon pretence that the ground was their own; and especially that no houses of timber should be erected for the future.† Though the public benefit of this last restriction, and of some regulations as to the rebuilding of a city which had been destroyed in great measure through the want of them, was sufficiently manifest, it is impossible to justify the tone and tenour of this proclamation; and more particularly as the meeting of parliament was very near at hand. But an act having passed therein for the same purpose, the proclamation must be considered as having had little effect. Another instance, and far less capable of extenuation, is a proclamation for shutting up coffee-houses, in December, 1675. I have already mentioned this as an intended measure of lord Clarendon. Coffee-houses were all at that time subject to a license, granted by the magistrates at quarter-sessions. But, the licenses having been granted for a certain time, it was justly questioned whether they could in any manner be revoked. This proclamation being of such disputable legality, the judges, according to North, were consulted, and intimating to the council that they were not agreed in opinion upon the most material questions submitted to them, it seemed advisable to recall it.‡ In this essential matter of proclamations, therefore, the administration of Charles II. is very advantageously

* Kennet's Charles II. 277.
† State Trials, vi. 837.
‡ Ralph, 297. North's Examen, 139. Kennet, 337. Hume of course pretends that this proclamation would have been reckoned legal in former times.

compared with that of his father; and, considering at the same time the entire cessation of impositions of money without consent of parliament, we must admit that, however dark might be his designs, there were no such general infringements of public liberty in his reign as had continually occurred before the long parliament.

One undeniable fundamental privilege had survived the shocks of every revolution; and in the worst times, except those of the late usurpation, had been the standing record of primeval liberty—the trial by jury: whatever infringement had been made on this, in many cases of misdemeanour, by the present jurisdiction of the star-chamber, it was impossible, after the bold reformers of 1641 had lopped off that unsightly excrescence from the constitution, to prevent a criminal charge from passing the legal course of investigation through the inquest of a grand jury, and the verdict in open court of a petty jury. But the judges, and other ministers of justice, for the sake of their own authority or that of the crown, devised various means of subjecting juries to their own direction, by intimidation, by unfair returns of the pannel, or by narrowing the boundaries of their lawful function. It is said to have been the practice in early times, as I have mentioned from sir Thomas Smith in another place, to fine juries for returning verdicts against the direction of the court, even as to matter of evidence, or to summon them before the star-chamber. It seems that instances of this kind were not very numerous after the accession of Elizabeth; yet a small number occur in our books of reports. They were probably sufficient to keep juries in much awe. But after the restoration, two judges, Hyde and Keeling, successively chief-justices of the king's bench, took on them to exercise a pretended power, which had at least been intermitted in the time of the commonwealth. The grand jury of Somerset having found a bill for manslaughter instead of murder, against the advice of the latter judge, were summoned before the court of king's bench, and dismissed with a reprimand instead of a fine.* In other cases fines were set on petty

Juries fined for verdicts.

* "Sir Hugh Wyndham and others of the grand jury of Somerset were at the last assizes bound over, by lord Ch. J. Keeling, to appear at the K. B. the first day of this term, to answer a misdemeanour for finding upon a bill of murder,

juries for acquittals against the judge's direction. This unusual and dangerous inroad on so important a right attracted the notice of the house of commons; and a committee was appointed, who reported some strong resolutions against Keeling for illegal and arbitrary proceedings in his office, the last of which was, that he be brought to trial, in order to condign punishment, in such manner as the house should deem expedient. But the chief justice, having requested to be heard at the bar, so far extenuated his offence that the house, after resolving that the practice of fining or imprisoning jurors is illegal, came to a second resolution to proceed no farther against him.*

Question of their right to return a general verdict.

The precedents, however, which these judges endeavoured to establish, were repelled in a more decisive manner than by a resolution of the house of commons. For in two cases, where the fines thus imposed upon jurors had been estreated into the exchequer, Hale, then chief baron, with the advice of most of the judges of England, as he informs us, stayed process; and in a subsequent case it was resolved by all the judges, except one, that it was against law to fine a jury for giving a verdict contrary to the court's direction. Yet notwithstanding this very recent determination, the recorder of London, in 1670, upon the acquittal of the quakers, Penn and Mead, on an indictment for an unlawful assembly, imposed a fine of forty marks on each of the jury.† Bushell, one of their number, being committed for non-payment of this fine, sued his writ of habeas corpus from the court of common pleas; and, on the return made, that he had been committed for finding a verdict

'billa vera quoad manslaughter,' against the directions of the judge. Upon their appearance they were told by the court, being full, that it was a misdemeanour in them, for they are not to distinguish betwixt murder and manslaughter; for it is only the circumstance of malice which makes the difference, and that may be implied by the law, without any fact at all, and so it lies not in the judgment of a jury, but of the judge; that the intention of their finding indictments is, that there might be no malicious prosecution; and therefore, if the matter of the indictment be not framed of malice, but is verisimilis, though it be not vera, yet it answers their oaths to present it. Twisden said he had known petty juries punished in my lord chief-justice Hyde's time, for disobeying of the judge's directions in point of law. But, because it was a mistake in their judgments rather than an obstinacy, the court discharged them without any fine or other attendance." Pasch. 19 Car. 2. Keeling, Ch. J. Twisden, Wyndham, Morton, justices. Hargrave MSS., vol. 339.

* Journals, 16th Oct. 1667.

† State Trials, vi. 967.

against full and manifest evidence, and against the direction of the court, chief justice Vaughan held the ground to be insufficient, and discharged the party. In his reported judgment on this occasion, he maintains the practice of fining jurors, merely on this account, to be comparatively recent, and clearly against law.* No later instance of it is recorded; and perhaps it can only be ascribed to the violence that still prevailed in the house of commons against non-conformists, that the recorder escaped its animadversion.

In this judgment of the chief-justice Vaughan, he was led to enter on a question much controverted in later times, the legal right of the jury, without the direction of the judge, to find a general verdict in criminal cases, where it determines not only the truth of the facts as deposed, but their quality of guilt or innocence; or, as it is commonly, though not perhaps quite accurately worded, to judge of the law as well as the fact. It is a received maxim with us, that the judge cannot decide on questions of fact, nor the jury on those of law. Whenever the general principle, or what may be termed the major proposition of the syllogism, which every litigated case contains, can be extracted from the particular circumstances to which it is supposed to apply, the court pronounce their own determination, without reference to a jury. The province of the latter, however, though it properly extend not to any general decision of the law, is certainly not bounded, at least in modern times, to a mere estimate of the truth of testimony. The intention of the litigant parties in civil matters, of the accused in crimes, is in every case a matter of inference from the testimony or from the acknowledged facts of the case; and wherever that intention is material to the issue, is constantly left for the jury's deliberation. There are indeed rules in criminal proceedings which supersede this consideration; and where, as it is expressed, the law presumes the intention in determining the offence. Thus, in the common instance of murder or manslaughter, the jury cannot legally determine that provocation to be sufficient, which by the settled rules of law is otherwise; nor can they, in any case, set up novel and arbitrary constructions of their own

* Vaughan's Reports. State Trials, v. 999.

without a disregard of their duty. Unfortunately it has been sometimes the disposition of judges to claim to themselves the absolute interpretation of facts, and the exclusive right of drawing inferences from them, as it has occasionally, though not perhaps with so much danger, been the failing of juries to make their right of returning a general verdict subservient to faction or prejudice. Vaughan did not of course mean to encourage any petulance in juries that should lead them to pronounce on the law, nor does he expatiate so largely on their power as has sometimes since been usual; but confines himself to a narrow, though conclusive line of argument, that as every issue of fact must be supported by testimony, upon the truth of which the jury are exclusively to decide, they cannot be guilty of any legal misdemeanour in returning their verdict, though apparently against the direction of the court in point of law; since it cannot ever be proved that they believed the evidence upon which that direction must have rested.*

Habeas corpus act passed.

I have already pointed out to the reader's notice that article of Clarendon's impeachment, which charges him with having caused many persons to be imprisoned against law.† These were released by the duke of Buckingham's administration, which in several respects acted on a more liberal principle than any other in this reign. The practice was not however wholly discontinued. Jenkes, a citizen of London on the popular or factious side, having been committed by the king in council for a mutinous speech in Guildhall, the justices at quarter sessions refused to admit him to bail, on pretence that he had been committed by a superior court; or to try him, because he was not entered in the calendar of prisoners. The chancellor, on application for a habeas corpus, declined to issue it during the vacation; and the chief justice of the king's bench, to whom, in the next place, the friends of Jenkes had recourse, made so many difficulties that he lay in prison for several weeks.‡ This has

* See Hargrave's judicious observations on the province of juries. State Trials, vi. 1013.

† Those who were confined by warrants were forced to buy their liberty of the courtiers; "Which," says Pepys (July 7. 1667), "is a most lamentable thing that we do professedly own that we do these things, not for right and justice' sake, but only to gratify this or that person about the king."

‡ State Trials, vi. 1189.

been commonly said to have produced the famous act of habeas corpus. But this is not truly stated. The arbitrary proceedings of lord Clarendon were what really gave rise to it. A bill to prevent the refusal of the writ of habeas corpus was brought into the house on April 10. 1668, but did not pass the committee in that session.* But another to the same purpose, probably more remedial, was sent up to the lords in March, 1669–70.† It failed of success in the upper house; but the commons continued to repeat their struggle for this important measure, and in the session of 1673–4 passed two bills, one to prevent the imprisonment of the subject in gaols beyond the seas, another to give a more expeditious use of the writ of habeas corpus in criminal matters. ‡ The same or similar bills appear to have gone up to the lords in 1675. It was not till 1676, that the delay of Jenkes's habeas corpus took place. And this affair seems to have had so trifling an influence that these bills were not revived for the next two years, notwithstanding the tempests that agitated the house during that period. § But in the short parliament of 1679, they appear to have been consolidated into one, that having met with better success among the lords, passed into a statute, and is generally denominated the habeas corpus act. ‖

* Commons' Journals. As the titles only of these bills are entered in the Journals, their purport cannot be stated with absolute certainty. They might, however, I suppose, be found in some of the offices.

† Parl. Hist. 661. It was opposed by the court.

‡ In this session, Feb. 14., a committee was appointed to inspect the laws, and consider how the king may commit any subject by his immediate warrant, as the law now stands, and report the same to the house, and also how the law now stands touching commitments of persons by the council-table. Ralph supposes (p. 255.) that this gave rise to the habeas corpus act, which is certainly not the case. The statute 16 Car. 1. c. 10. seems to recognise the legality of commitments by the king's special warrant, or by the privy council, or some, at least, of its members singly; and probably this, with long usage, is sufficient to support the controverted authority of the secretary of state. As to the privy council, it is not doubted, I believe, that they may commit. But it has been held, even in the worst of times, that a warrant of commitment under the king's own hand, without seal, or the hand of any secretary, or officer of state, or justice, is bad. 2 Jac. II. B. R. 2 Shower, 484.

§ In the Parliamentary History, 845., we find a debate on the petition of one Harrington to the commons, in 1677, who had been committed to close custody by the council. But as his demeanour was alleged to have been disrespectful, and the right of the council to commit was not disputed, and especially as he seems to have been at liberty when the debate took place, no proceedings ensued, though the commitment had not been altogether regular. Ralph (p. 314.) comments more severely on the behaviour of the house than was necessary.

‖ 31 Car. 2. c. 2.

It is a very common mistake, and that not only among foreigners, but many from whom some knowledge of our constitutional laws might be expected, to suppose that this statute of Charles II. enlarged in a great degree our liberties, and forms a sort of epoch in their history. But though a very beneficial enactment, and eminently remedial in many cases of illegal imprisonment, it introduced no new principle, nor conferred any right upon the subject. From the earliest records of the English law, no freeman could be detained in prison, except upon a criminal charge or conviction, or for a civil debt. In the former case, it was always in his power to demand of the court of king's bench a writ of habeas corpus ad subjiciendum, directed to the person detaining him in custody, by which he was enjoined to bring up the body of the prisoner, with the warrant of commitment, that the court might judge of its sufficiency, and remand the party, admit him to bail, or discharge him, according to the nature of the charge. This writ issued of right, and could not be refused by the court. It was not to bestow an immunity from arbitrary imprisonment, which is abundantly provided in Magna Charta (if indeed it were not much more ancient), that the statute of Charles II. was enacted; but to cut off the abuses, by which the government's lust of power, and the servile subtlety of crown lawyers, had impaired so fundamental a privilege.

There had been some doubts whether the court of common pleas could issue this writ; and the court of exchequer seems never to have done so.* It was also a question, and one of more importance, as we have seen in the case of Jenkes, whether a single judge of the court of king's bench could issue it during the vacation. The statute therefore enacts that where any person, other than persons convicted or in execution upon legal process, stands committed for any crime, except for treason or felony plainly expressed in the warrant of commitment, he may during the vacation complain to the chancellor, or any of the twelve judges; who upon sight of a copy of the warrant, or an affidavit that a

* The puisne judges of the common pleas granted a habeas corpus, against the opinion of chief justice Vaughan, who denied the court to have that power. Carter's Reports, 221.

copy is denied, shall award a habeas corpus directed to the officer in whose custody the party shall be, commanding him to bring up the body of his prisoner within a time limited according to the distance, but in no case exceeding twenty days, who shall discharge the party from imprisonment, taking surety for his appearance in the court wherein his offence is cognizable. A gaoler refusing a copy of the warrant of commitment, or not obeying the writ, is subjected to a penalty of 100*l.*; and even the judge denying a habeas corpus, when required according to this act, is made liable to a penalty of 500*l.* at the suit of the injured party. The court of king's bench had already been accustomed to send out their writ of habeas corpus into all places of peculiar and privileged jurisdiction, where this ordinary process does not run, and even to the island of Jersey, beyond the strict limits of the kingdom of England*; and this power, which might admit of some question, is sanctioned by a declaratory clause of the present statute. Another section enacts, that "no subject of this realm that now is, or hereafter shall be, an inhabitant or resiant of this kingdom of England, dominion of Wales, or town of Berwick-upon-Tweed, shall be sent prisoner into Scotland, Ireland, Jersey, Guernsey, Tangier, or into parts, garrisons, islands, or places beyond the seas, which are, or at any time hereafter shall be, within or without the dominions of his majesty, his heirs, or successors," under penalties of the heaviest nature short of death which the law then knew, and an incapacity of receiving the king's pardon. The great rank of those who were likely to offend against this part of the statute was, doubtless, the cause of this unusual severity.

But as it might still be practicable to evade these remedial provisions by expressing some matter of treason or felony in the warrant of commitment, the judges not being empowered to enquire into the truth of the facts contained in it, a further security against any protracted detention of an innocent man is afforded by a provision of great importance;

* The court of king's bench directed a habeas corpus to the governor of Jersey, to bring up the body of Overton, a well-known officer of the commonwealth, who had been confined there several years. Siderfin's Reports, 386. This was in 1668, after the fall of Clarendon, when a less despotic system was introduced.

that every person committed for treason or felony, plainly and specially expressed in the warrant, may, unless he shall be indicted in the next term, or at the next sessions of general gaol delivery after his commitment, be, on prayer to the court, released upon bail, unless it shall appear that the crown's witnesses could not be produced at that time; and if he shall not be indicted and tried in the second term or sessions of gaol delivery, he shall be discharged.

The remedies of the habeas corpus act are so effectual that no man can possibly endure any long imprisonment on a criminal charge, nor would any minister venture to exercise a sort of oppression so dangerous to himself. But it should be observed that, as the statute is only applicable to cases of commitment on such a charge, every other species of restraint on personal liberty is left to the ordinary remedy as it subsisted before this enactment. Thus a party detained without any warrant must sue out his habeas corpus at common law; and this is at present the more usual occurrence. But the judges of the king's bench, since the statute, have been accustomed to issue this writ during the vacation in all cases whatsoever. A sensible difficulty has, however, been sometimes felt, from their incompetency to judge of the truth of a return made to the writ. For, though in cases within the statute the prisoner may always look to his legal discharge at the next sessions of gaol delivery, the same redress might not always be obtained when he is not in custody of a common gaoler. If the person therefore who detains any one in custody should think fit to make a return to the writ of habeas corpus, alleging matter sufficient to justify the party's restraint, yet false in fact, there would be no means, at least by this summary process, of obtaining relief. An attempt was made in 1757, after an examination of the judges by the house of lords as to the extent and efficiency of the habeas corpus at common law, to render their jurisdiction more remedial.* It failed, however, for the time, of success; but a statute has recently been enacted†, which not only extends

* See the lords' questions and answers of the judges in Parl. Hist. xv. 898.; or Bacon's Abridgment, tit. Habeas Corpus; also Wilmot's Judgments, 81. This arose out of a case of impressment, where the expeditious remedy of habeas corpus is eminently necessary.

† 56 G. III. c. 100.

the power of issuing the writ during the vacation, in cases not within the act of Charles II., to all the judges, but enables the judge, before whom the writ is returned, to enquire into the truth of the facts alleged therein, and in case they shall seem to him doubtful, to release the party in custody, on giving surety to appear in the court to which such judge shall belong, on some day in the ensuing term, when the court may examine by affidavit into the truth of the facts alleged in the return, and either remand or discharge the party, according to their discretion. It is also declared that a writ of habeas corpus shall run to any harbour or road on the coast of England, though out of the body of any county; in order, I presume, to obviate doubts as to the effects of this remedy in a kind of illegal detention, more likely perhaps than any other to occur in modern times, on board of vessels upon the coast. Except a few of this description, it is very rare for a habeas corpus to be required in any case where the government can be presumed to have an interest.

Differences between lords and commons.

The reign of Charles II. was hardly more remarkable by the vigilance of the house of commons against arbitrary prerogative than by the warfare it waged against whatever seemed an encroachment or usurpation in the other house of parliament. It has been a peculiar happiness of our constitution that such dissensions have so rarely occurred. I cannot recollect any republican government, ancient or modern (except perhaps some of the Dutch provinces), where hereditary and democratical authority have been amalgamated so as to preserve both in effect and influence, without continual dissatisfaction and reciprocal encroachments; for though, in the most tranquil and prosperous season of the Roman state, one consul, and some magistrates of less importance, were invariably elected from the patrician families, these latter did not form a corporation, nor had any collective authority in the government. The history of monarchies, including of course all states where the principality is lodged in a single person, that have admitted the aristocratical and popular temperaments at the same time, bears frequent witness to the same jealous or usurping spirit. Yet monarchy is unquestionably more favourable to the co-existence of an hereditary body of nobles with a re-

presentation of the commons than any other form of commonwealth; and it is to the high prerogative of the English crown, its exclusive disposal of offices of trust, which are the ordinary subjects of contention, its power of putting a stop to parliamentary disputes by a dissolution, and, above all, to the necessity which both the peers and the commons have often felt, of a mutual good understanding for the maintenance of their privileges, that we must in a great measure attribute the general harmony, or at least the absence of open schism, between the two houses of parliament. This is, however, still more owing to the happy graduation of ranks, which renders the elder and the younger sons of our nobility two links in the unsevered chain of society; the one trained in the school of popular rights, and accustomed, for a long portion of their lives, to regard the privileges of the house whereof they form a part, full as much as those of their ancestors *; the other falling without hereditary distinction into the class of other commoners, and mingling the sentiments natural to their birth and family affections, with those that are more congenial to the whole community. It is owing also to the wealth and dignity of those ancient families, who would be styled noble in any other country, and who give an aristocratical character to the popular part of our legislature, and to the influence which the peers themselves, through the representation of small boroughs, are enabled to exercise over the lower house.

The original constitution of England was highly aristocratical. The peers of this realm, when summoned to parliament (and on such occasions every peer was entitled to his writ), were the necessary counsellors and coadjutors of the king in all the func-

Judicial powers of the lords historically traced.

* It was ordered, 21st Jan. 1549, that the eldest son of the earl of Bedford should continue in the house after his father had succeeded to the peerage. And, 9th Feb. 1575, that his son should do so, "according to the precedent in the like case of the now earl his father." It is worthy of notice that this determination, which, at the time, seems to have been thought doubtful, though very unreasonably (Journals, 10th Feb.), but which has had an influence which no one can fail to acknowledge, in binding together the two branches of the legislature, and in keeping alive the sympathy for public and popular rights in the English nobility, (that sensus communis, which the poet thought so rare in high rank,) is first recorded, and that twice over, in behalf of a family, in whom the love of constitutional freedom has become hereditary, and who may be justly said to have deserved, like the Valerii at Rome, the surname of Publicolæ.

tions that appertain to a government. In granting money for the public service, in changing by permanent statutes the course of the common law, they could only act in conjunction with the knights, citizens, and burgesses of the lower house of parliament. In redress of grievances, whether of so private a nature as to affect only single persons or extending to a county or hundred, whether proceeding from the injustice of public officers or of powerful individuals, whether demanding punishment as crimes against the state, or merely restitution and damages to the injured party, the lords assembled in parliament were competent, as we find in our records, to exercise the same high powers, if they were not even more extensive and remedial, as the king's ordinary council, composed of his great officers, his judges, and perhaps some peers, was wont to do in the intervals of parliament. These two, the lords and the privy council, seem to have formed, in the session, one body or great council, wherein the latter had originally right of suffrage along with the former. In this judicial and executive authority, the commons had at no time any more pretence to interfere than the council or the lords by themselves, had to make ordinances, at least of a general and permanent nature, which should bind the subject to obedience. At the beginning of every parliament numerous petitions were presented to the lords, or to the king and lords, (since he was frequently there in person, and always presumed to be so,) complaining of civil injuries and abuse of power. These were generally indorsed by appointed receivers of petitions, and returned by them to the proper court whence relief was to be sought.* For an immediate enquiry and remedy seem to have been rarely granted, except in cases of an extraordinary nature, when the law was defective, or could not easily be enforced by the ordinary tribunals; the shortness of sessions, and multiplicity of affairs, preventing the upper house of parliament from entering so fully into these matters as the king's council had leisure to do.

It might perhaps be well questioned, notwithstanding the

* The form of appointing receivers and tryers of petitions, though intermitted during the reign of William III., was revived afterwards, and finally not discontinued without a debate in the house of lords, and a division, in 1740. Parl. Hist. xi. 1013.

respectable opinion of sir M. Hale, whether the statutes directed against the prosecution of civil and criminal suits before the council are so worded as to exclude the original jurisdiction of the house of lords, though their principle is very adverse to it. But it is remarkable that, so far as the lords themselves could allege from the rolls of parliament, one only instance occurs between 4 Hen. IV. (1403) and 43 Eliz. (1602) where their house had entered upon any petition in the nature of an original suit; though in that (1 Ed. IV. 1461) they had certainly taken on them to determine a question cognizable in the common courts of justice. For a distinction seems to have been generally made between cases where relief might be had in the courts below, as to which it is contended by Hale that the lords could not have jurisdiction, and those where the injured party was without remedy, either through defect of the law, or such excessive power of the aggressor as could defy the ordinary process. During the latter part at least of this long interval, the council and court of star-chamber were in all their vigour, to which the intermission of parliamentary judicature may in a great measure be ascribed. It was owing also to the longer intervals between parliaments from the time of Henry VI., extending sometimes to five or six years, which rendered the redress of private wrongs by their means inconvenient and uncertain. In 1621 and 1624, the lords, grown bold by the general disposition in favour of parliamentary rights, made orders without hesitation on private petitions of an original nature. They continued to exercise this jurisdiction in the first parliaments of Charles I.; and in one instance, that of a riot at Banbury, even assumed the power of punishing a misdemeanor unconnected with privilege. In the long parliament, it may be supposed that they did not abandon this encroachment, as it seems to have been, on the royal authority, extending their orders both to the punishment of misdemeanors and to the awarding of damages.*

The ultimate jurisdiction of the house of lords, either by removing into it causes commenced in the lower courts, or by writ of error complaining of a judgment given therein, seems to have been as ancient, and founded on the same prin-

* Hargrave, p. 60. The proofs are in the Lords' Journals.

ciple of a paramount judicial authority delegated by the crown, as that which they exercised upon original petitions. It is to be observed that the council or star-chamber did not pretend to any direct jurisdiction of this nature; no record was ever removed thither upon assignment of errors in an inferior court. But after the first part of the fifteenth century, there was a considerable interval, during which this appellant jurisdiction of the lords seems to have gone into disuse, though probably known to be legal.* They began again, about 1580, to receive writs of error from the court of king's bench; though for forty years more the instances were by no means numerous. But the statute passed in 1585, constituting the court of exchequer-chamber as an intermediate tribunal of appeal between the king's bench and the parliament, recognises the jurisdiction of the latter, that is, of the house of lords, in the strongest terms.† To this power, therefore, of determining, in the last resort, upon writs of error from the courts of common law, no objection could possibly be maintained.

Their pretensions about the time of the restoration.

The revolutionary spirit of the long parliament brought forward still higher pretensions, and obscured all the land-marks of constitutional privilege. As the commons took on themselves to direct the execution of their own orders, the lords, afraid to be jostled out of that equality to which they were now content to be reduced, asserted a similar claim at the expense of the king's prerogative. They returned to their own house on the restoration with confused notions of their high jurisdiction, rather enhanced than abated by the humiliation they had undergone. Thus, before the king's arrival, the commons having sent up for their concurrence a resolution that the persons and estates of the regicides should be seized, the upper house deemed it an encroachment on their exclusive judicature, and changed the resolution into "an order of the

* They were very rare after the accession of Henry V.; but one occurs in 10th Hen. VI. 1432, with which Hale's list concludes. Hargrave's Preface to Hale, p. 7. This editor justly observes, that the incomplete state of the votes and early journals renders the negative proof inconclusive; though we may be fully warranted in asserting that from Henry V. to James I. there was very little exercise of judicial power in parliament, either civilly or criminally.

† 27th Eliz. c. 8.

lords on complaint of the commons."* In a conference on this subject between the two houses, the commons denied their lordships to possess an exclusive jurisdiction, but did not press that matter.† But in fact this order was rather of a legislative than judicial nature; nor could the lords pretend to any jurisdiction in cases of treason. They artfully, however, overlooked these distinctions; and made orders almost daily in the session of 1660, trenching on the executive power and that of the inferior courts. Nor content with ordering the estates of all peers to be restored, free from seizure by sequestration, and with all arrears of rent, we find in their journals that they did not hesitate on petition to stay waste on the estates of private persons, and to secure the tithes of livings, from which ministers had been ejected, in the hands of the churchwardens till their title could be tried.‡ They acted, in short, as if they had a plenary authority in matters of freehold right, where any member of their own house was a party, and in every case as full an equitable jurisdiction as the court of chancery. Though in the more settled state of things which ensued, these anomalous orders do not so frequently occur, we find several assumptions of power which show a disposition to claim as much as the circumstances of any particular case should lead them to think expedient for the parties, or honourable to themselves.§

Resistance made by the commons

The lower house of parliament, which hardly reckoned itself lower in dignity, and was something more than equal in substantial power, did not look without jealousy on these pretensions. They demurred to a privilege asserted by the lords of assessing themselves in

* Lords' Journal, May 18. 1660.

† Commons' Journals, May 22.

‡ Lords' Journals, June 4. 6. 14. 20. 22. et alibi sæpe. "Upon information given that some person in the late times had carried away goods from the house of the earl of Northampton, leave was given to the said earl, by his servants and agents, to make diligent and narrow search in the dwelling-houses of certain persons, and to break open any door or trunk that shall not be opened in obedience to the order." June 26. The like order was made next day for the marquis of Winchester, the earls of Derby and Newport, &c. A still more extraordinary vote was passed August 16. Lord Mohun having complained of one Keigwin, and his attorney Danby, for suing him by common process in Michaelmas term, 1651, in breach of privilege of peerage, the house voted that he should have damages: nothing could be more scandalously unjust, and against the spirit of the bill of indemnity. Three presbyterian peers protested.

§ They resolved in the case of the earl of Pembroke, Jan. 30. 1678, that the single testimony of a commoner is not sufficient against a peer.

bills of direct taxation; and, having on one occasion reluctantly permitted an amendment of that nature to pass, took care to record their dissent from the principle by a special entry in the journal.* An amendment having been introduced into a bill for regulating the press, sent up by the commons in the session of 1661, which exempted the houses of peers from search for unlicensed books, it was resolved not to agree to it; and the bill dropped for that time.† Even in far more urgent circumstances, while the parliament sat at Oxford in the year of the plague, a bill to prevent the progress of infection was lost, because the lords insisted that their houses should not be subjected to the general provisions for security.‡ These ill-judged demonstrations of a design to exempt themselves from that equal submission to the law, which is required in all well-governed states, and had ever been remarkable in our constitution, naturally raised a prejudice against the lords, both in the other house of parliament, and among the common lawyers.

Dispute about their original jurisdiction,

This half-suppressed jealousy soon disclosed itself in the famous controversy between the two houses about the case of Skinner and the East India company. This began by a petition of the former to the king, wherein he complained, that having gone as a merchant to the Indian seas, at a time when there was no restriction upon that trade, the East India company's agents had plundered his property, taken away his ships, and dispossessed him of an island which he had purchased from a native prince. Conceiving that he could have no sufficient redress in the ordinary courts of justice, he besought his sovereign to enforce reparation by some other means. After several ineffectual attempts by a committee of the privy council to bring about a compromise between the parties, the king transmitted the documents to the house of lords, with a recommendation to do justice to the petitioner. They proceeded accordingly to call on the East India company for an answer to Skinner's allegations. The company gave in what is technically called a plea to the jurisdiction, which the house over-ruled. The defendants then pleaded in bar, and contrived to delay the

* Journals, Aug. 2. and 15. 1660.
† Id. July 29. 1661.
‡ Id. Oct. 31. 1665.

enquiry into the facts till the next session; when the proceedings having been renewed, and the plea to the lords' jurisdiction again offered, and over-ruled, judgment was finally given that the East India company should pay 5000*l.* damages to Skinner.

Meantime the company had presented a petition to the house of commons against the proceedings of the lords in this business. It was referred to a committee, who had already been appointed to consider some other cases of a like nature. They made a report, which produced resolutions to this effect; that the lords, in taking cognizance of an original complaint, and that relievable in the ordinary course of law, had acted illegally, and in a manner to deprive the subject of the benefit of the law. The lords in return voted, "That the house of commons entertaining the scandalous petition of the East India company against the lords' house of parliament, and their proceedings, examinations and votes thereupon had and made, are a breach of the privileges of the house of peers, and contrary to the fair correspondency which ought to be between the two houses of parliament, and unexampled in former times; and that the house of peers, taking cognizance of the cause of Thomas Skinner, merchant, a person highly oppressed and injured in East India by the governor and company of merchants trading thither, and over-ruling the plea of the said company, and adjudging 5000*l.* damages thereupon against the said governor and company, is agreeable to the laws of the land, and well warranted by the law and custom of parliament, and justified by many parliamentary precedents ancient and modern."

and that in appeals from courts of equity.

Two conferences between the houses, according to the usage of parliament, ensued, in order to reconcile this dispute. But it was too material in itself, and aggravated by too much previous jealousy, for any voluntary compromise. The precedents alleged to prove an original jurisdiction in the peers were so thinly scattered over the records of centuries, and so contrary to the received principle of our constitution that questions of fact are cognizable only by a jury, that their managers in the conferences seemed less to insist on the general right, than on a supposed inability of the courts of law

to give adequate redress to the present plaintiff; for which the judges had furnished some pretext on a reference as to their own competence to afford relief, by an answer more narrow, no doubt, than would have been rendered at the present day. And there was really more to be said, both in reason and law, for this limited right of judicature, than for the absolute cognizance of civil suits by the lords. But the commons were not inclined to allow even of such a special exception from the principle for which they contended, and intimated that the power of affording a remedy in a defect of the ordinary tribunals could only reside in the whole body of the parliament.

The proceedings that followed were intemperate on both sides. The commons voted Skinner into custody for a breach of privilege, and resolved that whoever should be aiding in execution of the order of the lords against the East India company should be deemed a betrayer of the liberties of the commons of England, and an infringer of the privileges of the house. The lords, in return, committed sir Samuel Barnardiston, chairman of the company, and a member of the house of commons, to prison, and imposed on him a fine of 500*l*. It became necessary for the king to stop the course of this quarrel, which was done by successive adjournments and prorogations for fifteen months. But, on their meeting again in October 1669, the commons proceeded instantly to renew the dispute. It appeared that Barnardiston, on the day of the adjournment, had been released from custody, without demand of his fine, which, by a trick rather unworthy of those who had resorted to it, was entered as paid on the records of the exchequer. This was a kind of victory on the side of the commons; but it was still more material that no steps had been taken to enforce the order of the lords against the East India company. The latter sent down a bill concerning privilege and judicature in parliament, which the other house rejected on a second reading. They in return passed a bill vacating the proceedings against Barnardiston, which met with a like fate. In conclusion, the king recommended an erasure from the journals of all that had passed on the subject, and an entire cessation; an expedient which both houses willingly embraced, the one to secure its victory,

the other to save its honour. From this time the lords have tacitly abandoned all pretensions to an original jurisdiction in civil suits.*

They have however been more successful in establishing a branch of their ultimate jurisdiction, which had less to be urged for it in respect of precedent, that of hearing appeals from courts of equity. It is proved by sir Matthew Hale and his editor, Mr. Hargrave, that the lords did not entertain petitions of appeal before the reign of Charles I., and not perhaps unequivocally before the long parliament.† They became very common from that time, though hardly more so than original suits; and, as they bore no analogy, except at first glance, to writs of error, which come to the house of lords by the king's express commission under the great seal, could not well be defended on legal grounds. But on the other hand, it was reasonable that the vast power of the court of chancery should be subject to some control; and though a commission of review, somewhat in the nature of the court of delegates in ecclesiastical appeals, might have been and had been occasionally ordered by the crown‡; yet, if the ultimate jurisdiction of the peerage were convenient and salutary in cases of common law, it was difficult to assign any satisfactory reason why it should be less so in those which are technically denominated equitable.§ Nor is it likely that the commons would have disputed this usurpation, in which the crown had acquiesced, if the lords had not received appeals against members of the other house. Three instances of this took place about the year 1675; but that of Shirley against

* For the whole of this business, which is erased from the journals of both houses, see State Trials, v. 711. Parl. Hist. iv. 431. 443. Hatsell's Precedents, iii. 336. and Hargrave's Preface to Hale's Jurisdiction of the Lords, 101. [A slight attempt to revive the original jurisdiction was made by the lords in 1702. Id. 196.]

† Hale says, "I could never get to any precedent of greater antiquity than 3 Car. I., nay scarce before 16 Car. I., of any such proceeding in the lords' house." C. 33.; and see Hargrave's Preface, 53.

‡ Id. c. 31.

§ It was ordered in a petition of Robert Roberts, esq. that directions be given to the lord chancellor that he proceed to make a speedy decree in the court of chancery, according to equity and justice, notwithstanding there be not any precedent in the case. Against this lords Mohun and Lincoln severally protested; the latter very sensibly observing, that whereas it hath been the prudence and care of former parliaments to set limits and bounds to the jurisdiction of chancery, now this order of directions, which implies a command, opens a gap to set up an arbitrary power in the chancery, which is hereby countenanced by the house of lords to act, not according to the accustomed rules or former precedents of that court, but according to his own will. Lords' Journals, 29th Nov. 1664.

sir John Fagg is the most celebrated, as having given rise to a conflict between the two houses, as violent as that which had occurred in the business of Skinner. It began altogether on the score of privilege. As members of the house of commons were exempted from legal process during the session, by the general privilege of parliament, they justly resented the pretension of the peers to disregard this immunity, and compel them to appear as respondents in cases of appeal. In these contentions neither party could evince its superiority but at the expense of innocent persons. It was a contempt of the one house to disobey its order, of the other to obey it. Four counsel, who had pleaded at the bar of the lords in one of the cases where a member of the other house was concerned, were taken into custody of the serjeant-at-arms by the speaker's warrant. The gentleman usher of the black rod, by warrant of the lords, empowering him to call all persons necessary to his assistance, set them at liberty. The commons apprehended them again; and, to prevent another rescue, sent them to the Tower. The lords despatched their usher of the black rod to the lieutenant of the Tower, commanding him to deliver up the said persons. He replied, that they were committed by order of the commons, and he could not release them without their order; just as, if the lords were to commit any persons, he could not release them without their lordships' order. They addressed the king to remove the lieutenant; but, after some hesitation, he declined to comply with their desire. In this difficulty, they had recourse, instead of the warrant of the lords' speaker, to a writ of habeas corpus returnable in parliament; a proceeding not usual, but the legality of which seems to be now admitted. The lieutenant of the Tower, who, rather unluckily for the lords, had taken the other side, either out of conviction, or from a sense that the lower house were the stronger and more formidable, instead of obeying the writ, came to the bar of the commons for directions. They voted, as might be expected, that the writ was contrary to law and the privileges of their house. But, in this ferment of two jealous and exasperated assemblies, it was highly necessary, as on the former occasion, for the king to interpose by a prorogation for three months. This period, however, not being sufficient to allay

their animosity, the house of peers took up again the appeal of Shirley in their next session. Fresh votes and orders of equal intemperance on both sides ensued, till the king by the long prorogation, from November 1675 to February 1677, put an end to the dispute. The particular appeal of Shirley was never revived; but the lords continued without objection to exercise their general jurisdiction over appeals from courts of equity.* The learned editor of Hale's Treatise on the Jurisdiction of the Lords expresses some degree of surprise at the commons' acquiescence in what they had treated as an usurpation. But it is evident from the whole course of proceeding that it was the breach of privilege in citing their own members to appear, which excited their indignation. It was but incidentally that they observed in a conference, "that the commons cannot find, by Magna Charta, or by any other law or ancient custom of parliament, that your lordships have any jurisdiction in cases of appeal from courts of equity." They afterwards, indeed, resolved that there lies no appeal to the judicature of the lords in parliament from courts of equity†; and came ultimately, as their wrath increased, to a vote, "That whosoever shall solicit, plead, or prosecute any appeal against any commoner of England, from any court of equity, before the house of lords, shall be deemed and taken a betrayer of the rights and liberties of the commons of England, and shall be proceeded against accordingly‡;" which vote the lords resolved next day to be "illegal, unparliamentary, and tending to a dissolution of the government."§ But this was evidently rather an act of hostility arising out of the immediate quarrel than the calm assertion of a legal principle.‖

* It was thrown out against them by the commons in their angry conferences about the business of Ashby and White, in 1704, but not with any serious intention of opposition.

† C. J. May 30.

‡ Id. Nov. 19. Several divisions took place in the course of this business, and some rather close; the court endeavouring to allay the fire. The vote to take serjeant Pemberton into custody for appearing as counsel at the lords' bar was only carried by 154 to 146, on June 1.

§ Lords' Journals, Nov. 20.

‖ Lords' and Commons' Journals, May and November, 1675. Parl. Hist. 721. 791. State Trials, vi. 1121. Hargrave's Preface to Hale, 135.; and Hale's Treatise, c. 33.

It may be observed, that the lords learned a little caution in this affair. An appeal of one Cottington from the court of delegates to their house was rejected, by a vote that it did not properly belong to them, Shaftesbury alone dissentient. June 17. 1678. Yet they had asserted their right to receive appeals from inferior courts, that there might be no failure of justice, in terms large enough to embrace the ecclesiastical jurisdiction. May 6. 1675. And it is said that they actually had done so in 1628. Hargrave, 53.

Question of the exclusive right of the commons as to money-bills.

During the interval between these two dissensions, which the suits of Skinner and Shirley engendered, another difference had arisen, somewhat less violently conducted, but wherein both houses considered their essential privileges at stake. This concerned the long agitated question of the right of the lords to make alterations in money-bills. Though I cannot but think the importance of their exclusive privilege has been rather exaggerated by the house of commons, it deserves attention; more especially as the embers of that fire may not be so wholly extinguished as never again to show some traces of its heat.

Its history.

In our earliest parliamentary records, the lords and commons, summoned in a great measure for the sake of relieving the king's necessities, appear to have made their several grants of supply without mutual communication, and the latter generally in a higher proportion than the former. These were not in the form of laws, nor did they obtain any formal assent from the king, to whom they were tendered in written indentures, entered afterwards on the roll of parliament. The latest instance of such distinct grants from the two houses, as far as I can judge from the rolls, is in the 18th year of Edward III.* But in the 22d year of that reign the commons alone granted three fifteenths of their goods, in such a manner as to show beyond a doubt that the tax was to be levied solely upon themselves.† After this time, the lords and commons are jointly recited in the rolls to have granted them, sometimes, as it is expressed, upon deliberation had together. In one case it is said that the lords, with one assent, and afterwards the commons, granted a subsidy on exported wool.‡ A change of language is observable in Richard II.'s reign, when the commons are recited to grant with the assent of the lords; and this seems to indicate, not only that in practice the vote used to originate with the commons, but that their proportion, at least, of the tax being far greater than that of the lords (especially in the usual impositions on wool and skins, which ostensibly fell on the exporting merchant), the grant was to be deemed mainly theirs, subject only to the assent of the other house of parliament. This is, however, so explicitly asserted in a remark-

* Rot. Parl. ii. 148. † Id. 200. ‡ Id. 300. (43 Edw. 3.)

able passage on the roll of 9 Hen. IV., without any apparent denial, that it cannot be called in question by any one.* The language of the rolls continues to be the same in the following reigns; the commons are the granting, the lords the consenting power. It is even said by the court of king's bench, in a year-book of Edward IV., that a grant of money by the commons would be binding without assent of the lords; meaning of course as to commoners alone. I have been almost led to suspect, by considering this remarkable exclusive privilege of originating grants of money to the crown, as well as by the language of some passages in the rolls of parliament relating to them, that no part of the direct taxes, the tenths or fifteenths of goods, were assessed upon the lords temporal and spiritual, except where they are positively mentioned, which is frequently the case. But, as I do not remember to have seen this any where asserted by those who have turned their attention to the antiquities of our constitution, it may possibly be an unfounded surmise, or at least only applicable to the earlier period of our parliamentary records.

These grants continued to be made as before, by the consent indeed of the houses of parliament, but not as legislative enactments. Most of the few instances where they appear among the statutes are where some condition is annexed, or some relief of grievances so interwoven with them that they make part of a new law.† In the reign of Henry VII. they are occasionally inserted among the statutes, though still without any enacting words.‡ In that of Henry VIII. the form is rather more legislative, and they are said to be enacted by

* Rot. Parl. iii. 611. View of Middle Ages, ii. 310.

† 14 E. 3. stat. 1. c. 21. This statute is remarkable for a promise of the lords not to assent in future to any charge beyond the old custom, without assent of the commons in full parliament. Stat. 2. same year; the king promises to lay on no charge but by assent of the lords and commons. 18 E. 3. stat. 2. c. 1.; the commons grant two-fifteenths of the commonalty, and two-tenths of the cities and boroughs. "Et en cas que notre signeur le roi passe la mer, de paier a mesmes les tems les quinzisme et disme del second an, et nemy en autre maniere. Issint que les deniers de ce levez soient despendus, en les besoignes a eux monstez a cest parlement, par avis des grauntz a ce assignez, et que les aides de la Trent soient mys en defense de north." This is a remarkable precedent for the usage of appropriation, which had escaped me, though I have elsewhere quoted that in 5 Rich. 2. stat. 2. c. 2. and 3. In two or three instances we find grants of tenths and fifteenths in the statutes, without any other matter, as 14 E. 3. stat. 1. c. 20.; 27 E. 3. stat. 1. c. 4.

‡ 7 H. 7. c. 11.; 12 H. 7. c. 12.

the authority of parliament, though the king's name is not often mentioned till about the conclusion of his reign*; after which a sense of the necessity of expressing his legislative authority seems to have led to its introduction in some part or other of the bill.† The lords and commons are sometimes both said to grant, but more frequently the latter with the former's assent, as continued to be the case through the reigns of Elizabeth and James I. In the first parliament of Charles I. the commons began to omit the name of the lords in the preamble of bills of supply, reciting the grant as if wholly their own, but in the enacting words adopted the customary form of statutes. This, though once remonstrated against by the upper house, has continued ever since to be the practice.

The originating power as to taxation was thus indubitably placed in the house of commons; nor did any controversy arise upon that ground. But they maintained also that the lords could not make any amendment whatever in bills sent up to them for imposing, directly or indirectly, a charge upon the people. There seems no proof that any difference between the two houses on this score had arisen before the restoration; and in the convention parliament, the lords made several alterations in undoubted money-bills, to which the commons did not object. But in 1661, the lords having sent down a bill for paving the streets of Westminster, to which they desired the concurrence of the commons, the latter, on reading the bill a first time, "observing that it went to lay a charge upon the people, and conceiving that it was a privilege inherent in their house that bills of that nature should be first considered there," laid it aside, and caused another to be brought in.‡ When this was sent up to the lords, they inserted a clause, to which the commons disagreed, as contrary to their privileges, because the people cannot have

* I find only one exception, 5 H. 8. c. 17., which was in the now common form: Be it enacted by the king our sovereign lord, and by the assent, &c.

† In 37 H. 8. c. 25. both lords and commons are said to grant, and they pray that their grant "may be ratified and confirmed by his majesty's royal assent, so to be enacted and authorized by virtue of this present parliament as in such cases heretofore has been accustomed."

‡ Commons' Journals, 24. 29 July; Lords' Journals, 30 July. See also Hatsell's Precedents, iii. 100. for this subject of supply.

any tax or charge imposed upon them, but originally by the house of commons. The lords resolved this assertion of the commons to be against the inherent privileges of the house of peers; and mentioned one precedent of a similar bill in the reign of Mary, and two in that of Elizabeth, which had begun with them. The present bill was defeated by the unwillingness of either party to recede; but for a few years after, though the point in question was still agitated, instances occur where the commons suffered amendments in what were now considered as money-bills to pass, and others where the lords receded from them rather than defeat the proposed measure. In April 1671, however, the lords having reduced the amount of an imposition on sugar, it was resolved by the other house, "That in all aids given to the king by the commons, the rate or tax ought not to be altered by the lords."* This brought on several conferences between the houses, wherein the limits of the exclusive privilege claimed by the commons were discussed with considerable ability, and less heat than in the disputes concerning judicature; but, as I cannot help thinking, with a decided advantage both as to precedent and constitutional analogy on the side of the peers.† If the commons, as in early times, had merely granted their own money, it would be reasonable that their house should have, as it claimed to have, "a fundamental right as to the matter, the measure, and the time." But that the peers, subject to the same burthens as the rest of the community, and possessing no trifling proportion of the general wealth, should have no other alternative than to refuse the necessary supplies of the revenue, or to have their exact proportion,

* They expressed this with strange latitude in a resolution some years after, that all aids and supplies to his majesty in parliament are *the sole gift of the commons*. Parl. Hist. 1005. As they did not mean to deny that the lords must concur in the bill, much less that they must pay their quota, this language seems indefensible.

† Lords' and Commons' Journals, April 17th and 22d, 1679. Parl. Hist. iv. 480. Hatsell's Precedents, iii. 109. 368. 409.

In a pamphlet by lord Anglesea, if I mistake not, entitled, "Case stated of the Jurisdiction of the House of Lords in point of Impositions," 1696, a vigorous and learned defence of the right of the lords to make alterations in money-bills, it is admitted that they cannot increase the rates; since that would be to originate a charge on the people, which they cannot do. But it is even said in the year-book, 33 H. 6., that if the commons grant tonnage for four years, and the lords reduce the terms to two years, they need not send the bill down again. This of course could not be supported in modern times.

with all qualifications and circumstances attending their grant, presented to them unalterably by the other house of parliament, was an anomaly that could hardly rest on any other ground of defence than such a series of precedents as establish a constitutional usage; while, in fact, it could not be made out that such a pretension was ever advanced by the commons before the present parliament. In the short parliament of April 1640, the lords having sent down a message, requesting the other house to give precedency in the business they were about to matter of supply, it had been highly resented, as an infringement of their privilege; and Mr. Pym was appointed to represent their complaint at a conference. Yet even then, in the fervour of that critical period, the boldest advocate of popular privileges who could have been selected was content to assert that the matter of subsidy and supply ought to begin in the house of commons.*

The right extended further.

There seems to be still less pretext for the great extension given by the commons to their acknowledged privilege of originating bills of supply. The principle was well adapted to that earlier period when security against misgovernment could only be obtained by the vigilant jealousy and uncompromising firmness of the commons. They came to the grant of subsidy with real or feigned reluctance, as the stipulated price of redress of grievances. They considered the lords, generally speaking, as too intimately united with the king's ordinary council, which indeed sat with them, and had perhaps, as late as Edward III.'s time, a deliberative voice. They knew the influence or intimidating ascendancy of the peers over many of their own members. It may be doubted in fact whether the lower house shook off, absolutely and permanently, all sense of subordination, or at least deference, to the upper, till about the close of the reign of Elizabeth. But I must confess that, when the wise and ancient maxim, that the commons alone can empower the king to levy the people's money, was applied to a private bill for lighting and cleansing a certain town, or cutting dikes in a fen, to local and limited assessments for local benefit, (as to which the crown has no manner of in-

* Parl. Hist. ii. 563.

terest, nor has any thing to do with the collection,) there was more disposition shown to make encroachments than to guard against those of others. They began soon after the revolution to introduce a still more extraordinary construction of their privilege, not receiving from the house of lords any bill which imposes a pecuniary penalty on offenders, nor permitting them to alter the application of such as had been imposed below.*

These restrictions upon the other house of parliament, however, are now become, in their own estimation, the standing privileges of the commons. Several instances have occurred during the last century, though not, I believe, very lately, when bills, chiefly of a private nature, have been unanimously rejected, and even thrown over the table by the speaker, because they contained some provision in which the lords had trespassed upon these alleged rights.† They are, as may be supposed, very differently regarded in the neighbouring chamber. The lords have never acknowledged any further privilege than that of originating bills of supply. But the good sense of both parties, and of an enlightened nation, who must witness and judge of their disputes, as well as the natural desire of the government to prevent in the outset any altercation that must impede the course of its measures, have rendered this little jealousy unproductive of those animosities which it seemed so happily contrived to excite. The one house, without admitting the alleged privilege, has generally been cautious not to give a pretext for eagerly asserting it; and the other, on the trifling occasions where

* The principles laid down by Hatsell are: 1. That in bills of supply, the lords can make no alteration but to correct verbal mistakes. 2. That in bills, not of absolute supply, yet imposing burthens, as turnpike acts, &c., the lords cannot alter the quantum of the toll, the persons to manage it, &c.; but in other clauses they may make amendments. 3. That, where a charge may indirectly be thrown on the people by a bill, the commons object to the lords making amendments. 4. That the lords cannot insert pecuniary penalties in a bill, or alter those inserted by the commons, iii. 137. He seems to boast that the lords during the last century have very faintly opposed the claim of the commons. But surely they have sometimes done so in practice, by returning a money-bill, or what the lower house call one, amended; and the commons have had recourse to the evasion of throwing out such bill, and bringing in another with the amendments inserted in it; which does not look very triumphant.

† The last instance mentioned by Hatsell is in 1790, when the lords had amended a bill for regulating Warwick gaol by changing the rate to be imposed from the landowners to the occupiers, iii. 131. I am not at present aware of any subsequent case, but rather suspect that such might be found.

it has seemed, perhaps unintentionally, to be infringed, has commonly resorted to the moderate course of passing a fresh bill to the same effect, after satisfying its dignity by rejecting the first.

State of the upper house under the Tudors and Stuarts.

It may not be improper to choose the present occasion for a summary view of the constitution of both houses of parliament under the lines of Tudor and Stuart. Of their earlier history the reader may find a brief and not, I believe, very incorrect account, in a work to which this is a kind of sequel.

Augmentation of the temporal lords.

The number of temporal lords summoned by writ to the parliaments of the house of Plantagenet was exceedingly various; nor was any thing more common in the fourteenth century than to omit those who had previously sat in person, and still more their descendants. They were rather less numerous for this reason, under the line of Lancaster, when the practice of summoning those who were not hereditary peers did not so much prevail as in the preceding reigns. Fifty-three names, however, appear in the parliament of 1454, the last held before the commencement of the great contest between York and Lancaster. In this troublous period of above thirty years, if the whole reign of Edward IV. is to be included, the chiefs of many powerful families lost their lives in the field or on the scaffold, and their honours perished with them by attainder. New families, adherents of the victorious party, rose in their place; and sometimes an attainder was reversed by favour; so that the peers of Edward's reign were not much fewer than the number I have mentioned. Henry VII. summoned but twenty-nine to his first parliament, including some whose attainder had never been judicially reversed; a plain act of violence, like his previous usurpation of the crown. In his subsequent parliaments the peerage was increased by fresh creations, but never much exceeded forty. The greatest number summoned by Henry VIII. was fifty-one; which continued to be nearly the average in the two next reigns, and was very little augmented by Elizabeth. James, in his thoughtless profusion of favour, made so many new creations, that eighty-two peers sat in his first parliament, and ninety-six in his latest. From a similar facility in granting so cheap

a reward of service, and in some measure perhaps from the policy of counteracting a spirit of opposition to the court, which many of the lords had begun to manifest, Charles called no less than one hundred and seventeen peers to the parliament of 1628, and one hundred and nineteen to that of November 1640. Many of these honours were sold by both these princes; a disgraceful and dangerous practice, unheard of in earlier times, by which the princely peerage of England might have been gradually levelled with the herd of foreign nobility. This has occasionally, though rarely, been suspected since the restoration. In the parliament of 1661, we find one hundred and thirty-nine lords summoned.

The spiritual lords, who, though forming another estate in parliament, have always been so united with the temporality that the suffrages of both upon every question are told indistinctly and numerically, composed in general, before the reformation, a majority of the upper house; though there was far more irregularity in the summonses of the mitred abbots and priors than those of the barons. But by the surrender and dissolution of the monasteries, about thirty-six votes of the clergy on an average were withdrawn from the parliament; a loss ill compensated to them by the creation of five new bishoprics. Thus, the number of the temporal peers being continually augmented, while that of the prelates was confined to twenty-six, the direct influence of the church on the legislature has become comparatively small; and that of the crown, which, by the pernicious system of translations and other means, is generally powerful with the episcopal bench, has, in this respect at least, undergone some diminution. It is easy to perceive from this view of the case that the destruction of the monasteries, as they then stood, was looked upon as an indispensable preliminary to the reformation; no peaceable efforts towards which could have been effectual without altering the relative proportions of the spiritual and temporal aristocracy.

The house of lords, during this period of the sixteenth and seventeenth centuries, were not supine in rendering their collective and individual rights independent of the crown. It became a fundamental principle, according indeed to ancient authority, though not strictly observed in ruder times, that

every peer of full age is entitled to his writ of summons at the beginning of a parliament, and that the house will not proceed on business, if any one is denied it.* The privilege of voting by proxy, which was originally by special permission of the king, became absolute, though subject to such limitations as the house itself may impose. The writ of summons, which, as I have observed, had in earlier ages (if usage is to determine that which can rest on nothing but usage) given only a right of sitting in the parliament for which it issued, was held, about the end of Elizabeth's reign, by a construction founded on later usage, to convey an inheritable peerage, which was afterwards adjudged to descend upon heirs general, female as well as male; an extension which sometimes raises intricate questions of descent, and though no materially bad consequences have flowed from it, is perhaps one of the blemishes in the constitution of parliament. Doubts whether a peerage could be surrendered to the king, and whether a territorial honour, of which hardly any remain, could be alienated along with the land on which it depended, were determined in the manner most favourable to the dignity of the aristocracy. They obtained also an important privilege; first of recording their dissent in the journals of the house, and afterwards of inserting the grounds of it. Instances of the former occur not unfrequently at the period of the reformation; but the latter practice was little known before the long parliament. A right that Cato or Phocion would have prized, though it may sometimes have been frivolously or factiously exercised!

State of the commons.

The house of commons, from the earliest records of its regular existence in the 23d year of Edward I., consisted of seventy-four knights, or representatives from all the counties of England, except Chester, Durham, and Monmouth, and of a varying number of deputies from the cities and boroughs; sometimes in the earliest period of representation amounting to as many as two hundred and

* See the case of the earl of Arundel in parliament of 1626. In one instance the house took notice that a writ of summons had been issued to the earl of Mulgrave, he being under age, and addressed the king that he would be pleased to be sparing of writs of this nature for the future. 20th Oct. 1667. The king made an excuse that he did not know the earl was much under age, and would be careful for the future. 29th Oct.

sixty, sometimes by the negligence or partiality of the sheriffs in omitting places that had formerly returned members, to not more than two thirds of that number. New boroughs, however, as being grown into importance, or from some private motive, acquired the franchise of election; and at the accession of Henry VIII. we find two hundred and twenty-four citizens and burgesses from one hundred and eleven towns (London sending four), none of which have since intermitted their privilege.

Increase of their members.

I must so far concur with those whose general principles as to the theory of parliamentary reform leave me far behind, as to profess my opinion that the change which appears to have taken place in the English government towards the end of the thirteenth century, was founded upon the maxim that all who possessed landed or moveable property ought, as freemen, to be bound by no laws, and especially by no taxation, to which they had not consented through their representatives. If we look at the constituents of a house of commons under Edward I. or Edward III., and consider the state of landed tenures and of commerce at that period, we shall perceive that excepting women, who have generally been supposed capable of no political right but that of reigning, almost every one who contributed towards the tenths of fifteenths granted by the parliament, might have exercised the franchise of voting for those who sat in it. Were we even to admit, that in corporate boroughs the franchise may have been usually vested in the freemen rather than the inhabitants, yet this distinction, so important in later ages, was of little consequence at a time when all traders, that is, all who possessed any moveable property worth assessing, belonged to the former class. I do not pretend that no one was contributory to a subsidy, who did not possess a vote; but that the far greater portion was levied on those who, as freeholders or burgesses, were reckoned in law to have been consenting to its imposition. It would be difficult probably to name any town of the least consideration in the fourteenth and fifteenth centuries, which did not, at some time or other, return members to parliament. This is so much the case, that if, in running our eyes along the map, we find any sea-port, as Sunderland or Falmouth,

Question as to rights of election.

or any inland town, as Leeds or Birmingham, which has never enjoyed the elective franchise, we may conclude at once that it has emerged from obscurity since the reign of Henry VIII.*

Though scarce any considerable town, probably, was intentionally left out, except by the sheriffs' partiality, it is not to be supposed that all boroughs that made returns were considerable. Several that are currently said to be decayed, were never much better than at present. Some of these were the ancient demesne of the crown; the tenants of which, not being suitors to the county courts, nor voting in the election of knights for the shire, were, still on the same principle of consent to public burthens, called upon to send their own representatives. Others received the privilege along with their charter of incorporation, in the hope that they would thrive more than proved to be the event; and possibly, even in such early times, the idea of obtaining influence in the commons through the votes of their burgesses might sometimes suggest itself.

That, amidst all this care to secure the positive right of representation, so little provision should have been made as to its relative efficiency, that the high-born and opulent gentry should have been so vastly out-numbered by peddling traders, that the same number of two should have been deemed sufficient for the counties of York and Rutland, for Bristol and Gatton, are facts more easy to wonder at than to explain; for though the total ignorance of the government as to the relative population might be perhaps a sufficient reason for not making an attempt at equalization, yet if the representation had been founded on any thing like a numerical principle, there would have been no difficulty in reducing it to the proportion furnished by the books of subsidy for each county and borough, or at least in a rude approximation towards a more rational distribution.

Henry VIII. gave a remarkable proof that no part of the kingdom, subject to the English laws and parliamentary burthens, ought to want its representation, by extending the

* Though the proposition in the text is, I believe, generally true, it has occurred to me since, that there are some exceptions in the northern parts of England; and that both Sheffield and Manchester are among them.

right of election to the whole of Wales, the counties of Chester and Monmouth, and even the towns of Berwick and Calais. It might be possible to trace the reason, why the county of Durham was passed over. The attachment of those northern parts to popery seems as likely as any other. Thirty-three were thus added to the commons. Edward VI. created fourteen boroughs, and restored ten that had disused their privilege. Mary added twenty-one, Elizabeth sixty, and James twenty-seven members.

These accessions to the popular chamber of parliament after the reign of Henry VIII. were by no means derived from a popular principle, such as had influenced its earlier constitution. We may account perhaps on this ground for the writs addressed to a very few towns, such as Westminster. But the design of that great influx of new members from petty boroughs, which began in the short reigns of Edward and Mary, and continued under Elizabeth, must have been to secure the authority of government, especially in the successive revolutions of religion. Five towns only in Cornwall made returns at the accession of Edward VI.; twenty-one at the death of Elizabeth. It will not be pretended that the wretched villages, which corruption and perjury still hardly keep from famine, were seats of commerce and industry in the sixteenth century. But the county of Cornwall was more immediately subject to a coercive influence, through the indefinite and oppressive jurisdiction of the stannary court. Similar motives, if we could discover the secrets of those governments, doubtless operated in most other cases. A slight difficulty seems to have been raised in 1563 about the introduction of representatives from eight new boroughs at once by charters from the crown, but was soon waved with the complaisance usual in those times. Many of the towns which had abandoned their privilege at a time when they were compelled to the payment of daily wages to their members during the session, were now desirous of recovering it, when that burthen had ceased and the franchise had become valuable. And the house, out of favour to popular rights, laid it down in the reign of James I. as a principle, that every town, which has at any time returned members to parliament, is entitled to a writ as a matter of course. The speaker accordingly issued

writs to Hertford, Pomfret, Ilchester, and some other places, on their petition. The restorations of boroughs in this manner, down to 1641, are fifteen in number. But though the doctrine that an elective right cannot be lost by disuse, is still current in parliament, none of the very numerous boroughs which have ceased to enjoy that franchise since the days of the three first Edwards, have from the restoration downwards made any attempt at retrieving it; nor is it by any means likely that they would be successful in the application. Charles I., whose temper inspired him rather with a systematic abhorence of parliaments than with any notion of managing them by influence, created no new boroughs. The right indeed would certainly have been disputed, however frequently exercised. In 1673 the county and city of Durham, which had strangely been unrepresented to so late an era, were raised by act of parliament to the privileges of their fellow-subjects.* About the same time a charter was granted to the town of Newark, enabling it to return two burgesses. It passed with some little objection at the time; but four years afterwards, after two debates, it was carried on the question, by 125 to 73, that by virtue of the charter granted to the town of Newark, it hath right to send burgesses to serve in parliament. † Notwithstanding this apparent recognition of the king's prerogative to summon burgesses from a town not previously represented, no later instance of its exercise has occurred; and it would unquestionably have been resisted by the commons, not, as is vulgarly supposed, because the act of union with Scotland has limited the English members to 513 (which is not the case), but upon the broad maxims of exclusive privilege in matters relating to their own body, which the house was become powerful enough to assert against the crown.

It is doubtless a problem of no inconsiderable difficulty to determine with perfect exactness, by what class of persons the elective franchise in ancient boroughs was originally possessed; yet not perhaps so much so as the carelessness of some, and the artifices of others, have caused it to appear. The different opinions on this con-

Four different theories as to the original principle.

* 25 Car. 2. c. 9. A bill had passed the commons in 1624 for the same effect, but failed through the dissolution.

† Journals, 26th Feb. and 20th March, 1676-7.

troverted question may be reduced to the four following theses: — 1. The original right, as enjoyed by boroughs represented in the parliaments of Edward I., and all of later creation, where one of a different nature has not been expressed in the charter from which they derive the privilege, was in the inhabitant householders resident in the borough, and paying scot and lot; under those words including local rates, and probably general taxes. 2. The right sprang from the tenure of certain freehold lands or burgages within the borough, and did not belong to any but such tenants. 3. It was derived from charters of incorporation, and belonged to the community or freemen of the corporate body. 4. It did not extend to the generality of freemen, but was limited to the governing part or municipal magistracy. The actual right of election, as fixed by determinations of the house of commons before 1772, and by committees under the Grenville act since, is variously grounded upon some of these four principal rules, each of which has been subject to subordinate modifications which produce still more complication and irregularity.

Their probability considered.

Of these propositions, the first was laid down by a celebrated committee of the house of commons in 1624, the chairman whereof was serjeant Glanville, and the members, as appears by the list in the journals, the most eminent men, in respect of legal and constitutional knowledge, that were ever united in such a body. It is called by them the common-law right, and that which ought always to obtain, where prescriptive usage to the contrary cannot be shown. But it has met with very little favour from the house of commons since the restoration. The second has the authority of lord Holt in the case of Ashby and White, and of some other lawyers who have turned their attention to the subject. It countenances what is called the right of burgage tenure; the electors in boroughs of this description being such as hold burgages or ancient tenements within the borough. The next theory, which attaches the primary franchise to the freemen of corporations, has on the whole been most received in modern times, if we look either at the decisions of the proper tribunal, or the current doctrine of lawyers. The last proposition is that of Dr. Brady, who in

a treatise of boroughs, written to serve the purposes of James II., though not published till after the revolution, endeavoured to settle all elective rights on the narrowest and least popular basis. This work gained some credit, which its perspicuity and acuteness would deserve, if these were not disgraced by a perverse sophistry and suppression of truth.

It does not appear at all probable that such varying and indefinite usages, as we find in our present representation of boroughs, could have begun simultaneously, when they were first called to parliament by Edward I. and his two next descendants. There would have been what may be fairly called a common-law right, even were we to admit that some variation from it may, at the very commencement, have occurred in particular places. The earliest writ of summons directed the sheriff to make a return from every borough within his jurisdiction, without any limitation to such as had obtained charters, or any rule as to the electoral body. Charters, in fact, incorporating towns seem to have been by no means common in the thirteenth and fourteenth centuries; and though they grew more frequent afterwards, yet the first that gave expressly a right of returning members to parliamen was that of Wenlock under Edward IV. These charters, it has been contended, were incorporations of the inhabitants, and gave no power either to exclude any of them, or to admit non-resident strangers, according to the practice of later ages. But, however this may be, it is highly probable that the word burgess (burgensis), long before the elective franchise or the character of a corporation existed, meant literally the free inhabitant householder of a borough, a member of its court-leet, and subject to its jurisdiction. We may, I believe, reject with confidence what I have reckoned as the third proposition; namely, that the elective franchise belonged, as of common right, to the freemen of corporations; and still more that of Brady, which few would be found to support at the present day.

There can, I should conceive, be little pretence for affecting to doubt, that the burgesses of Domesday-book, of the various early records cited by Madox and others, and of the writs of summons to Edward's parliament, were inhabitants

of tenements within the borough. But it may remain to be proved that any were entitled to the privileges or rank of burgesses, who held less than an estate of freehold in their possessions. The burgage-tenure, of which we read in Littleton, was evidently freehold; and it might be doubtful whether the lessees of dwellings for a term of years, whose interest, in contemplation of law, is far inferior to a freehold, were looked upon as sufficiently domiciled within the borough to obtain the appellation of burgesses. It appears from Domesday that the burgesses, long before any incorporation, held lands in common belonging to their town; they had also their guild or market-house, and were entitled in some places to tolls and customs. These permanent rights seem naturally restrained to those who possessed an absolute property in the soil. There can surely be no question as to mere tenants at will, liable to be removed from their occupation at the pleasure of the lord; and it is perhaps unnecessary to mention that the tenancy from year to year, so usual at present, is of very recent introduction. As to estates for a term of years, even of considerable duration, they were probably not uncommon in the time of Edward I.; yet far out-numbered, as I should conceive, by those of a freehold nature. Whether these lessees were contributory to the ancient local burthens of scot and lot, as well as to the tallages exacted by the king, and tenths afterwards imposed by parliament in respect of moveable estate, it seems not easy to determine; but if they were so, as appears more probable, it was not only consonant to the principle, that no freeman should be liable to taxation without the consent of his representatives, to give them a share in the general privilege of the borough, but it may be inferred with sufficient evidence from several records, that the privilege and the burthen were absolutely commensurate; men having been specially discharged from contributing to tallages, because they did not participate in the liberties of the borough, and others being expressly declared subject to those impositions, as the condition of their being admitted to the rights of burgesses.* It might however be conjectured that a difference of usage between those boroughs, where the

* Madox Firma, Burgi, p. 270. et post.

ancient exclusive rights of burgage tenants were maintained, and those where the equitable claim of taxable inhabitants possessing only a chattel interest received attention, might ultimately produce those very opposite species of franchise, which we find in the scot and lot borough, and in those of burgage tenure. If the franchise, as we now denominate it, passsd in the thirteenth century for a burthen, subjecting the elector to bear his part in the payment of wages to the representative, the above conjecture will be equally applicable, by changing the words right and claim into liability.*

It was according to the natural course of things, that the mayors or bailiffs, as returning officers, with some of the principal burgesses (especially where incorporating charters had given them a pre-eminence), would take to themselves the advantage of serving a courtier or neighbouring gentleman, by returning him to parliament, and virtually exclude the general class of electors, indifferent to public matters, and without a suspicion that their individual suffrages could ever be worth purchase. It is certain that a seat in the commons was an object of ambition in the time of Edward IV., and I have little doubt that it was so in many instances much sooner. But there existed not the means of that splendid corruption which has emulated the Crassi and Luculli of Rome. Even so late as 1571, Thomas Long, a member for Westbury, confessed that he had given four pounds to the mayor and

* The popular character of the elective franchise in early times has been maintained by two writers of considerable research and ability; Mr. Luders, Reports of Election Cases, and Mr. Merewether, in his Sketch of the History of Boroughs and Report of the West Looe Case. The former writer has the following observations, vol. i. p. 99.: — "The ancient history of boroughs does not confirm the opinion above referred to, which lord chief justice Holt delivered in the case of Ashby v. White; viz. that inhabitants not incorporated cannot send members to parliament but by prescription. For there is good reason to believe that the elections in boroughs were in the beginning of representation popular; yet in the reign of Edward I. there were not perhaps thirty corporations in the kingdom. Who then elected the members of boroughs not incorporated? Plainly, the inhabitants or burghers [according to their tenure or situation]; for at that time every inhabitant of a borough was called a burgess; and Hobart refers to this usage in support of his opinion in the case of Dungannon. The manner in which they exercised this right was the same as that in which the inhabitants of a town, at this day, hold a right of common, or other such privilege, which many possess who are not incorporated." The words in brackets, which are not in the printed edition, are inserted by the author himself in a copy bequeathed to the Inner Temple library. The remainder of Mr. Luders's note, though too long for this place, is very good, and successfully repels the *corporate* theory.

another person for his return. The elections were thus generally managed, not often perhaps by absolute bribery, but through the influence of the government and of the neighbouring aristocracy; and while the freemen of the corporation, or resident householders, were frequently permitted, for the sake of form, to concur in the election, there were many places where the smaller part of the municipal body, by whatever names distinguished, acquired a sort of prescriptive right through an usage, of which it was too late to show the commencement.*

It was perceived, however, by the assertors of the popular cause under James I., that, by this narrowing of the electoral franchise, many boroughs were subjected to the influence of the privy council, which, by restoring the householders to their legitimate rights, would strengthen the interests of the country. Hence lord Coke lays it down in his fourth institute, that "if the king newly incorporate an ancient borough,

* The following passage from Vowell's treatise, on the order of the parliament, published in 1571, and reprinted in Holingshed's Chronicles of Ireland, (vi. 345.) seems to indicate that, at least in practice, the election was in the principal or governing body of the corporation. "The sheriff of every county, having received his writ, ought, forthwith to send his precepts and summons to the mayors, bailiffs, and head officers of every city, town corporate, borough, and such places as have been accustomed to send burgesses within his county, that they do choose and elect among themselves two citizens for every city, and two burgesses for every borough, according to their old custom and usage. And these head officers ought then to assemble themselves, *and the aldermen and common council of every city or town*; and to make choice among themselves of two able and sufficient men of every city or town, to serve for and in the said parliament."

Now, if these expressions are accurate, it certainly seems that, at this period, the great body of freemen or inhabitants were not partakers in the exercise of their franchise. And the following passage, if the reader will turn to it, wherein Vowell adverts to the form of a county election, is so differently worded in respect to the election by the freeholders at large, that we may fairly put a literal construction upon the former. In point of fact, I have little doubt that elections in boroughs were for the most part very closely managed in the sixteenth century, and probably much earlier. This, however, will not by any means decide the question of right. For we know that in the reigns of Henry IV. and Henry V. returns for the great county of York were made by the proxies of a few peers and a few knights; and there is a still more anomalous case in the reign of Elizabeth, when a lady Packington sealed the indenture for the county of Worcester. Carew's Hist. of Elections, part ii. p. 282. But no one would pretend that the right of election was in these persons, or supposed by any human being to be so.

The difficulty to be got over by those who defend the modern decisions of committees is this. We know that in the reign of Edward I. more than one hundred boroughs made returns to the writ. If most of these were not incorporated, nor had any aldermen, capital burgesses, and so forth, by whom were the elections made? Surely by the freeholders, or by the inhabitants. And if they were so made in the reign of Edward I., how has the franchise been restrained afterwards?

which before sent burgesses to parliament, and granteth that certain selected burgesses shall make election of the burgesses of parliament, where all the burgesses elected before, this charter taketh not away the election of the other burgesses. And so, if a city or borough hath power to make ordinances, they cannot make an ordinance that a less number shall elect burgesses for the parliament than made the election before; for free elections of members of the high court of parliament are pro bono publico, and not to be compared to other cases of election of mayors, bailiffs, &c. of corporations."* He adds, however, "by original grant or by custom, a selected number of burgesses may elect and bind the residue." This restriction was admitted by the committee over which Glanville presided in 1624.† But both they and lord Coke believed the representation of boroughs to be from a date before what is called legal memory, that is, the accession of Richard I. It is not easy to reconcile their principle, that an elective right once subsisting could not be limited by any thing short of immemorial prescription, with some of their own determinations, and still less with those which have subsequently occurred, in favour of a restrained right of suffrage. There seems, on the whole, great reason to be of opinion, that where a borough is so ancient as to have sent members to parliament before any charter of incorporation proved, or reasonably presumed to have been granted, or where the word burgensis is used without any thing to restrain its meaning in an ancient charter, the right of election ought to have been acknowledged either in the resident householders paying general and local taxes, or in such of them as possessed an estate of freehold within the borough. And whatever may have been the primary meaning of the word burgess, it appears consonant to the popular spirit of the English constitution that, after the possessors of leasehold interest became so numerous and opulent as to bear a very large share in the public burthens, they should have enjoyed commensurate privileges; and that the resolution of Mr. Glanville's committee in favour of what they called the

* 4 Inst. 48. Glanville, pp. 53. 66. That no private agreement, or by-law of the borough, can restrain the right of election, is laid down in the same book, p. 17.

† Glanville's case of Bletchingly, p. 33.

common-law right should have been far more uniformly received, and more consistently acted upon, not merely as agreeable to modern theories of liberty, from which some have intimated it to have sprung, but as grounded on the primitive spirit and intention of the law of parliament.

In the reign of Charles II. the house of commons seems to have become less favourable to this species of franchise. But after the revolution, when the struggle of parties was renewed every three years throughout the kingdom, the right of election came more continually into question, and was treated with the grossest partiality by the house, as subordinate to the main interests of the rival factions. Contrary determinations for the sole purpose of serving these interests, as each grew in its turn more powerful, frequently occurred; and at this time the ancient right of resident householders seems to have grown into disrepute, and given way to that of corporations, sometimes at large, sometimes only in a limited and very small number.* A slight check was imposed on this scandalous and systematic injustice by the act 2 G. 2. c. 2., which renders the last determination of the house of commons conclusive as to the right of election.† But this enactment confirmed many decisions that cannot be reconciled with any sensible rule. The same iniquity continued to prevail in cases beyond its pale; the fall of sir Robert Walpole from power was reckoned to be settled, when there appeared a small majority against him on the right of election at Chippenham, a question not very logically connected with the

* [I incline to suspect that it would be found on research, that, in a plurality of instances, the tories favoured the right of residents, either householders or burgage tenants, to the exclusion of freemen, who, being in a great measure outvoters, were less likely to be influenced by the neighbouring gentry. In 1694, a bill was brought in to disfranchise the borough of Stockbridge for bribery. But the burgesses petitioned against it, declaring themselves resolved, for the future, in all difficult cases, to consult the gentlemen of the county. Journals, 7th Feb. They by no means kept their word in the next century; no place having been more notoriously venal. The bill was thrown out by a small majority; but the whigs seem to have supported it, as far as we can judge by the tellers. Id. March 30. — 1845.]

† This clause, in an act imposing severe penalties on bribery, was inserted by the house of lords with the insidious design of causing the rejection of the whole bill; if the commons, as might be expected, should resent such an interference with their privileges. The ministry accordingly endeavoured to excite this sentiment; but those who had introduced the bill very wisely thought it better to sacrifice a point of dignity rather than lose so important a statute. It was however only carried by two voices to agree with the amendment. Parl. Hist. viii. 754.

merits of his administration; and the house would to this day have gone on trampling on the franchises of their constituents, if a statute had not been passed through the authority and eloquence of Mr. Grenville, which has justly been known by his name. I shall not enumerate the particular provisions of this excellent law, which, in point of time, does not fall within the period of my present work; it is generally acknowledged that, by transferring the judicature in all cases of controverted elections, from the house to a sworn committee of fifteen members, the reproach of partiality has been a good deal lightened, though not perhaps effaced.*

* These pages were first published in 1827. The Reform bill of 1832 has of course rendered a disquisition on the ancient rights of election in boroughs a matter of merely historical interest.

CHAPTER XIV.

THE REIGN OF JAMES II.

Designs of the King — Parliament of 1685 *— King's Intention to repeal the Test Act — Deceived as to the Dispositions of his Subjects — Prorogation of Parliament — Dispensing Power confirmed by the Judges — Ecclesiastical Commission — King's Scheme of establishing Popery — Dismissal of Lord Rochester — Prince of Orange alarmed — Plan of setting the Princess aside — Rejected by the King — Overtures of the Malecontents to Prince of Orange — Declaration for Liberty of Conscience — Addresses in favour of it — New-modelling of the Corporations — Affair of Magdalen College — Infatuation of the King — His Coldness towards Louis — Invitation signed to the Prince of Orange — Birth of Prince of Wales — Justice and Necessity of the Revolution — Favourable Circumstances attending it — Its salutary Consequences — Proceedings of the Convention — Ended by the Elevation of William and Mary to the Throne.*

THE great question that has been brought forward at the end of the last chapter, concerning the right and usage of election in boroughs, was perhaps of less practical importance in the reign of Charles the Second than we might at first imagine, or than it might become in the present age. Whoever might be the legal electors, it is undoubted that a great preponderance was virtually lodged in the select body of corporations. It was the knowledge of this that produced the corporation act soon after the restoration, to exclude the presbyterians, and the more violent measures of quo warranto at the end of Charles's reign. If by placing creatures of the court in municipal offices, or by intimidating the former corporators through apprehensions of forfeiting their common property and lucrative privileges, what was called a loyal parliament could be procured, the business of government, both as to supply and enactment or repeal of laws, would be carried on far more smoothly, and with less scandal than by their entire disuse. Few of those who assumed the name of tories were prepared to sacrifice the ancient fundamental forms of the constitution. They thought it equally necessary that a parliament should exist, and that it should have no

will of its own, or none at least, except for the preservation of that ascendancy of the established religion which even their loyalty would not consent to surrender.

Designs of the king.

It is not easy to determine whether James II. had resolved to complete his schemes of arbitrary government by setting aside even the nominal concurrence of the two houses of parliament in legislative enactments, and especially in levying money on his subjects. Lord Halifax had given him much offence towards the close of the late reign, and was considered from thenceforth as a man unfit to be employed, because in the cabinet, on a question whether the people of New England should be ruled in future by an assembly or by the absolute pleasure of the crown, he had spoken very freely against unlimited monarchy.* James, indeed, could hardly avoid perceiving that the constant acquiescence of an English house of commons in the measures proposed to it, a respectful abstinence from all intermeddling with the administration of affairs, could never be relied upon or obtained at all, without much of that dexterous management and influence which he thought it both unworthy and impolitic to exert. It seems clearly that he had determined on trying their obedience merely as an experiment, and by no means to put his authority in any manner within their control. Hence he took the bold step of issuing a proclamation for the payment of customs, which by law expired at the late king's death†; and Barillon mentions several times, that he

* Fox, Appendix, p. 8.

† "The legal method," says Burnet, "was to have made entries, and to have taken bonds for those duties to be paid when the parliament should meet and renew the grant." Mr. Onslow remarks on this, that he should have said, the least illegal and the only justifiable method. To which the Oxford editor subjoins that it was the proposal of lord-keeper North, while the other, which was adopted, was suggested by Jefferies. This is a mistake. North's proposal was to collect the duties under the proclamation, but to keep them apart from the other revenues in the exchequer until the next session of parliament. There was surely little difference in point of illegality between this and the course adopted. It was alleged that the merchants, who had paid duty, would be injured by a temporary importation duty free; and certainly it was inconvenient to make the revenue dependent on such a contingency as the demise of the crown. But this neither justifies the proclamation, nor the disgraceful acquiescence of the next parliament in it.

The king was thanked in several addresses for directing the customs to be levied, particularly in one from the benchers and barristers of the Middle Temple. London Gazette, March 11. This was drawn by sir Bartholomew Shower, and presented by sir Humphrey Mackworth. Life of James, vol. ii. p. 17. The former was active as a lawyer in all the worst measures of these two reigns.

was resolved to continue in the possession of the revenue, whether the parliament should grant it or no. He was equally decided not to accept it for a limited time. This, as his principal ministers told the ambassador, would be to establish the necessity of convoking parliament from time to time, and thus to change the form of government by rendering the king dependent upon it; rather than which it would be better to come at once to the extremity of a dissolution, and maintain the possession of the late king's revenues by open force.* But the extraordinary conduct of this house of commons, so unlike any that had met in England for the last century, rendered any exertion of violence on this score quite unnecessary.

The behaviour of that unhonoured parliament, which held its two short sessions in 1685, though in a great measure owing to the fickleness of the public mind and rapid ascendancy of tory principles during the late years, as well as to a knowledge of the king's severe and vindictive temper, seems to confirm the assertion strongly made at the time within its walls, that many of the members had been unduly returned.† The notorious facts, indeed, as to the forfeiture of corporations throughout the kingdom, and their re-grant under such restrictions as might serve the purpose of the crown, stand in need of no confirmation. Those who look at the debates and votes of this assembly, their large grant of a permanent revenue to the annual amount of two millions, rendering a frugal prince, in time of peace, entirely out of all dependence on his people; their timid departure from a resolution taken to address the king on the only matter for which they were really solicitous, the enforcement of the penal laws, on a suggestion of his displeasure‡; their

Parliament of 1685.

Yet, after the revolution, they both became tory patriots, and jealous assertors of freedom against the government of William III. Barillon, however, takes notice that this illegal continuance of the revenue produced much discontent. Fox's Appendix, 39. And Rochester told him that North and Halifax would have urged the king to call a parliament, in order to settle the revenue on a lawful basis, if that resolution had not been taken by himself. Id. p. 20. The king thought it necessary to apologize to Barillon for convoking parliament. Id. p. 18. Dalrymple, p. 100.

* Dalrymple, p. 142. The king alludes to this possibility of a limited grant with much resentment and threatening, in his speech on opening the session.

† Fox, Appendix, p. 93. Lonsdale, p. 5. [Ralph, 860. Evelyn, i. 561.]

‡ For this curious piece of parliamentary inconsistency, see Reresby's Memoirs, p. 113.; and Barillon in the Appendix to Fox, p. 95. "Il s'est passé avant hier une chose de grande consé-

bill entitled, for the preservation of his majesty's person, full of dangerous innovations in the law of treason, especially one most unconstitutional clause, that any one moving in either house of parliament to change the descent of the crown should incur the penalties of that offence*; their supply of 700,000*l.*, after the suppression of Monmouth's rebellion, for the support of a standing army†; will be inclined to believe that, had James been as zealous for the church of England as his father, he would have succeeded in establishing a power so nearly despotic, that neither the privileges of parliament, nor much less those of private men, would have stood in his way. The prejudice which the two last Stuarts had acquired in favour of the Roman religion, so often deplored by thoughtless or insidious writers as one of the worst consequences of their father's ill fortune, is to be accounted rather among the most signal links in the chain of causes

quence dans la chambre basse: il fut proposé le matin que la chambre se mettoit en comité l'après diner pour considérer la harangue du roy sur l'affaire de la religion, et savoir ce qui devoit être entendu par le terme *de religion protestante*. La résolution fut prise unanimement, et sans contradiction, de faire une adresse au roy pour le prier de faire une proclamation pour l'exécution des loix contre tous les non-conformistes généralement, c'est-à-dire, contre tous ceux qui ne sont pas ouvertement de l'église Anglicane; cela enferme les presbitériens et tous les sectaires, aussi bien que les catholiques Romains. La malice de cette résolution fut aussitôt reconnu du roy d'Angleterre, et de ses ministres; les principaux de la chambre basse furent mandés, et ceux que sa majesté Britannique croit être dans ses intérêts; il leur fit une réprimande sévère de s'être laissés séduire et entraîner à une résolution si dangereuse et si peu admissible. Il leur déclara que, si l'on persistoit à lui faire une pareille adresse, il répondroit à la chambre basse en termes si décisifs et si fermes qu'on ne retourneroit pas à lui faire une pareille adresse. La manière dont sa majesté Britannique s'explique produisit son effet hier matin; et le chambre basse rejeta tout d'une voix ce que avoit été résolu en comité le jour auparavant."

The only man who behaved with distinguished spirit in this wretched parliament was one in whose political life there is little else to praise, sir Edward Seymour. He opposed the grant of the revenues for life, and spoke strongly against the illegal practices in the elections. Fox, 90. 93.

* Fox, Appendix, p. 156. "Provided always, and be it further enacted, that if any peer of this realm, or member of the house of commons, shall move or propose in either house of parliament the disherison of the rightful and true heir of the crown, or to alter or change the descent or succession of the crown in the right line; such offence shall be deemed and adjudged high treason, and every person being indicted and convicted of such treason, shall be proceeded against, and shall suffer and forfeit as in other cases of high treason mentioned in this act."

See what Lord Lonsdale says, p. 8., of this bill, which he, among others, contrived to weaken by provisoes, so that it was given up.

† Parl. Hist. 1372. The king's speech had evidently shown that the supply was only demanded for this purpose. The speaker, on presenting the bill for settling the revenue in the former session, claimed it as a merit that they had not inserted any appropriating clauses. Parl. Hist. 1359.

through which a gracious Providence has favoured the consolidation of our liberties and welfare. Nothing less than a motive more universally operating than the interests of civil freedom would have stayed the compliant spirit of this unworthy parliament, or rallied, for a time at least, the supporters of indefinite prerogative under a banner they abhorred. We know that the king's intention was to obtain the repeal of the habeas corpus act, a law which he reckoned as destructive of monarchy as the test was of the catholic religion.* And I see no reason to suppose that he would have failed of this, had he not given alarm to his high-church parliament, by a premature manifestation of his design to fill the civil and military employments with the professors of his own mode of faith.

King's intention to repeal the habeas corpus act.

It has been doubted by Mr. Fox whether James had, in this part of his reign, conceived the projects commonly imputed to him, of overthrowing, or injuring by any direct acts of power, the protestant establishment of this kingdom. Neither the copious extracts from Barillon's correspondence with his own court, published by sir John Dalrymple and himself, nor the king's own memoirs, seem, in his opinion, to warrant a conclusion that any thing farther was intended than to emancipate the Roman catholics from the severe restrictions of the penal laws, securing the public exercise of their worship from molestation, and to replace them upon an equality as to civil offices, by abrogating the test act of the late reign.† We find nevertheless a remarkable conversation of the king himself with the French ambassador, which leaves an impression on the mind that his projects were already irreconcilable with that pledge of support he had rather

* Reresby, p. 110. Barillon, in Fox's Appendix, pp. 93. 127, &c. "Le feu roi d'Angleterre et celui-ci m'ont souvent dit, qu'un gouvernement ne peut subsister avec une telle loi." Dalrymple, p. 171.

† This opinion has been well supported by Mr. Serjeant Heywood (Vindication of Mr. Fox's History, p. 154.). In some few of Barillon's letters to the king of France, he speaks of James's intention établir la religion catholique; but these perhaps might be explained by a far greater number of passages, where he says only établir le libre exercice de la religion catholique, and by the general tenor of his correspondence. But though the primary object was toleration, I have no doubt but that they conceived this was to end in establishment. See what Barillon says, p. 84.; though the legal reasoning is false, as might be expected from a foreigner. It must at all events be admitted that the conduct of the king after the formation of the catholic junto in 1686, demonstrates an intention of overthrowing the Anglican establishment.

unadvisedly given to the Anglican church at his accession. This interpretation of his language is confirmed by the expressions used at the same time by Sunderland, which are more unequivocal, and point at the complete establishment of the catholic religion.* The particular care displayed by James in this conversation, and indeed in so many notorious instances, to place the army, as far as possible, in the command of

* "Il [le roy] me répondit à ce que je venois de dire, que je connoissois le fond de ses intentions pour l'établissement de la religion catholique; qu'il n'esperoit en venir à bout que par l'assistance de V. M.; que je voyois qu'il venoit de donner des emplois dans ses troupes aux catholiques aussi bien qu'aux protestans; que cette égalité fâchoit beaucoup de gens, mais qu'il n'avoit pas laissé passer une occasion si importante sans s'en prévaloir; qu'il feroit de même à l'égard des choses practicables, et que je voyois plus clair sur cela dans ses desseins que ses propres ministres, s'en étant souvent ouvert avec moi sans reserve," p. 104. In a second conversation immediately afterwards, the king repeated, "que je connoissois le fond de ses desseins, et que je pouvois repondre que tout son but étoit d'établir la religion catholique; qu'il ne perdroit aucune occasion de la faire . . . que peu à peu il va à son but, et que ce qu'il fait presentement emporte nécessairement l'exercice libre de la religion catholique, qui se trouvera établi avant qu'un acte de parlement l'autorise; que je connoissois assez l'Angleterre pour savoir que la possibilité d'avoir des emplois et des charges fera plus de catholiques que la permission de dire des messes publiques; que cependant il s'attendoit que V. M. ne l'abandonneroit pas," &c. p. 106. Sunderland entered on the same subject, saying, "Je ne sais pas si l'on voit en France les choses comme elles sont ici; mais je défie ceux qui les voyent de près de ne pas connoitre que le roy mon maitre n'a rien dans le cœur si avant que l'envie d'établir la religion catholique; qu'il ne peut même, selon le bon sens et la droite raison, avoir d'autre but; que sans cela il ne sera jamais en sûreté, et sera toujours exposé au zèle indiscret de ceux qui échaufferont les peuples contre la catholicité, tant qu'elle ne sera pas *plus* pleinement établie; il y a une autre chose certaine, c'est que ce plan là ne peut réussir que par un concert et une liaison étroite avec le roi votre maitre; c'est un projet qui ne peut convenir qu'à lui, ni réussir que par lui. Toutes les autres puissances s'y opposeront ouvertement, ou le traverseront sous main. On sait bien que cela ne convient point au prince d'Orange; mais s'il ne sera pas en état de l'empêcher si on veut se conduire en France comme il est nécessaire, c'est-a-dire ménager l'amitié du roy d'Angleterre, et le contenir dans son projet. Je vois clairement l'appréhension que beaucoup de gens ont d'une liaison avec la France, et les efforts qu'on fait pour l'affoiblir; mais cela ne sera au pouvoir de personne, si on n'en a pas envie ce France; c'est sur quoi il faut que vous vouz expliquiez nettement, que vous fassiez connoitre que le roi votre maitre veut aider de bonne foi le roi d'Angleterre à établir fermement la religion catholique."

The word *plus* in the above passage is not in Dalrymple's extract from this letter, vol. ii. part ii. pp. 174. 187. Yet for omitting this word Serjeant Heywood (not having attended to Dalrymple) censures Mr. Rose as if it had been done purposely. Vindic. of Fox, p. 154. But this is not quite judicious or equitable, since another critic might suggest that it was purposely interpolated. No one of common candour would suspect this of Mr. Fox; but his copyist, I presume, was not infallible. The word *plus* is evidently incorrect. The catholic religion was not established at all in any possible sense; what room could there be for the comparative? M. Mazure, who has more lately perused the letters of Barillon at Paris, prints the passage without *plus*. Hist. de la Révol. ii. 36. Certainly the whole conversation here ascribed to Sunderland points at something far beyond the free exercise of the Roman catholic religion.

catholic officers, has very much the appearance of his looking towards the employment of force in overthrowing the protestant church, as well as the civil privileges of his subjects. Yet he probably entertained confident hopes, in the outset of his reign, that he might not be driven to this necessity, or at least should only have occasion to restrain a fanatical populace. He would rely on the intrinsic excellence of his own religion, and still more on the temptations that his favour would hold out. For the repeal of the test would not have placed the two religions on a fair level. Catholics, however little qualified, would have filled, as in fact they did under the dispensing power, most of the principal stations in the court, law, and army. The king told Barillon, he was well enough acquainted with England to be assured, that the admissibility to office would make more catholics than the right of saying mass publicly. There was, on the one hand, a prevailing laxity of principle in the higher ranks, and a corrupt devotedness to power for the sake of the emoluments it could dispense, which encouraged the expectation of such a nominal change in religion as had happened in the sixteenth century. And, on the other, much was hoped by the king from the church itself. He had separated from her communion in consequence of the arguments which her own divines had furnished; he had conversed with men bred in the school of Laud; and was slow to believe that the conclusions which he had, not perhaps unreasonably, derived from the semi-protestant theology of his father's reign, would not appear equally irresistible to all minds, when free from the danger and obloquy that had attended them. Thus by a voluntary return of the clergy and nation to the bosom of the catholic church, he might both obtain an immortal renown, and secure his prerogative against that religious jealousy which had always been the aliment of political factions.* Till this revolution however

* It is curious to remark that both James and Louis considered the re-establishment of the catholic religion and of the royal authority as closely connected, and parts of one great system. Barillon in Fox, Append. 19. 57. Mazure, i. 346. Mr. Fox maintains (Hist. p. 102.) that the great object of the former was absolute power rather than the interests of popery. Doubtless, if James had been a protestant, his encroachments on the rights of his subjects would not have been less than they were, though not exactly of the same nature; but the main object of his reign can hardly be denied to have been either the full toleration, or the national establishment of the church of Rome. Mr. Fox's remark must, at all events, be limited to the year 1685.

could be brought about, he determined to court the church of England, whose boast of exclusive and unlimited loyalty could hardly be supposed entirely hollow, in order to obtain the repeal of the penal laws and disqualifications which affected that of Rome. And though the maxims of religious toleration had been always in his mouth, he did not hesitate to propitiate her with the most acceptable sacrifice, the persecution of non-conforming ministers. He looked upon the dissenters as men of republican principles; and if he could have made his bargain for the free exercise of the catholic worship, I see no reason to doubt that he would never have announced his general indulgence to tender consciences.*

James deceived as to the dispositions of his subjects.

But James had taken too narrow a view of the mighty people whom he governed. The laity of every class, the tory gentlemen almost equally with the presbyterian artisan, entertained an inveterate abhorrence of the Romish superstition. Their first education, the usual tenor of preaching, far more polemical than at present, the books most current, the tradition of ancient cruelties and conspiracies, rendered this a cardinal point of religion even with those who had little beside. Many still gave credit to the popish plot; and with those who had been compelled to admit its general falsehood, there remained, as is frequently the case, an indefinite sense of dislike and suspicion, like the

* Fox, Appendix, p. 33. Ralph, 869. The prosecution of Baxter, for what was called reflecting on the bishops, is an instance of this. State Trials, ii. 494. Notwithstanding James's affected zeal for toleration, he did not scruple to congratulate Louis on the success of his very different mode of converting heretics. Yet I rather believe him to have been really averse to persecution; though with true Stuart insincerity he chose to flatter his patron. Dalrymple, p. 177. A book by Claude, published in Holland, entitled "Plaintes des Protestans cruellement opprimés dans le royaume de France," was ordered to be burned by the hangman, on the complaint of the French ambassador, and the translator and printer to be enquired after and prosecuted. Lond. Gazette, May 8. 1686. Jefferies objected to this in council as unusual; but the king was determined to gratify his most christian brother. Mazure, ii. 122. It is said also that one of the reasons for the disgrace of lord Halifax was his speaking warmly about the revocation of the edict of Nantes. Id. p. 55. Yet James sometimes blamed this himself, so as to displease Louis. Id. p. 56. In fact, it very much tended to obstruct his own views for the establishment of a religion which had just shown itself in so odious a form. For this reason, though a brief was read in churches for the sufferers, special directions were given that there should be no sermon. It is even said that he took on himself the distribution of the money collected for the refugees, in order to stop the subscription; or at least that his interference had that effect. The enthusiasm for the French protestants was such that single persons subscribed 500 or 1000 pounds; which, relatively to the opulence of the kingdom, almost equals any munificence of this age. Id. p. 123.

swell of waves after a storm, which attached itself to all the objects of that calumny.* This was of course enhanced by the insolent and injudicious confidence of the Romish faction, especially the priests, in their demeanour, their language, and their publications. Meanwhile a considerable change had been wrought in the doctrinal system of the Anglican church since the restoration. The men most conspicuous in the reign of Charles II. for their writings, and for their argumentative eloquence in the pulpit, were of the class who had been denominated Latitudinarian divines; and while they maintained the principles of the Remonstrants in opposition to the school of Calvin, were powerful and unequivocal supporters of the protestant cause against Rome. They made none of the dangerous concessions which had shaken the faith of the duke and duchess of York, they regretted the disuse of no superstitious ceremony, they denied not the one essential characteristic of the reformation, the right of private judgment, they avoided the mysterious jargon of a real presence in the Lord's Supper. Thus such an agreement between the two churches as had been projected at different times was become far more evidently impracticable, and the separation more broad and defined.† These men, as well as others who do not properly belong to the same class, were now distinguished by their courageous and able defences of the reform-

* It is well known that the house of commons, in 1685, would not pass the bill for reversing lord Stafford's attainder, against which a few peers had entered a very spirited protest. Parl. Hist. 1361. Barillon says, this was "parce que dans le préambule il y a des mots insérés qui semblent favoriser la religion catholique; cela seul a retardé la rehabilitation du comte de Stafford dont tous sont d'accord à l'égard du fond." Fox, App. p. 110. But there was another reason which might have weight. Stafford had been convicted on the evidence, not only of Oates, who had been lately found guilty of perjury, but of several other witnesses, especially Dugdale and Turberville. And these men had been brought forward by the government against lord Shaftesbury and College, the latter of whom had been hanged on their testimony. The reversal of Lord Stafford's attainder, just as we now think it, would have been a disgrace to these crown prosecutions; and a conscientious tory would be loth to vote for it.

† "In all the disputes relating to that mystery before the civil wars, the church of England protestant writers owned the real presence, and only abstracted from the *modus* or manner of Christ's body being present in the eucharist, and therefore durst not say but it might be there by transubstantiation as well as by any other way.... It was only of late years that such principles have crept into the church of England; which, having been blown into the parliament house, had raised continual tumults about religion ever since. Those unlearned and fanatical notions were never heard of till doctor Stillingfleet's late invention of them, by which he exposed himself to the lash, not only of the Roman catholics, but to that of many of the church of England controvertists too." Life of James, ii. 146.

ation. The victory, in the judgment of the nation, was wholly theirs. Rome had indeed her proselytes, but such as it would have been more honourable to have wanted. The people heard sometimes with indignation, or rather with contempt, that an unprincipled minister, a temporising bishop, or a licentious poet, had gone over to the side of a monarch who made conformity with his religion the only certain path to his favour.

Prorogation of Parliament.

The short period of a four years' reign may be divided by several distinguishing points of time, which make so many changes in the posture of government. From the king's accession to the prorogation of parliament on November 30. 1685, he had acted apparently in concurrence with the same party that had supported him in his brother's reign, of which his own seemed the natural and almost undistinguishable continuation. This party, which had become incomparably stronger than the opposite, had greeted him with such unbounded professions*, the temper of its representatives had been such in the first session of parliament, that a prince less obstinate than James might have expected to succeed in attaining an authority which the nation seemed to offer. A rebellion speedily and decisively quelled confirms every government; it seemed to place his own beyond hazard. Could he have been induced to change the

* See London Gazettes, 1685, passim; the most remarkable are inserted by Ralph and Kennet. I am sure the addresses which we have witnessed in this age among a neighbouring people are not on the whole more fulsome and disgraceful. Addresses, however, of all descriptions, as we well know, are generally the composition of some zealous individual, whose expressions are not to be taken as entirely those of the subscribers. Still these are sufficient to manifest the general spirit of the times.

The king's popularity at his accession, which all contemporary writers attest, is strongly expressed by lord Lonsdale. "The great interest he had in his brother, so that all applications to the king seemed to succeed only as he favoured them, and the general opinion of him to be a prince steady above all others to his word, made him at that time the most popular prince that had been known in England for a long time. And from men's attempting to exclude him, they, at this juncture of time, made him their darling; no more was his religion terrible; his magnanimous courage, and the hardships he had undergone, were the discourse of all men. And some reports of a misunderstanding betwixt the French king and him, occasioned originally by the marriage of the lady Mary to the prince of Orange, industriously spread abroad to amuse the ignorant, put men in hopes of what they had long wished; that, by a conjunction of Holland and Spain, &c. we might have been able to reduce France to the terms of the Pyrenean treaty, which was now become the terror of Christendom, we never having had a prince for many ages that had so great a reputation for experience and a martial spirit." P. 3. This last sentence is a truly amusing contrast to the real truth.

order of his designs, and accustom the people to a military force, and to a prerogative of dispensing with statutes of temporal concern, before he meddled too ostensibly with their religion, he would possibly have gained both the objects of his desire. Even conversions to popery might have been more frequent, if the gross solicitations of the court had not made them dishonourable. But, neglecting the hint of a prudent adviser, that the death of Monmouth left a far more dangerous enemy behind, he suffered a victory that might have ensured him success to inspire an arrogant confidence that led on to destruction. Master of an army, and determined to keep it on foot, he naturally thought less of a good understanding with parliament.* He had already rejected the proposition of employing bribery among the members, an expedient very little congenial to his presumptuous temper and notions of government.† They were assembled, in his opinion, to testify the nation's loyalty, and thankfulness to their gracious prince for not taking away their laws and liberties. But, if a factious spirit of opposition should once prevail, it could not be his fault if he dismissed them till more becoming sentiments should again gain ground.‡ Hence,

* "On voit qu'insensiblement les catholiques auront les armes à la main; c'est un état bien différent de l'oppression où ils étoient, et dont les protestans zélés reçoivent une grande mortification; ils voyent bien que le roy d'Angleterre fera le reste quand il le pourra. La levée des troupes, qui seront bientot complettes, fait juger que le roy d'Angleterre veut être en état de se faire obéir, et de n'être pas gêné par les loix qui se trouveront contraires à ce qu'il veut établir." Barillon, in Fox's Appendix, 111. "Il me paroit (he says, June 25.), que le roy d'Angleterre a été fort aisé d'avoir une prétexte de lever des troupes, et qu'il croit que l'entreprise de M. le duc de Monmouth ne servira qu'à le rendre plus maître de sons pays." And on July 30.: "Le projet du roy d'Angleterre est d'abolir entièrement les milices, dont il a reconnu l'inutilité et le danger en cette dernière occasion; et de faire, s'il est possible, que le parlement établisse le fond destiné pour les milices à l'entretien des troupes réglées. Tout cela change entièrement l'état de ce pays ici, et met les Anglois dans une condition bien différente de celle où ils ont été jusques à present. Ils le connoissent, et voyent bien qu'un roy de différente religion que celle du pays, et qui se trouve armé, ne renoncera pas aisément aux avantages que lui donne la défaite des rebelles, et les troupes qu'il a sur pied." And afterwards: "Le roi d'Angleterre m'a dit que quoiqu'il arrive, il conservera les troupes sur pied, quand même le parlement ne lui donneroit pour les entretenir. Il connoit bien que le parlement verra mal volontiers cet établissement; mais il veut être assuré du dedans de son pays, et il croit ne le pouvoir être sans cela." Dalrymple, 169. 170.

† Fox's App. 69. Dalrymple, 153.

‡ It had been the intention of Sunderland and the others to dissolve parliament, as soon as the revenue for life should be settled, and to rely in future on the assistance of France. Fox's App. 59, 60. Mazure, i. 432. But this was prevented, partly by the sudden invasion of Monmouth, which made a new session necessary, and gave hopes of a large sup-

he did not hesitate to prorogue, and eventually to dissolve, the most compliant house of commons that had been returned since his family had sat on the throne, at the cost of 700,000*l.*, a grant of supply which thus fell to the ground, rather than endure any opposition on the subject of the test and penal laws. Yet, from the strength of the court in all divisions, it must seem not improbable to us that he might, by the usual means of management, have carried both of those favourite measures, at least through the lower house of parliament. For the crown lost the most important division only by one vote, and had in general a majority. The very address about unqualified officers, which gave the king such offence as to bring on a prorogation, was worded in the most timid manner; the house having rejected unanimously the words first inserted by their committee, requesting that his majesty would be pleased not to continue them in their employments, for a vague petition that "he would be graciously pleased to give such directions that no apprehensions or jealousies may remain in the hearts of his majesty's good and faithful subjects."*

The second period of this reign extends from the prorogation of parliament to the dismissal of the earl of Rochester from the treasury in 1686. During this time James, exasperated at the reluctance of the commons to acquiesce in his measures, and the decisive opposition of the church, threw off the half restraint he had imposed on himself; and showed plainly that, with a bench of judges to pronounce his commands, and an army to enforce them, he would not suffer the mockery of constitutional limitations to stand any longer in his way. Two important steps were made this year towards

ply for the army; and partly by the unwillingness of the king of France to advance as much money as the English government wanted. In fact the plan of continual prorogations answered as well.

* Journals, Nov. 14. Barillon says that the king answered this humble address, "avec des marques de fierté et de colère sur le visage, qui faisoit assez connôitre ses sentimens." Dalrymple, 172. See too his letter in Fox, 139.

A motion was made to ask the lords' concurrence in this address, which, according to the journals, was lost by 212 to 138. In the Life of James, ii. 55., it is said that it was carried against the motion by only four voices; and this I find confirmed by a manuscript account of the debates (Sloane MSS. 1470), which gives the numbers 212 to 208. The journal probably is mis-printed, as the court and country parties were very equal. It is said in this manuscript, that those who opposed the address opposed also the motion for requesting the lords' concurrence in it; but James represents it otherwise, as a device of the court to quash the proceeding.

the accomplishment of his designs, by the judgment of the court of king's bench in the case of sir Edward Hales, confirming the right of the crown to dispense with the test act, and by the establishment of the new ecclesiastical commission.

Dispensing power confirmed by the judges.

The kings of England, if not immemorially, yet from a very early era in our records, have exercised a prerogative unquestioned by parliament, and recognised by courts of justice, that of granting dispensations from the prohibitions and penalties of particular laws. The language of ancient statutes was usually brief and careless, with few of those attempts to regulate prospective contingencies, which, even with our pretended modern caution, are so often imperfect; and, as the sessions were never regular, sometimes interrupted for several years, there was a kind of necessity, or great convenience, in deviating occasionally from the rigour of a general prohibition; more often perhaps some motive of interest or partiality would induce the crown to infringe on the legal rule. This dispensing power, however, grew up, as it were, collaterally to the sovereignty of the legislature, which it sometimes appeared to overshadow. It was, of course, asserted in large terms by counsellors of state, and too frequently by the interpreters of law. Lord Coke, before he had learned the bolder tone of his declining years, lays it down, that no act of parliament can bind the king from any prerogative which is inseparable from his person, so that he may not dispense with it by a non-obtante; such is his sovereign power to command any of his subjects to serve him for the public weal, which solely and inseparably is annexed to his person, and cannot be restrained by any act of parliament. Thus, although the statute 23 H. 6. c. 8. provides that all patents to hold the office of sheriff for more than one year shall be void, and even enacts that the king shall not dispense with it; yet it was held by all the judges in the reign of Henry VII., that the king may grant such a patent for a longer term on good grounds, whereof he alone is the judge. So also the statutes which restrain the king from granting pardons in case of murder have been held void; and doubtless the constant practice has been to disregard them.*

* Coke, 12 Rep. 18.

This high and dangerous prerogative, nevertheless, was subject to several limitations, which none but the grosser flatterers of monarchy could deny. It was agreed among lawyers that the king could not dispense with the common law, nor with any statute prohibiting that which was *malum in se*, nor with any right or interest of a private person, or corporation.* The rules, however, were still rather complicated, the boundaries indefinite, and therefore varying according to the political character of the judges. For many years dispensations had been confined to taking away such incapacity as either the statutes of a college, or some law of little consequence, perhaps almost obsolete, might happen to have created. But when a collusive action was brought against sir Edward Hales, a Roman catholic, in the name of his servant, to recover the penalty of 500*l.* imposed by the test act, for accepting the commission of colonel of a regiment, without the previous qualification of receiving the sacrament in the church of England, the whole importance of the alleged prerogative became visible, and the fate of the established constitution seemed to hang upon the decision. The plaintiff's advocate, Northey, was known to have received his fee from the other side, and was thence suspected, perhaps unfairly, of betraying his own cause†; but the chief justice Herbert showed that no arguments against this prerogative would have swayed his determination. Not content with

* Vaughan's Reports. Thomas v. Sorrell, 333. [Lords' Journals, 29th Dec., 1666. "The commons introduced the word 'nuisance' into the Irish bill, in order to prevent the king's dispensing with it. The lords did argue that it was an ill precedent, and that which will ever hereafter be held as a way of preventing the king's dispensation with acts, and therefore rather advise to pass the bill without that word, and let it go accompanied with a petition to the king, that he will not dispense with it, this being a more civil way to the king. They answered well, that this do imply that the king should pass their bill, and yet with design to dispense with it; which is to suppose the king guilty of abusing them. And more, they produce precedents for it; namely, that against new buildings, and about leather, when the word nuisance is used to the purpose; and farther, that they do not rob the king of any right he ever had; for he never had a power to do hurt to his people, nor would exercise it; and therefore, there is no danger in the passing this bill of imposing on his prerogative; and concluded that they think they ought to do this, so as the people may really have the benefit of it when it is passed, &c. The lords gave way soon afterwards." Pepys's Diary, Jan. 9. 1666-7. Clarendon speaks of this precaution against the dispensing powers as derogatory to the king's prerogative; "divesting him of a trust that was inherent in him from all antiquity." Life of Clarendon, p. 380.]

† Burnet and others. This hardly appears by Northey's argument.

treating the question as one of no difficulty, he grounded his decision in favour of the defendant upon principles that would extend far beyond the immediate case. He laid it down that the kings of England were sovereign princes, that the laws of England were the king's laws; that it was consequently an inseparable prerogative of the crown to dispense with penal laws in particular cases, for reasons of which it was the sole judge. This he called the ancient remains of the sovereign power and prerogative of the kings of England, which never yet was taken from them, nor could be. There was no law, he said, that might not be dispensed with by the supreme lawgiver (meaning evidently the king, since the proposition would otherwise be impertinent); though he made a sort of distinction as to those which affected the subject's private right. But the general maxims of slavish churchmen and lawyers were asserted so broadly, that a future judge would find little difficulty in making use of this precedent to justify any stretch of arbitrary power.*

It is by no means evident that the decision in this particular case of Hales, which had the approbation of eleven judges out of twelve, was against law.† The course of former precedents seems rather to furnish its justification. But the less untenable such a judgment in favour of the dispensing power might appear, the more necessity would men of reflection perceive of making some great change in the relations of the people towards their sovereign. A prerogative of setting aside the enactments of parliament, which in trifling matters, and for the sake of conferring a benefit on individuals, might be suffered to exist with little mischief, became intolerable when exercised in contravention of the very principle of those statutes which had been provided for the security of fundamental liberties or institutions. Thus the test act, the great achievement, as it had been reckoned, of the protestant party, for the sake of which the most subservient of parliaments had just then ventured to lose the king's favour, became absolutely nugatory and ineffective, by

* State Trials, xi. 1165—1280. 2 Shower's Reports, 475.

† The dissentient judge was Street; and Powell is said to have doubted. The king had privately secured this opinion of the bench in his favour before the action was brought. Life of James, ii. 79.

a construction which the law itself did not reject. Nor was it easy to provide any sufficient remedy by means of parliament; since it was the doctrine of the judges, that the king's inseparable and sovereign prerogatives in matters of government could not be taken away or restrained by statute. The unadvised assertion in a court of justice of this principle, which though not by any means novel, had never been advanced in a business of such universal concern and interest, may be said to have sealed the condemnation of the house of Stuart. It made the co-existence of an hereditary line, claiming a sovereign prerogative paramount to the liberties they had vouchsafed to concede, incompatible with the security or probable duration of those liberties. This incompatibility is the true basis of the revolution in 1688.

But, whatever pretext the custom of centuries or the authority of compliant lawyers might afford for these dispensations from the test, no legal defence could be made for the ecclesiastical commission of 1686. The high commission court of Elizabeth had been altogether taken away by an act of the long parliament, which went on to provide that no new court should be erected with the like power, jurisdiction, and authority. Yet the commission issued by James II. followed very nearly the words of that which had created the original court under Elizabeth, omitting a few particulars of little moment.* It is not known, I believe, at whose suggestion the king adopted this measure. The pre-eminence reserved by the commission to Jefferies, whose presence was made necessary to all their meetings, and the violence with which he acted in all their transactions on record, seem to point him out as its great promoter; though it is true that, at a later period, Jefferies seems to have perceived the destructive indiscretion of the popish counsellors. It displayed the king's change of policy and entire separation from that high-church party, to whom he was indebted for the throne; since the manifest design of the ecclesiastical com-

Ecclesiastical commission.

* State Trials, xi 1132. et seq. The members of the commission were the primate Sancroft (who never sat), Crew and Sprat, bishops of Durham and Rochester, the chancellor Jefferies, the earls of Rochester and Sunderland, and chief justice Herbert. Three were to form a quorum, but the chancellor necessarily to be one. Ralph, 929. The earl of Mulgrave was introduced afterwards.

mission was to bridle the clergy, and silence the voice of protestant zeal. The proceedings against the bishop of London, and other instances of hostility to the established religion, are well known.

Elated by success and general submission, exasperated by the reluctance and dissatisfaction of those on whom he had relied for an active concurrence with his desires, the king seems at least by this time to have formed the scheme of subverting, or impairing as far as possible, the religious establishment. He told Barillon, alluding to the ecclesiastical commission, that God had permitted all the statutes which had been enacted against the catholic religion to become the means of its re-establishment.* But the most remarkable evidence of this design was the collation of Massey, a recent convert, to the deanery of Christ Church, with a dispensation from all the statutes of uniformity and other ecclesiastical laws, so ample that it made a precedent, and such it was doubtless intended to be, for bestowing any benefices upon members of the church of Rome. This dispensation seems to have been not generally known at the time. Burnet has stated the circumstances of Massey's promotion inaccurately; and no historian, I believe, till the publication of the instrument after the middle of the last century, was fully aware of the degree in which the king had trampled upon the securities of the established church in this transaction.†

King's scheme of establishing popery.

A deeper impression was made by the dismissal of Rochester from his post of lord treasurer; so nearly consequent on his positive declaration of adherence to the protestant religion, after the dispute held in his presence at the king's particular command, between di-

Dismissal of lord Rochester.

* Mazure, ii. 130.

† Henry Earl of Clarendon's Papers, ii. 278. In Gutch's Collectanea Curiosa, vol. i. p. 287., we find not only this licence to Massey, but one to Obadiah Walker, master of University College, and to two fellows of the same, and one of Brazen-nose College, to absent themselves from church, and not to take the oaths of supremacy and allegiance, or do any other thing to which, by the laws and statutes of the realm, or those of the college, they are obliged. There is also, in the same book, a dispensation for one Sclater, curate of Putney, and rector of Esher, for using the common prayer, &c. &c. Id. p. 290. These are in May, 1686, and subscribed by Powis, the solicitor-general. The attorney-general, Sawyer, had refused; as we learn from Reresby, p. 133., the only contemporary writer, perhaps, who mentions this very remarkable aggression on the established church.

vines of both persuasions, that it had much the appearance of a resolution taken at court to exclude from the high offices of the state all those who gave no hope of conversion.* Clarendon had already given way to Tyrconnel in the government of Ireland; the privy seal was bestowed on a catholic peer, lord Arundel; lord Bellasis, of the same religion, was now placed at the head of the commission of the treasury; Sunderland, though he did not yet cease to conform, made no secret of his pretended change of opinion; the council board, by virtue of the dispensing power, was filled with those who would refuse the test; a small junto of catholics, with father Petre, the king's confessor, at their head, took the management of almost all affairs upon themselves†; men, whose known want of principle gave reason to expect their compliance, were raised to bishoprics; there could be no rational doubt of a concerted scheme to depress and discountenance the established church. The dismissal of Rochester, who had gone great lengths to preserve his power and emoluments, and would in all probability have concurred in the establishment of arbitrary power under a protestant sovereign‡, may be reckoned the most unequivocal evidence of

* The catholic lords, according to Barillon, had represented to the king, that nothing could be done with parliament so long as the treasurer caballed against the designs of his majesty. James promised to dismiss him if he did not change his religion. Mazure, ii. 170. The queen had previously been rendered his enemy by the arts of Sunderland, who persuaded her that lord and lady Rochester had favoured the king's intimacy with the countess of Dorchester, in order to thwart the popish intrigue. Id. 149. "On voit," says Barillon on the treasurer's dismissal, "que la cabale catholique a entièrement prevalu. On s'attendoit depuis quelque temps à ce qui est arrivé au comte de Rochester; mais l'exécution fait encore une nouvelle impression sur les esprits." P. 181.

† Life of James, 74. Barillon frequently mentions this cabal, as having in effect the whole conduct of affairs in their hands. Sunderland belonged to them; but Jefferies, being reckoned on the protestant side, had, I believe, very little influence for at least the two latter years of the king's reign. "Les affaires de ce pays-ci," says Bonrepos, in 1686, "ne roulent à présent que sur la religion. Le roi est absolument gouverné par les catholiques. My lord Sunderland ne se maintient que par ceux-ci, et par son dévouement à faire tout ce qu'il croit être agréable sur ce point. Il a le secret des affaires de Rome." Mazure, ii. 124. "On feroit ici," says Barillon, the same year, "ce que on fait en France," [that is, I suppose, dragonner et fusiller les hérétiques] "si l'on pouvoit espérer de réussir." P. 127.

‡ Rochester makes so very bad a figure in all Barillon's correspondence, that there really seems no want of candour in this supposition. He was evidently the most active co-operator in the connexion of both the brothers with France, and seems to have had as few compunctious visitings, where the church of England was not concerned, as Sunderland himself. Godolphin was too much implicated, at least by acquiescence, in the counsels of this reign; yet we find him suspected of not wishing "se passer

the king's intentions; and from thence we may date the decisive measures that were taken to counteract them.

Prince of Orange alarmed.

It was, I do not merely say the interest, but the clear right and bounden duty, of the prince of Orange, to watch over the internal politics of England, on account of the near connexion which his own birth and his marriage with the presumptive heir had created. He was never to be reckoned a foreigner as to this country, which, even in the ordinary course of succession, he might be called to govern. From the time of his union with the princess Mary, he was the legitimate and natural ally of the whig party; alien in all his sentiments from his two uncles, neither of whom, especially James, treated him with much regard, on account merely of his attachment to religion and liberty, for he might have secured their affection by falling into their plans. Before such differences as subsisted between these personages, the bonds of relationship fall asunder like flax; and William would have had at least the sanction of many precedents in history, if he had employed his influence to excite sedition against Charles or James, and to thwart their administration. Yet his conduct appears to have been merely defensive; nor had he the remotest connexion with the violent and factious proceedings of Shaftesbury and his partisans. He played a very dexterous, but apparently very fair, game throughout the last years of Charles; never losing sight of the popular party, through whom alone he could expect influence over England during the life of his father-in-law, while he avoided any direct rupture with the brothers, and every reasonable pretext for their taking offence.

It has never been established by any reputable testimony, though perpetually asserted, nor is it in the least degree probable, that William took any share in prompting the invasion of Monmouth.* But it is nevertheless manifest that he

entièrement de parlement, et à rompre nettement avec le prince d'Orange." Fox, Append. p. 60.

If Rochester had gone over to the Romanists, many, probably, would have followed: on the other hand, his steadiness retained the wavering It was one of the first great disappointments with which the king met. But his dismissal from the treasury created a sensible alarm. Dalrymple, 179.

* Lord Dartmouth wrote to say that Fletcher told him there were good grounds to suspect that the prince, un-

derived the greatest advantage from this absurd rebellion and from its failure; not only, as it removed a mischievous adventurer, whom the multitude's idle predilection had elevated so high, that factious men would, under every government, have turned to account his ambitious imbecility; but as the cruelty with which this unhappy enterprise was punished rendered the king odious*, while the success of his arms inspired him with false confidence, and neglect of caution. Every month, as it brought forth evidence of James's arbitrary projects, increased the number of those who looked for deliverance to the prince of Orange, either in the course of succession, or by some special interference. He had, in fact, a stronger motive for watching the councils of his father-in-law than has generally been known. The king was, at his accession, in his fifty-fifth year, and had no male children;

derhand, encouraged the expedition, with design to ruin the duke of Monmouth; and this Dalrymple believes, p. 136. It is needless to observe, that such subtle and hazardous policy was totally out of William's character: nor is there much more reason to believe what is insinuated by James himself (Macpherson's Extracts, p. 144. Life of James, ii. 34.), that Sunderland had been in secret correspondence with Monmouth; unless indeed it were, as seems hinted in the latter work, with the king's knowledge.

* The number of persons who suffered the sentence of the law, in the famous western assize of Jefferies, has been differently stated; but according to a list in the Harleian Collection, n. 4689, it appears to be as follows: at Winchester one (Mrs. Lisle) executed; at Salisbury, none; at Dorchester, 74 executed, 171 transported; at Exeter, 14 executed, 7 transported; at Taunton, 144 executed, 284 transported; at Wells, 97 executed, 393 transported. In all, 330 executed, 855 transported; besides many that were left in custody for want of evidence. It may be observed, that the prisoners sentenced to transportation appear to have been made over to some gentlemen of interest at court; among others to sir Christopher Musgrave, who did not blush to beg the grant of their unfortunate countrymen, to be sold as slaves in the colonies.

The apologists of James II. have endeavoured to lay the entire blame of these cruelties on Jefferies, and to represent the king as ignorant of them. Roger North tells a story of his brother's interference, which is plainly contradicted by known dates, and the falsehood of which throws just suspicion on his numerous anecdotes. See State Trials, xi. 303. But the king speaks with apparent approbation of what he calls Jefferies's campaign, in writing to the prince of Orange (Dalrymple, 165.); and I have heard that there are extant additional proofs of his perfect acquaintance with the details of those assizes: nor, indeed, can he be supposed ignorant of them. Jefferies himself, before his death, declared that he had not been half bloody enough for him by whom he was employed. Burnet, 651. (note to Oxford edition, vol. iii.) The king, or his biographer in his behalf, makes a very awkward apology for the execution of major Holmes, which is shown by himself to have been a gross breach of faith. Life of James, ii. 43.

It is unnecessary to dwell on what may be found in every history; the trials of Mrs. Lisle, Mrs. Gaunt, and alderman Cornish; the former before Jefferies, the two latter before Jones, his successor as chief justice of K. B., a judge nearly as infamous as the former, though not altogether so brutal. Both Mrs. Lisle's and Cornish's convictions were without evidence, and consequently were reversed after the revolution. State Trials, vol. xi.

nor did the queen's health give much encouragement to expect them. Every dream of the nation's voluntary return to the church of Rome must have vanished, even if the consent of a parliament could be obtained, which was nearly vain to think of; or if open force and the aid of France should enable James to subvert the established religion, what had the catholics to anticipate from his death, but that fearful reaction which had ensued upon the accession of Elizabeth? This had already so much disheartened the moderate part of their body that they were most anxious not to urge forward a change, for which the kingdom was not ripe, and which was so little likely to endure, and used their influence to promote a reconciliation between the king and prince of Orange, contenting themselves with that free exercise of their worship which was permitted in Holland.* But the ambitious priesthood who surrounded the throne had bolder projects. A scheme was formed early in the king's reign, to exclude the princess of Orange from the succession in favour of her sister Anne, in the event of the latter's conversion to the Romish faith. The French ministers at our court, Barillon and Bonrepos, gave ear to this hardy intrigue. They flattered themselves that both Anne and her husband were favourably disposed. But in this they were wholly mistaken. No one could be more unconquerably fixed in her religion than that princess. The king himself, when the Dutch ambassador, Van Citers, laid before him a document, probably drawn up by some catholics of his court, in which these audacious speculations were developed, declared his indignation at so criminal a project.

Plan of setting the princess aside;

rejected by the king.

* Several proofs of this appear in the correspondence of Barillon. Fox, 135. Mazure, ii. 22. The nuncio, M. d'Adda, was a moderate man, and united with the moderate catholic peers, Bellasis, Arundel, and Powes. Id. 127. This party urged the king to keep on good terms with the prince of Orange, and to give way about the test. Id. 184. 255. They were disgusted at father Petre's introduction into the privy council; 308. 353. But it has ever been the misfortune of that respectable body to suffer unjustly for the follies of a few. Barillon admits very early in James's reign, that many of them disliked the arbitrary proceedings of the court; "ils prétendent être bons Anglois, c'est-à-dire, ne pas désirer que le roi d'Angleterre ôte à la nation ses privilèges et ses libertés." Mazure, i. 404.

William openly declared his willingness to concur in taking off the penal laws, provided the test might remain. Burnet, 694. Dalrymple, 184. Mazure, ii. 216. 250. 346. James replied that he must have all or nothing. Id. 353.

It was not even in his power, he let the prince afterwards know by a message, or in that of parliament, according to the principles which had been maintained in his own behalf, to change the fundamental order of succession to the crown.* Nothing indeed can more forcibly paint the desperation of the popish faction than their entertainment of so preposterous a scheme. But it naturally increased the solicitude of William about the intrigues of the English cabinet. It does not appear that any direct overtures were made to the prince of Orange, except by a very few malecontents, till the embassy of Dykvelt from the States in the spring of 1687. It was William's object to ascertain, through that minister, the real state of parties in England. Such assurances as he carried back to Holland gave encouragement to an enterprise that would have been equally injudicious and unwarrantable without them.† Danby, Halifax, Nottingham, and others of the tory, as well as whig factions, entered into a secret correspondence with the prince of Orange; some from a real attachment to the constitutional limitations of monarchy; some from a conviction that, without open apostasy from the protestant faith, they could never obtain from James the prizes of their ambition. This must have been the predominant motive with lord Churchill, who never gave any proof of solicitude about civil liberty; and his influence taught the princess Anne to distinguish her interest from those of her father. It was about this time also that even Sunderland entered upon a mysterious communication with the prince of Orange; but whether he afterwards served his present master only to betray him, as has been generally believed, or sought rather to propitiate, by clandestine professions, one who might in the course of events become such, is not perhaps what the evidence already known to the world will enable us to determine.‡ The

Overtures of the malecontents to the prince of Orange.

* I do not know that this intrigue has been brought to light before the recent valuable publication of M. Mazure, certainly not with such full evidence. See i. 417.; ii. 128. 160. 165. 167. 182. 188. 192. Barillon says to his master in one place:—"C'est une matière fort délicate à traiter. Je sais pourtant qu'on en parle au roi d'Angleterre; et qu'avec le temps on ne désespère pas de trouver des moyens pour faire passer la couronne sur la tête d'un heritier catholique. Il faut pour cela venir à bout de beaucoup les choses qui ne sont encore que commencées."

† Burnet. Dalrymple. Mazure.

‡ The correspondence began by an affectedly obscure letter of lady Sunder-

apologists of James have often represented Sunderland's treachery as extending back to the commencement of this reign, as if he had entered upon the king's service with no other aim than to put him on measures that would naturally lead to his ruin. But the simpler hypothesis is probably nearer the truth: a corrupt and artful statesman could have no better prospect for his own advantage than the power and popularity of a government which he administered; it was a conviction of the king's incorrigible and infatuated adherence to designs which the rising spirit of the nation rendered utterly infeasible, an apprehension that, whenever a free parliament should be called, he might experience the fate of Strafford as an expiation for the sins of the crown, which determined him to secure as far as possible his own indemnity upon a revolution that he could not have withstood.*

Declaration for liberty of conscience.

The dismissal of Rochester was followed up, at no great distance of time, by the famous declaration for liberty of conscience, suspending the execution of all penal laws concerning religion, and freely pardoning all offences against them, in as full a manner as if each individual had been named. He declared also his will and pleasure that the oaths of supremacy and allegiance, and the several tests enjoined by statutes of the late reign, should no longer be required of any one before his admission to offices of trust.

land to the prince of Orange, dated March 7. 1687. Dalrymple, 187. The meaning, however, cannot be misunderstood. Sunderland himself sent a short letter of compliment by Dykvelt, May 28., referring to what that envoy had to communicate. Churchill, Nottingham, Rochester, Devonshire, and others, wrote also by Dykvelt. Halifax was in correspondence at the end of 1686.

* Sunderland does not appear, by the extracts from Barillon's letters, published by M. Mazure, to have been the adviser of the king's most injudicious measures. He was united with the queen, who had more moderation than her husband. It is said by Barillon that both he and Petre were against the prosecution of the bishops, ii. 448. The king himself ascribes this step to Jefferies, and seems to glance also at Sunderland as its adviser. Life of James, ii. 156. He speaks more explicitly as to Jefferies in Macpherson's Extracts, 151. Yet lord Clarendon's Diary, ii. 49., tends to acquit Jefferies. Probably the king had nobody to blame but himself. One cause of Sunderland's continuance in the apparent support of a policy which he knew to be destructive was his poverty. He was in the pay of France, and even importunate for its money. Mazure, 372. Dalrymple, 270. et post. Louis only gave him half what he demanded. Without the blindest submission to the king, he was every moment falling; and this drove him into a step as injudicious as it was unprincipled, his pretended change of religion, which was not publicly made till June, 1688, though he had been privately reconciled, it is said, (Mazure, ii. 463.) more than a year before by father Petre.

The motive of this declaration was not so much to relieve the Roman catholics from penal and incapacitating statutes, (which, since the king's accession and the judgment of the court of king's bench in favour of Hales, were virtually at an end,) as by extending to the protestant dissenters the same full measure of toleration, to enlist under the standard of arbitrary power those who had been its most intrepid and steadiest adversaries. It was after the prorogation of parliament that he had begun to caress that party, who in the first months of his reign had endured a continuance of their persecution.* But the clergy in general detested the nonconformists hardly less than the papists, and had always abhorred the idea of even a parliamentary toleration. The present declaration went much farther than the recognized prerogative of dispensing with prohibitory statutes. Instead of removing the disability from individuals by letters patent, it swept away at once, in effect, the solemn ordinances of the legislature. There was, indeed, a reference to the future concurrence of the two houses, whenever he should think it convenient for them to meet; but so expressed as rather to insult, than pay respect to, their authority.† And no one could help considering the declaration of a similar nature just published in Scotland, as the best commentary on the present. In that he suspended all laws against the Roman catholics and moderate presbyterians, "by his sovereign authority, prerogative royal, and absolute power, which all his subjects were to obey without reserve;" and its whole tenor spoke, in as unequivocal language as his grandfather was accustomed to use, his contempt of all pretended limitations on his will.‡ Though the constitution of Scotland was not so well balanced as our own, it was notorious that the crown did not legally possess an absolute power in that kingdom; and men might conclude that, when he should think it less necessary to observe some measures with his English subjects, he would address them in the same strain.

* "This defection of those his majesty had hitherto put the greatest confidence in [Clarendon and Rochester], and the sullen disposition of the church of England party in general, made him think it necessary to reconcile another; and yet he hoped to do it in such a manner as not to disgust quite the church-man neither." Life of James, ii. 102.

† London Gazette, March 18. 1687. Ralph, 945.

‡ Ralph, 943. Mazure, ii. 207.

Those, indeed, who knew by what course his favour was to be sought, did not hesitate to go before, and light him, as it were, to the altar on which their country's liberty was to be the victim. Many of the addresses which fill the columns of the London Gazette in 1687, on occasion of the declaration of indulgence, flatter the king with assertions of his dispensing power. The benchers and barristers of the Middle Temple, under the direction of the prostitute Shower, were again foremost in the race of infamy.* They thank him "for asserting his own royal prerogatives, the very life of the law, and of their profession; which prerogatives, as they were given by God himself, so no power upon earth could diminish them, but they must always remain entire and inseparable from his royal person; which prerogatives, as the addressers had studied to know, so they were resolved to defend, by asserting with their lives and fortunes that divine maxim, *à Deo rex, à rege lex.*"† Addresses in favour of it.

These addresses, which, to the number of some hundreds, were sent up from every description of persons, the clergy, the non-conformists of all denominations, the grand juries, the justices of the peace, the corporations, the inhabitants of towns, in consequence of the declaration, afford a singular contrast to what we know of the prevailing dispositions of the people in that year, and of their general abandonment of the king's cause before the end of the next. Those from the clergy, indeed, disclose their ill-humour at the unconstitutional indulgence, limiting their thanks to some promises of favour the king had used towards the established church. But as to the rest, we should have cause to blush for the servile hypocrisy of our ancestors, if there were not good reason to believe that these addresses were sometimes the work of a small minority in the name of the rest, and that

* [But these addresses from the Middle and Inner Temple, we are informed by sir James Mackintosh, "from recent examination of the records of those bodies, do not appear to have been voted by either. The former, eminent above others for fulsome servility, is traditionally said to be the clandestine production of three of the benchers, of whom Chauncy, the historian of Hertfordshire, was one." Hist. of James II. p. 177.]

† London Gazette, June 9. 1687. Shower had been knighted a little before, on presenting, as recorder of London, an address from the grand jury of Middlesex, thanking the king for his declaration. Id May 12.

the grand juries and the magistracy in general had been so garbled for the king's purposes in this year that they formed a very inadequate representation of that great class from which they ought to have been taken.* It was however very natural that they should deceive the court. The catholics were eager for that security which nothing but an act of the legislature could afford; and James, who, as well as his minister, had a strong aversion to the measure, seems about the latter end of the summer of 1687 to have made a sudden change in his scheme of government, and resolved once more to try the disposition of a parliament. For this purpose, having dissolved that from which he could expect nothing hostile to the church, he set himself to manage the election of another in such a manner as to ensure his main object, the security of the Romish religion.†

Now modelling of the corporations.

"His first care," says his biographer Innes, "was to purge the corporations from that leaven which was in danger of corrupting the whole kingdom; so he appointed certain regulators to inspect the conduct of several borough towns, to correct abuses where it was practicable, and where not, by forfeiting their charters, to turn out such

* London Gazette of 1687 and 1688, passim. Ralph, 946. 368. These addresses grew more ardent after the queen's pregnancy became known. They were renewed, of course, after the birth of the prince of Wales. But scarce any appear after the expected invasion was announced. The tories (to whom add the dissenters) seem to have thrown off the mask at once, and deserted the king whom they had so grossly flattered, as instantaneously as parasites on the stage desert their patron on the first tidings of his ruin.

The dissenters have been a little ashamed of their compliance with the declaration, and of their silence in the popish controversy during this reign. Neal, 755. 768.; and see Biog. Brit. art. Alsop. The best excuses are, that they had been so harassed that it was not in human nature to refuse a mitigation of suffering almost on any terms; that they were by no means unanimous in their transitory support of the court; and that they gladly embraced the first offers of an equal indulgence held out to them by the church.

† "The king, now finding that nothing which had the least appearance of novelty, though never so well warranted by the prerogative, would go down with the people, unless it had the parliamentary stamp on it, resolved to try if he could get the penal laws and test taken off by that authority." Life of James, ii. 134. But it seems by M. Mazure's authorities, that neither the king nor lord Sunderland wished to convoke a parliament, which was pressed forward by the eager catholics, ii. 399. iii. 65. [The proclamation for a new parliament came out Sept. 21. 1688. The king intended to create new peers enough to insure the repeal of the test, Mazure, iii. 81.; but intimates in his proclamation that he would consent to let Roman catholics remain incapable of sitting in the lower house. Id. 82. Ralph, 1010. But this very proclamation was revoked in a few days.]

rotten members as infected the rest. But in this, as in most other cases, the king had the fortune to choose persons not too well qualified for such an employment, and extremely disagreeable to the people; it was a sort of motley council made up of catholics and presbyterians, a composition which was sure never to hold long together, or that could probably unite in any method suitable to both their interests; it served therefore only to increase the public odium by their too arbitrary ways of turning out and putting in; and yet those who were thus intruded, as it were, by force, being of the presbyterian party, were by this time become as little inclinable to favour the king's intentions as the excluded members." *

This endeavour to violate the legal rights of electors as well as to take away other vested franchises, by new modelling corporations through commissions granted to regulators, was the most capital delinquency of the king's government; because it tended to preclude any reparation for the rest, and directly attacked the fundamental constitution of the state.† But, like all his other measures, it displayed not more ill-will to the liberties of the nation than inability to overthrow them. The catholics were so small a body, and so weak, especially in corporate towns, that the whole effect produced by the regulators was to place municipal power and trust in the hands of the non-conformists, those precarious and unfaithful allies of the court, whose resentment of past oppression, hereditary attachment to popular principles of government, and inveterate abhorrence of popery, were not to be effaced by an unnatural coalition. Hence, though they availed themselves, and surely without reproach, of the toleration held out to them, and even took the benefit of the scheme of regulation, so as to fill the corporation of London and many others, they were, as is confessed above, too much of Englishmen and protestants for the purposes of the court. The wiser part of the churchmen made secret overtures to their party; and by assurances of a toleration, if not also of a comprehension within the Anglican pale, won them over to a hearty concurrence in the

* Life of James, p. 139.

† Ralph, 965, 966. The object was to let in the dissenters. This was evidently a desperate game: James had ever mortally hated the sectaries as enemies to monarchy; and they were irreconcilably adverse to all his schemes.

great project that was on foot.* The king found it necessary to descend so much from the haughty attitude he had taken at the outset of his reign, as personally to solicit men of rank and local influence for their votes on the two great measures of repealing the test and penal laws. The country gentlemen, in their different counties, were tried with circular questions, whether they would comply with the king in their elections, or, if themselves chosen, in parliament. Those who refused such a promise were erased from the lists of justices and deputy-lieutenants.† Yet his biographer admits that he received little encouragement to proceed in the experiment of a parliament‡; and it is said by the French ambassador that evasive answers were returned to these questions, with such uniformity of expression as indicated an alarming degree of concert.§

Affair of Magdalen College.

It is unnecessary to dwell on circumstances so well known as the expulsion of the fellows of Magdalen College.‖ It was less extensively mischievous than the new modelling of corporations, but perhaps a more glaring act of despotism. For though the crown had been accustomed from the time of the reformation to send very peremptory commands to ecclesiastical foundations, and even to dispense with their statutes at discretion, with so little resistance that few seemed to doubt of its prerogative; though Elizabeth would probably have treated the fellows of any college much in the same manner as James II., if they had proceeded to an election in defiance of her recommendation; yet the right was not the less clearly theirs, and the struggles of a century would have been thrown away, if James II. was

* Burnet. Life of James, 169. D'Oyly's Life of Sancroft, i. 326. Lord Halifax, as is supposed, published a letter of advice to the dissenters, warning them against a coalition with the court, and promising all indulgence from the church. Ralph, 950. Somers Tracts, viii. 50.

† Ralph, 967. Lonsdale, p. 15. "It is to be observed," says the author of this memoir, "that most part of the offices in the nation, as justices of the peace, deputy-lieutenants, mayors, aldermen, and freemen of towns, are filled with Roman catholics and dissenters, after having suffered as many regulations as were necessary for that purpose. And thus stands the state of this nation in this month of September, 1688." P. 34. Notice is given in the London Gazette for December 11. 1687, that the lists of justices and deputy-lieutenants would be revised.

‡ Life of James, 183.

§ Mazure, ii. 302.

‖ The reader will find almost every thing relative to the subject in that incomparable repertory, the State Trials, xii. 1.; also some notes in the Oxford edition of Burnet.

to govern as the Tudors, or even as his father and grandfather had done before him.* And though Parker, bishop of Oxford, the first president whom the ecclesiastical commissioners obtruded on the college, was still nominally a protestant†, his successor Giffard was an avowed member of the church of Rome. The college was filled with persons of the same persuasion; mass was said in the chapel, and the established religion was excluded with a degree of open force which entirely took away all security for its preservation in any other place. This latter act, especially, of the Magdalen drama, in a still greater degree than the nomination of Massey to the deanery of Christ Church, seems a decisive proof that the king's repeated promises of contenting himself with a toleration of his own religion would have yielded to his insuperable bigotry and the zeal of his confessor. We may perhaps add to these encroachments upon the act of uniformity, the design imputed to him of conferring the archbishopric of York on father Petre; yet there would have been difficulties that seem insurmountable in the way of this, since, the validity of Anglican orders not being acknowledged by the church of Rome, Petre would not have sought consecration at the hands of Sancroft; nor, had he done so, would the latter have conferred it on him, even if the chapter of York had gone through the indispensable form of an election.‡

Infatuation of the king.

The infatuated monarch was irritated by that which he should have taken as a terrible warning, this resistance to his will from the university of Oxford. That sanctuary of pure unspotted loyalty, as some would say, that

* [This is the only ground to be taken in the great case of Magdalen College, as in that of Francis, at Cambridge, a little earlier; for the precedents of dispensing with college statutes by the royal authority were numerous. See Ralph, 958. But it is one thing to do an irregular act, and another to enforce it. A vindication of the proceedings of the ecclesiastical commission was published, wherein it is said, that "the legislative power in matters ecclesiastical was lodged in the king, and too ample to be limited by act of parliament." Id. 971.—1845.]

† Parker's Reasons for Abrogating the Test are written in such a tone as to make his readiness to abandon the protestant side very manifest, even if the common anecdotes of him should be exaggerated.

‡ It seems, however, confirmed by Mazure, ii. 390., with the addition, that Petre, like a second Wolsey, aspired also to be chancellor. The pope, however, would not make him a bishop, against the rules of the order of jesuits to which he belonged. Id. 241. James then tried, through lord Castlemain, to get him a cardinal's hat, but with as little success.

sink of all that was most abject in servility, as less courtly tongues might murmur, the university of Oxford, which had but four short years back, by a solemn decree in convocation, poured forth anathemas on all who had doubted the divine right of monarchy, or asserted the privileges of subjects against their sovereigns, which had boasted in its addresses of an obedience without any restrictions or limitations, which but recently had seen a known convert to popery, and a person disqualified in other ways, installed by the chapter without any remonstrance in the deanery of Christ Church, was now the scene of a firm though temperate opposition to the king's positive command, and soon after the willing instrument of his ruin. In vain the pamphleteers, on the side of the court, upbraided the clergy with their apostasy from the principles they had so much vaunted. The imputation it was hard to repel; but, if they could not retract their course without shame, they could not continue in it without destruction.* They were driven to extremity by the order of May 4. 1688, to read the declaration of indulgence in their churches.† This, as is well known, met with great resistance, and, by inducing the primate and six other bishops to present a petition to the king against it, brought on that famous prosecution, which, more perhaps than all his former actions, cost him the allegiance of the Anglican church. The proceedings upon the trial of those prelates are so familiar as to require no particular notice.‡ What is most worthy of remark is, that the very party who had most extolled the royal prerogative, and often in such terms as if all limitations of it were only to subsist at pleasure, became now the instruments of bringing it down within the compass and control of the law. If the king had

* "Above twenty years together," says Sir Roger L'Estrange, perhaps himself a disguised catholic, in his reply to the reasons of the clergy of the diocese of Oxford against petitioning (Somers Tracts, viii. 45.), "without any regard to the nobility, gentry, and commonalty, our clergy have been publishing to the world that the king can do greater things than are done in his declaration; but now the scene is altered, and they are become more concerned to maintain their reputation even with the commonalty than with the king." See also in the same volume, p. 19. "A remonstrance from the church of England to both houses of parliament." 1685; and p. 145. "A new test of the church of England's loyalty;" both, especially the latter, bitterly reproaching her members for their apostasy from former professions.

† Ralph, 982.

‡ See State Trials, xii. 183. D'Oyly's Life of Sancroft, i. 250.

a right to suspend the execution of statutes by proclamation, the bishops' petition might not indeed be libellous, but their disobedience and that of the clergy could not be warranted; and the principal argument both of the bar and the bench rested on the great question of that prerogative.

The king, meantime, was blindly hurrying on at the instigation of his own pride and bigotry, and of some ignorant priests; confident in the fancied obedience of the church, and in the hollow support of the dissenters, after all his wiser counsellors, the catholic peers, the nuncio, perhaps the queen herself, had grown sensible of the danger, and solicitous for temporizing measures. He had good reason to perceive that neither the fleet nor the army could be relied upon; to cashier the most rigidly protestant officers, to draft Irish troops into the regiments, to place all important commands in the hands of catholics, were difficult and even desperate measures, which rendered his designs more notorious, without rendering them more feasible. It is among the most astonishing parts of this unhappy sovereign's impolicy, that he sometimes neglected, even offended, never steadily and sufficiently courted, the sole ally that could by possibility have co-operated in his scheme of government. In his brother's reign, James had been the most obsequious and unhesitating servant of the French king. Before his own accession, his first step was to implore, through Barillon, a continuance of that support and protection, without which he could undertake nothing which he had designed in favour of the catholics. He received a present of 500,000 livres with tears of gratitude; and telling the ambassador he had not disclosed his real designs to his ministers, pressed for a strict alliance with Louis, as the means of accomplishing them.* Yet, with a strange inconsistency, he drew off gradually from these professions, and not only kept on rather cool terms with France during part of his reign, but sometimes played a double game by treating of a league with Spain.

James's coldness towards Louis.

The secret of this uncertain policy, which has not been well known till very lately, is to be found in the king's character. James had a real sense of the dignity pertaining to a king of England, and much of the

* Fox, App. 29.; Dalrymple, 107.; Mazure, i. 396. 433.

national pride as well as that of his rank. He felt the degradation of importuning an equal sovereign for money, which Louis gave less frequently and in smaller measure than it was demanded. It is natural for a proud man not to love those before whom he has abased himself. James, of frugal habits, and master of a great revenue, soon became more indifferent to a French pension. Nor was he insensible to the reproach of Europe, that he was grown the vassal of France and had tarnished the lustre of the English crown.* Had he been himself protestant, or his subjects catholic, he would probably have given the reins to that jealousy of his ambitious neighbour, which, even in his peculiar circumstances, restrained him from the most expedient course; I mean expedient, on the hypothesis that to overthrow the civil and religious institutions of his people was to be the main object of his reign. For it was idle to attempt this without the steady co-operation of France; and those sentiments of dignity and independence, which at first sight appear to do him honour, being without any consistent magnanimity of character, served only to accelerate his ruin, and confirm the persuasion of his incapacity.† Even in the memorable

* Several proofs of this occur in the course of M. Mazure's work. When the Dutch ambassador, Van Citers, showed him a paper, probably forged to exasperate him, but purporting to be written by some catholics, wherein it was said that it would be better for the people to be vassals of France than slaves of the devil, he burst out into rage. "'Jamais! non, jamais! je ne ferai rien qui me puisse mettre au-dessous des rois de France et d'Espagne. Vassal! vassal de la France!' s'écria-t-il avec emportement. 'Monsieur! si le parlement avoit voulu, s'il vouloit encore, j'aurois porté, je porterois encore la monarchie à un de consideration qu'elle n'a jamais eu sous aucune des rois mes prédécesseurs, et votre état y trouveroit peut-être sa propre sécurité.'" Vol. ii. 165. Sunderland said to Barillon, "Le roi d'Angleterre se reproche de ne pas être en Europe tout ce qu'il devoit être; et souvent il se plaint que le roi votre maitre n'a pas pour lui assez de considération." Id. 313. On the other hand, Louis was much mortified that James made so few applications for his aid. His hope seems to have been that by means of French troops, or troops at least in his pay, he should get a footing in England; and this was what the other was too proud and jealous to permit. "Comme le roi," he said, in 1687, "ne doute pas de mon affection et du désir que j'ai de voir la réligion catholique bien établie en Angleterre, il faut croire qu'il se trouve assez de force et d'autorité pour exécuter ses desseins, puisqu'il n'a pas recours à moi." P. 258.; also 174. 225. 320.

† James affected the same ceremonial as the king of France, and received the latter's ambassador sitting and covered. Louis only said, smiling, "Le roi mon frère est fier, mais il aime assez les pistoles de France." Mazure, i. 423. A more extraordinary trait of James's pride is mentioned by Dangeau, whom I quote from the Quarterly Review, xix. 470. After his retirement to St. Germains, he wore violet in court mourning; which, by etiquette, was confined to the kings

year 1688, though the veil was at length torn from his eyes on the verge of the precipice, and he sought in trembling the assistance he had slighted, his silly pride made him half unwilling to be rescued; and, when the French ambassador at the Hague, by a bold manœuvre of diplomacy, asserted to the States that an alliance already subsisted between his master and the king of England, the latter took offence at the unauthorised declaration, and complained privately that Louis treated him as an inferior.* It is probable that a more ingenuous policy in the court of Whitehall, by determining the king of France to declare war sooner on Holland, would have prevented the expedition of the prince of Orange.†

The latter continued to receive strong assurances of attachment from men of rank in England; but wanted that direct invitation to enter the kingdom with force, which he required both for his security and his justification. No men who thought much about their country's interests or their own would be hasty in venturing on so awful an enterprise. The punishment and ignominy of treason, the reproach of history, too often the sworn slave of fortune, awaited its failure. Thus Halifax and Nottingham found their conscience or their courage unequal to the crisis, and drew back from the hardy

of France. The courtiers were a little astonished to see *solem geminum*, though not at a loss where to worship. Louis, of course, had too much magnanimity to express resentment. But what a picture of littleness of spirit does this exhibit in a wretched pauper, who could only escape by the most contemptible insignificance the charge of most ungrateful insolence!

* Mazure, iii. 50. James was so much out of humour at D'Avaux's interference, that he asked his confidants, "if the king of France thought he could treat him like the cardinal of Furstenburg," a creature of Louis XIV. whom he had set up for the electorate of Cologne. Id. 69. He was in short so much displeased with his own ambassador at the Hague, Skelton, for giving into this declaration of D'Avaux, that he not only recalled, but sent him to the Tower. Burnet is therefore mistaken, p. 768., in believing that there was actually an alliance, though it was very natural that he should give credit to what an ambassador asserted in a matter of such importance. In fact, a treaty was signed between James and Louis, Sept. 13., by which some French ships were to be under the former's orders. Mazure, iii. 67.

† Louis continued to find money, though despising James and disgusted with him, probably with a view to his own grand interests. He should, nevertheless, have declared war against Holland in October, which must have put a stop to the armament. But he had discovered that James with extreme meanness had privately offered, about the end of September, to join the alliance against him as the only resource. This wretched action is first brought to light by M. Mazure, iii. 104. He excused himself to the king of France by an assurance that he was not acting sincerely towards Holland. Louis, though he gave up his intention of declaring war, behaved with great magnanimity and compassion towards the falling bigot.

Invitation signed to the prince of Orange.

conspiracy that produced the revolution.* Nor, perhaps, would the seven eminent persons, whose names are subscribed to the invitation addressed on the 30th of June, 1688, to the prince of Orange, the earls of Danby, Shrewsbury, and Devonshire, lord Lumley, the bishop of London, Mr. Henry Sidney, and admiral Russell, have committed themselves so far, if the recent birth of a prince of Wales had not made some measures of force absolutely necessary for the common interests of the nation and the prince of Orange.† It cannot be said without absurdity, that James was guilty of any offence in becoming father of this child; yet it was evidently that which rendered his other offences inexpiable. He was now considerably advanced in life; and the decided resistance of his subjects made it improbable that he could do much essential injury to the established constitution during the remainder of it. The mere certainty of all reverting to a protestant heir would be an effectual guarantee of the Anglican church. But the birth of a son to be nursed in the obnoxious bigotry of Rome, the prospect of a regency under the queen, so deeply implicated, according to common report, in the schemes of this reign, made every danger appear more terrible. From the moment that the queen's pregnancy was announced, the catholics gave way to enthusiastic unrepressed exultation; and, by the confidence with which they prophesied the birth of an heir, furnished a pretext for the suspicions which a disappointed people began to entertain.‡ These suspicions were very general; they extended to the highest ranks, and are a conspicuous instance of that prejudice which is chiefly founded on our wishes. Lord Danby, in a letter to William, of March 27., insinuates his doubt of the queen's pregnancy. After the child's birth, the seven subscribers to the association

Birth of the prince of Wales.

* Halifax all along discouraged the invasion, pointing out that the king made no progress in his schemes. Dalrymple, passim. Nottingham said he would keep the secret, but could not be a party to a treasonable undertaking (Id. 228. Burnet, 764.); and wrote as late as July to advise delay and caution. Notwithstanding the splendid success of the opposite counsels, it would be judging too servilely by the event not to admit that they were tremendously hazardous.

† The invitation to William seems to have been in debate some time before the prince of Wales's birth; but it does not follow that it would have been despatched if the queen had borne a daughter; nor do I think that it should have been.

‡ Ralph, 980. Mazure, ii. 367.

inviting the prince to come over, and pledging themselves to join him, say that not one in a thousand believe it to be the queen's; lord Devonshire separately held language to the same effect.* The princess Anne talked with little restraint of her suspicions, and made no scruple of imparting them to her sister.† Though no one can hesitate at present to acknowledge that the prince of Wales's legitimacy is out of all question, there was enough to raise a reasonable apprehension in the presumptive heir, that a party not really very scrupulous, and through religious animosity supposed to be still less so, had been induced by the undoubted prospect of advantage to draw the king, who had been wholly their slave, into one of those frauds which bigotry might call pious.‡

Justice and necessity of the Revolution.

The great event however of what has been emphatically denominated in the language of our public acts the Glorious Revolution stands in need of no vulgar credulity, no mistaken prejudice, for its support. It can only rest on the basis of a liberal theory of government, which looks to the public good as the great end for which positive laws and the constitutional order of states have been instituted. It cannot be defended without rejecting the slavish principles of absolute obedience, or even that pretended modification of them which imagines some extreme case of intolerable tyranny, some, as it were, lunacy of despotism, as the only plea and palliation of resistance. Doubtless the administration of James II. was not of this nature. Doubtless he was not a Caligula, or a Commodus, or an Ezzelin, or a Galeazzo Sforza, or a Christiern II. of Denmark, or a Charles IX. of France, or one of those almost innumerable

* Dalrymple, 216. 228. The prince was urged in the memorial of the seven to declare the fraud of the queen's pregnancy to be one of the grounds of his expedition. He did this: and it is the only part of his declaration that is false.

† State Trials, xii. 151. Mary put some very sensible questions to her sister, which show her desire of reaching the truth in so important a matter. They were answered in a style which shows that Anne did not mean to lessen her sister's suspicions. Dalrymple, 305. Her conversation with lord Clarendon on this subject, after the depositions had been taken, is a proof that she had made up her mind not to be convinced. Henry Earl of Clarendon's Diary, 77. 79. State Trials, ubi suprà.

‡ M. Mazure has collected all the passages in the letters of Barillon and Bonrepos to the court of France relative to the queen's pregnancy, ii. 366.; and those relative to the birth of the prince of Wales, p. 547. It is to be observed that this took place more than a month before the time expected.

tyrants whom men have endured in the wantonness of unlimited power. No man had been deprived of his liberty by any illegal warrant. No man, except in the single though very important instance of Magdalen College, had been despoiled of his property. I must also add that the government of James II. will lose little by comparison with that of his father. The judgment in favour of his prerogative to dispense with the test, was far more according to received notions of law, far less injurious and unconstitutional, than that which gave a sanction to ship-money. The injunction to read the declaration of indulgence in churches was less offensive to scrupulous men than the similar command to read the declaration of Sunday sports in the time of Charles I. Nor was any one punished for a refusal to comply with the one; while the prisons had been filled with those who had disobeyed the other. Nay, what is more, there are much stronger presumptions of the father's than of the son's intention to lay aside parliaments, and set up an avowed despotism. It is indeed amusing to observe that many, who scarcely put bounds to their eulogies of Charles I., have been content to abandon the cause of one who had no faults in his public conduct but such as seemed to have come by inheritance. The characters of the father and son were very closely similar; both proud of their judgment as well as their station, and still more obstinate in their understanding than in their purpose; both scrupulously conscientious in certain great points of conduct, to the sacrifice of that power which they had preferred to every thing else; the one far superior in relish for the arts and for polite letters, the other more diligent and indefatigable in business; the father exempt from those vices of a court to which the son was too long addicted; not so harsh perhaps or prone to severity in his temper, but inferior in general sincerity and adherence to his word. They were both equally unfitted for the condition in which they were meant to stand — the limited kings of a wise and free people, the chiefs of the English commonwealth.

The most plausible argument against the necessity of so violent a remedy for public grievances as the abjuration of allegiance to a reigning sovereign, was one that misled half the nation in that age, and is still sometimes insinuated by

those whose pity for the misfortunes of the house of Stuart appears to predominate over every other sentiment which the history of the revolution should excite. It was alleged that the constitutional mode of redress by parliament was not taken away; that the king's attempts to obtain promises of support from the electors and probable representatives showed his intention of calling one; that the writs were in fact ordered before the prince of Orange's expedition; that after the invader had reached London, James still offered to refer the terms of reconciliation with his people to a free parliament, though he could have no hope of evading any that might be proposed; that by reversing illegal judgments, by annulling unconstitutional dispensations, by reinstating those who had been unjustly dispossessed, by punishing wicked advisers, above all, by passing statutes to restrain the excesses and cut off the dangerous prerogatives of the monarchy, (as efficacious, or more so, than the bill of rights and other measures that followed the revolution,) all risk of arbitrary power, or of injury to the established religion, might have been prevented, without a violation of that hereditary right which was as fundamental in the constitution as any of the subject's privileges. It was not necessary to enter upon the delicate problem of absolute non-resistance, or to deny that the conservation of the whole was paramount to all positive laws. The question to be proved was, that a regard to this general safety exacted the means employed in the revolution, and constituted that extremity which could alone justify such a deviation from the standard rules of law and religion.

It is evidently true that James had made very little progress, or rather experienced a signal defeat, in his endeavour to place the professors of his own religion on a firm and honourable basis. There seems the strongest reason to believe, that far from reaching his end through the new parliament, he would have experienced those warm assaults on the administration, which generally distinguished the house of commons under his father and brother. But, as he was in no want of money, and had not the temper to endure what he thought the language of republican faction, we may be equally sure that a short and angry session would have ended with a more decided resolution on his side to govern in future with-

out such impracticable counsellors. The doctrine imputed of old to lord Strafford, that, after trying the good-will of parliament in vain, a king was absolved from the legal maxims of government, was always at the heart of the Stuarts. His army was numerous, according at least to English notions; he had already begun to fill it with popish officers and soldiers; the militia, though less to be depended on, was under the command of lord and deputy lieutenants carefully selected; above all, he would at the last have recourse to France; and though the experiment of bringing over French troops was very hazardous, it is difficult to say that he might not have succeeded, with all these means, in preventing or putting down any concerted insurrection. But at least the renewal of civil bloodshed and the anarchy of rebellion seemed to be the alternative of slavery, if William had never earned the just title of our deliverer. It is still more evident that, after the invasion had taken place, and a general defection had exhibited the king's inability to resist, there could have been no such compromise as the tories fondly expected, no legal and peaceable settlement in what they called a free parliament, leaving James in the real and recognized possession of his constitutional prerogatives. Those who have grudged William III. the laurels that he won for our service are ever prone to insinuate, that his unnatural ambition would be content with nothing less than the crown, instead of returning to his country after he had convinced the king of the error of his counsels, and obtained securities for the religion and liberties of England. The hazard of the enterprise, and most hazardous it truly was, was to have been his; the profit and advantage our own. I do not know that William absolutely expected to place himself on the throne; because he could hardly anticipate that James would so precipitately abandon a kingdom wherein he was acknowledged, and had still many adherents. But undoubtedly he must, in consistency with his magnanimous designs, have determined to place England in its natural station, as a party in the great alliance against the power of Louis XIV. To this one object of securing the liberties of Europe, and chiefly of his own country, the whole of his heroic life was directed with undeviating, undisheartened firmness. He had in view no distant prospect, when the entire

succession of the Spanish monarchy would be claimed by that insatiable prince, whose renunciation at the treaty of the Pyrenees was already maintained to be invalid. Against the present aggressions and future schemes of this neighbour the league of Augsburg had just been concluded. England, a free, a protestant, a maritime kingdom, would, in her natural position, as a rival of France, and deeply concerned in the independence of the Netherlands, become a leading member of this confederacy. But the sinister attachments of the house of Stuart had long diverted her from her true interests, and rendered her councils disgracefully and treacherously subservient to those of Louis. It was therefore the main object of the prince of Orange to strengthen the alliance by the vigorous co-operation of this kingdom; and with no other view, the emperor, and even the pope, had abetted his undertaking. But it was impossible to imagine that James would have come with sincerity into measures so repugnant to his predilections and interests. What better could be expected than a recurrence of that false and hollow system which had betrayed Europe and dishonoured England under Charles II.; or rather, would not the sense of injury and thraldom have inspired still more deadly aversion to the cause of those to whom he must have ascribed his humiliation? There was as little reason to hope that he would abandon the long-cherished schemes of arbitrary power, and the sacred interests of his own faith. We must remember that, when the adherents or apologists of James II. have spoken of him as an unfortunately misguided prince, they have insinuated what neither the notorious history of those times, nor the more secret information since brought to light, will in any degree confirm. It was indeed a strange excuse for a king of such mature years, and so trained in the most diligent attention to business. That in some particular instances he acted under the influence of his confessor, Petre, is not unlikely; but the general temper of his administration, his notions of government, the objects he had in view, were perfectly his own, and were pursued rather in spite of much dissuasion and many warnings, than through the suggestions of any treacherous counsellors.

Both with respect therefore to the prince of Orange and to

the English nation, James II. was to be considered as an enemy whose resentment could never be appeased, and whose power consequently must be wholly taken away. It is true that, if he had remained in England, it would have been extremely difficult to deprive him of the nominal sovereignty. But in this case, the prince of Orange must have been invested, by some course or other, with all its real attributes. He undoubtedly intended to remain in this country; and could not otherwise have preserved that entire ascendancy which was necessary for his ultimate purposes. The king could not have been permitted, with any common prudence, to retain the choice of his ministers, or the command of his army, or his negative voice in laws, or even his personal liberty; by which I mean, that his guards must have been either Dutch, or at least appointed by the prince and parliament. Less than this it would have been childish to require; and this would not have been endured by any man even of James's spirit, or by the nation, when the re-action of loyalty should return, without continued efforts to get rid of an arrangement far more revolutionary and subversive of the established monarchy than the king's deposition.

Favourable circumstances attending the revolution.

In the revolution of 1688 there was an unusual combination of favouring circumstances, and some of the most important, such as the king's sudden flight, not within prior calculation, which render it no precedent for other times and occasions in point of expediency, whatever it may be in point of justice. Resistance to tyranny by overt rebellion incurs not only the risks of failure, but those of national impoverishment and confusion, of vindictive retaliation, and such aggressions (perhaps inevitable) on private right and liberty as render the name of revolution and its adherents odious. Those, on the other hand, who call in a powerful neighbour to protect them from domestic oppression, may too often expect to realise the horse of the fable, and endure a subjection more severe, permanent, and ignominious, than what they shake off. But the revolution effected by William III. united the independent character of a national act with the regularity and the coercion of anarchy which belong to a military invasion. The United Provinces were not such a foreign potentate as could put in

jeopardy the independence of England; nor could his army have maintained itself against the inclinations of the kingdom, though it was sufficient to repress any turbulence that would naturally attend so extraordinary a crisis. Nothing was done by the multitude; no new men, either soldiers or demagogues, had their talents brought forward by this rapid and pacific revolution; it cost no blood, it violated no right, it was hardly to be traced in the course of justice; the formal and exterior character of the monarchy remained nearly the same in so complete a regeneration of its spirit. Few nations can hope to ascend up to the sphere of a just and honourable liberty, especially when long use has made the track of obedience familiar, and they have learned to move as it were only by the clank of the chain, with so little toil and hardship. We reason too exclusively from this peculiar instance of 1688, when we hail the fearful struggles of other revolutions with a sanguine and confident sympathy. Nor is the only error upon this side. For, as if the inveterate and cankerous ills of a commonwealth could be extirpated with no loss and suffering, we are often prone to abandon the popular cause in agitated nations with as much fickleness as we embraced it, when we find that intemperance, irregularity, and confusion, from which great revolutions are very seldom exempt. These are indeed so much their usual attendants, the re-action of a self-deceived multitude is so probable a consequence, the general prospect of success in most cases so precarious, that wise and good men are more likely to hesitate too long, than to rush forward too eagerly. Yet, "whatever be the cost of this noble liberty, we must be content to pay it to Heaven."*

It is unnecessary even to mention those circumstances of this great event, which are minutely known to almost all my readers. They were all eminently favourable in their effect to the regeneration of our constitution; even one of temporary inconvenience, namely, the return of James to London, after his detention by the fishermen near Feversham. This, as Burnet has observed, and as is easily demonstrated by the writings of that time, gave a different colour to the state of

* Montesquieu.

affairs, and raised up a party which did not before exist, or at least was too disheartened to show itself.* His first desertion of the kingdom had disgusted every one, and might be construed into a voluntary cession. But his return to assume again the government put William under the necessity of using that intimidation which awakened the mistaken sympathy of a generous people. It made his subsequent flight, though certainly not what a man of courage enough to give his better judgment free play would have chosen, appear excusable and defensive. It brought out too glaringly, I mean for the satisfaction of prejudiced minds, the undeniable fact, that the two houses of convention deposed and expelled their sovereign. Thus the great schism of the Jacobites, though it must otherwise have existed, gained its chief strength; and the revolution, to which at the outset a coalition of whigs and tories had conspired, became, in its final result, in the settlement of the crown upon William and Mary, almost entirely the work of the former party.

But while the position of the new government was thus rendered less secure, by narrowing the basis of public opinion whereon it stood, the liberal principles of policy which the whigs had espoused became incomparably more powerful, and were necessarily involved in the continuance of the revolution settlement. The ministers of William III. and of the house of Brunswick had no choice but to respect and countenance the doctrines of Locke, Hoadley, and Molesworth.

* Some short pamphlets, written at this juncture to excite sympathy for the king, and disapprobation of the course pursued with respect to him, are in the Somers Collection, vol. ix. But this force put upon their sovereign first wounded the consciences of Sancroft and the other bishops, who had hitherto done as much as in their station they well could to ruin the king's cause and paralyse his arms. Several modern writers have endeavoured to throw an interest about James at the moment of his fall, either from a lurking predilection for all legitimately crowned heads, or from a notion that it becomes a generous historian to excite compassion for the unfortunate. There can be no objection to pitying James, if this feeling is kept unmingled with any blame of those who were the instruments of his misfortune. It was highly expedient for the good of this country, because the revolution settlement could not otherwise be attained, to work on James's sense of his deserted state by intimidation; and for that purpose the order conveyed by three of his own subjects, perhaps with some rudeness of manner, to leave Whitehall, was necessary. The drift of several accounts of the revolution that may be read is to hold forth Mulgrave, Craven, Arran, and Dundee to admiration, at the expense of William and of those who achieved the great consolidation of English liberty.

The assertion of passive obedience to the crown grew obnoxious to the crown itself. Our new line of sovereigns scarcely ventured to hear of their hereditary right, and dreaded the cup of flattery that was drugged with poison. This was the greatest change that affected our monarchy by the fall of the house of Stuart. The laws were not so materially altered as the spirit and sentiments of the people. Hence those who look only at the former have been prone to underrate the magnitude of this revolution. The fundamental maxims of the constitution, both as they regard the king and the subject, may seem nearly the same; but the disposition with which they were received and interpreted was entirely different.

Its salutary consequences.

It was in this turn of feeling, in this change, if I may so say, of the heart, far more than in any positive statutes and improvements of the law, that I consider the revolution to have been eminently conducive to our freedom and prosperity. Laws and statutes as remedial, nay, more closely limiting the prerogative than the bill of rights and act of settlement, might possibly have been obtained from James himself, as the price of his continuance on the throne, or from his family as that of their restoration to it. But what the revolution did for us was this; it broke a spell that had charmed the nation. It cut up by the roots all that theory of indefeasible right, of paramount prerogative, which had put the crown in continual opposition to the people. A contention had now subsisted for five hundred years, but particularly during the last four reigns, against the aggressions of arbitrary power. The sovereigns of this country had never patiently endured the control of parliament; nor was it natural for them to do so, while the two houses of parliament appeared historically, and in legal language, to derive their existence as well as privileges from the crown itself. They had at their side the pliant lawyers, who held the prerogative to be uncontrollable by statutes, a doctrine of itself destructive to any scheme of reconciliation and compromise between the king and his subjects; they had the churchmen, whose casuistry denied that the most intolerable tyranny could excuse resistance to a lawful government.

These two propositions could not obtain general acceptation without rendering all national liberty precarious.

It has been always reckoned among the most difficult problems in the practical science of government, to combine an hereditary monarchy with security of freedom, so that neither the ambition of kings shall undermine the people's rights, nor the jealousy of the people overturn the throne. England had already experience of both these mischiefs. And there seemed no prospect before her, but either their alternate recurrence, or a final submission to absolute power, unless by one great effort she could put the monarchy for ever beneath the law, and reduce it to an integrant portion instead of the primary source and principle of the constitution. She must reduce the favoured maxim, "A Deo rex, à rege lex;" and make the crown itself appear the creature of the law. But our ancient monarchy, strong in a possession of seven centuries, and in those high and paramount prerogatives which the consenting testimony of lawyers and the submission of parliaments had recognized, a monarchy from which the house of commons and every existing peer, though not perhaps the aristocratic order itself, derived its participation in the legislature, could not be bent to the republican theories which have been not very successfully attempted in some modern codes of constitution. It could not be held, without breaking up all the foundations of our polity, that the monarchy emanated from the parliament, or, in any historical sense, from the people. But by the revolution and by the act of settlement, the rights of the actual monarch, of the reigning family, were made to emanate from the parliament and the people. In technical language, in the grave and respectful theory of our constitution, the crown is still the fountain from which law and justice spring forth. Its prerogatives are in the main the same as under the Tudors and the Stuarts; but the right of the house of Brunswick to exercise them can only be deduced from the convention of 1688.

The great advantage therefore of the revolution, as I would explicitly affirm, consists in that which was reckoned its reproach by many, and its misfortune by more; that it broke the line of succession. No other remedy could have

been found, according to the temper and prejudices of those times, against the unceasing conspiracy of power. But when the very tenure of power was conditional, when the crown, as we may say, gave recognizances for its good behaviour, when any violent and concerted aggressions on public liberty would have ruined those who could only resist an inveterate faction by the arms which liberty put in their hands, the several parts of the constitution were kept in cohesion by a tie far stronger than statutes, that of a common interest in its preservation. The attachment of James to popery, his infatuation, his obstinacy, his pusillanimity, nay even the death of the duke of Glocester, the life of the prince of Wales, the extraordinary permanence and fidelity of his party, were all the destined means through which our present grandeur and liberty, our dignity of thinking on matters of government, have been perfected. Those liberal tenets, which at the era of the revolution were maintained but by one denomination of English party, and rather perhaps on authority of not very good precedents in our history than of sound general reasoning, became in the course of the next generation almost equally the creed of the other, whose long exclusion from government taught them to solicit the people's favour; and by the time that Jacobitism was extinguished had passed into received maxims of English politics. None at least would care to call them in question within the walls of parliament; nor have their opponents been of much credit in the paths of literature. Yet, as since the extinction of the house of Stuart's pretensions, and other events of the last half century, we have seen those exploded doctrines of indefeasible hereditary right revived under another name, and some have been willing to misrepresent the transactions of the revolution and the act of settlement as if they did not absolutely amount to a deposition of the reigning sovereign, and an election of a new dynasty by the representatives of the nation in parliament, it may be proper to state precisely the several votes, and to point out the impossibility of reconciling them to any gentler construction.

The lords spiritual and temporal, to the number of about ninety, and an assembly of all who had sat in any of king Charles's parliaments, with the lord mayor and

Proceedings of the convention.

fifty of the common council, requested the prince of Orange to take upon him the administration after the king's second flight, and to issue writs for a convention in the usual manner.* This was on the 26th of December; and the convention met on the 22d of January. Their first care was to address the prince to take the administration of affairs and disposal of the revenue into his hands, in order to give a kind of parliamentary sanction to the power he already exercised. On the 28th of January the commons, after a debate in which the friends of the late king made but a faint opposition†, came to their great vote: That king James II. having endeavoured to subvert the constitution of this kingdom, by breaking the original contract between king and people, and by the advice of jesuits and other wicked persons having violated the fundamental laws, and having withdrawn himself out of the kingdom, has abdicated the government, and that the throne is thereby vacant. They resolved unanimously the next day, that it hath been found by experience inconsistent with the safety and welfare of this protestant kingdom to be governed by a popish prince.‡ This vote was a remarkable triumph of the whig party, who had contended for the exclusion bill; and, on account of that endeavour to establish a principle which no one was now found to controvert, had been subjected to all the insults and reproaches of

* Parl. Hist. v. 26. The former address on the king's first quitting London, signed by the peers and bishops, who met at Guildhall, Dec. 11., did not, in express terms, desire the prince of Orange to assume the government, or to call a parliament, though it evidently tended to that result, censuring the king and extolling the prince's conduct. Id. 19. It was signed by the archbishop, his last public act. Burnet has exposed himself to the lash of Ralph by stating this address of Dec. 11. incorrectly. [The prince issued two proclamations, Jan. 16. and 21., addressed to the soldiers and sailors, on which Ralph comments in his usual invidious manner. They are certainly expressed in a high tone of sovereignty, without the least allusion to the king, or to the request of the peers, and some phrases might give offence to our lawyers. Ralph, ii. 10. — 1845.]

† [It appears by some notes of the debate in the convention, published in the Hardwicke Papers, ii. 401., that the vote of abdication was carried with only three negatives. The tide ran too high for the tories, though some of them spoke; they recovered their spirits after the lords' amendments. This account of the debate is remarkable, and clears up much that is obscure in Grey, whom the Parliamentary History has copied. The declaration of right was drawn up rather hastily, Serjeant Maynard, as well as younger lawyers, pressing for no delay in filling the throne. I suppose that the wish to screen themselves under the statute of Henry VII. had something to do with this; which was also very expedient in itself. — 1845.]

‡ Commons' Journals; Parl. Hist.

the opposite faction. The lords agreed with equal unanimity to this vote; which, though it was expressed only as an abstract proposition, led by a practical inference to the whole change that the whigs had in view. But upon the former resolution several important divisions took place. The first question put, in order to save a nominal allegiance to the late king, was, whether a regency with the administration of regal power under the style of king James II. during the life of the said king James, be the best and safest way to preserve the protestant religion and the laws of this kingdom? This was supported both by those peers who really meant to exclude the king from the enjoyment of power, such as Nottingham, its great promoter, and by those who, like Clarendon, were anxious for his return upon terms of security for their religion and liberty. The motion was lost by fifty-one to forty-nine; and this seems to have virtually decided, in the judgment of the house, that James had lost the throne.* The lords then resolved that there was an original contract between the king and people, by fifty-five to forty-six; a position that seems rather too theoretical, yet necessary at that time, as denying the divine origin of monarchy, from which its absolute and indefeasible authority had been plausibly derived. They concurred, without much debate, in the rest of the commons' vote; till they came to the clause that he had abdicated the government, for which they substituted the word "deserted." They next omitted the final and most important clause, that the throne was thereby vacant, by a majority of fifty-five to forty-one. This was owing to the party of lord Danby, who asserted a devolution of the crown on the princess of Orange. It seemed to be tacitly understood by both sides that the infant child was to be presumed spurious. This at least was a necessary supposition for the tories, who sought in the idle rumours of the time an excuse for abandoning his right. As to the whigs, though they were active in discrediting this unfortunate boy's legitimacy,

* Somerville and several other writers have not accurately stated the question; and suppose the lords to have debated whether the throne, on the hypothesis of its vacancy, should be filled by a king or a regent. Such a mode of putting the question would have been absurd. I observe that M. Mazure has been deceived by these authorities.

their own broad principles of changing the line of succession rendered it, in point of argument, a superfluous enquiry. The tories, who had made little resistance to the vote of abdication, when it was proposed in the commons, recovered courage by this difference between the two houses; and perhaps by observing the king's party to be stronger out of doors than it had appeared to be, were able to muster 151 voices against 282 in favour of agreeing with the lords in leaving out the clause about the vacancy of the throne.* There was still, however, a far greater preponderance of the whigs in one part of the convention, than of the tories in the other. In the famous conference that ensued between committees of the two houses upon these amendments, it was never pretended that the word "abdication" was used in its ordinary sense, for a voluntary resignation of the crown. The commons did not practise so pitiful a subterfuge. Nor could the lords explicitly maintain, whatever might be the wishes of their managers, that the king was not expelled and excluded as much by their own word "desertion" as by that which the lower house had employed. Their own previous vote against a regency was decisive upon this point.† But as abdication was a gentler term than forfeiture, so desertion appeared a still softer method of expressing the same idea. Their chief objection, however, to the former word was that it led, or might seem to lead, to the vacancy of the throne, against which their principal arguments were directed. They contended that in our government there could be no interval or vacancy, the heir's right being complete by a demise of the crown; so that it would at once render the monarchy elective, if any other person were designated to the succession. The commons did not deny that the present case was one of election, though they refused to allow that the monarchy was thus rendered perpetually elective. They asked, supposing a right to descend upon the next heir, who was that heir to inherit it?

* Parl. Hist. 61. The chief speakers on this side were old sir Thomas Clarges, brother-in-law of general Monk, who had been distinguished as an opponent of administration under Charles and James, and Mr. Finch, brother of lord Nottingham, who had been solicitor-general to Charles, but was removed in the late reign.

† James is called "the late king" in a resolution of the lords on Feb. 2.

and gained one of their chief advantages by the difficulty of evading this question. It was indeed evident that, if the lords should carry their amendments, an enquiry into the legitimacy of the prince of Wales could by no means be dispensed with. Unless that could be disproved more satisfactorily than they had reason to hope, they must come back to the inconveniences of a regency, with the prospect of bequeathing interminable confusion to their posterity. For, if the descendants of James should continue in the Roman catholic religion, the nation might be placed in the ridiculous situation of acknowledging a dynasty of exiled kings, whose lawful prerogative would be withheld by another race of protestant regents. It was indeed strange to apply the provisional substitution of a regent in cases of infancy or imbecility of mind to a prince of mature age, and full capacity for the exercise of power. Upon the king's return to England, this delegated authority must cease of itself; unless supported by votes of parliament as violent and incompatible with the regular constitution as his deprivation of the royal title; but far less secure for the subject, whom the statute of Henry VII. would shelter in paying obedience to a king de facto, while the fate of sir Henry Vane was an awful proof that no other name could give countenance to usurpation. A great part of the nation not thirty years before had been compelled by acts of parliament* to declare upon oath their abhorrence of that traitorous position, that arms might be taken up by the king's authority against his person or those commissioned by him, through the influence of those very tories or loyalists who had now recourse to the identical distinction between the king's natural and political capacity, for which the presbyterians had incurred so many reproaches.

In this conference, however, if the whigs had every advantage on the solid grounds of expediency, or rather political necessity, the tories were as much superior in the mere argument, either as it regarded the common sense of words, or the principles of our constitutional law. Even should we admit that an hereditary king is competent to abdicate the throne in the name of all his posterity, this could only be

* 13 Car. II. c. i.; 17 Car. II. c. ii.

intended of a voluntary and formal cession, not such a constructive abandonment of his right by misconduct as the commons had imagined. The word "forfeiture" might better have answered this purpose; but it had seemed too great a violence on principles which it was more convenient to undermine than to assault. Nor would even forfeiture bear out by analogy the exclusion of an heir, whose right was not liable to be set aside at the ancestor's pleasure. It was only by recurring to a kind of paramount, and what I may call hyper-constitutional law, a mixture of force and regard to the national good, which is the best sanction of what is done in revolutions, that the vote of the commons could be defended. They proceeded not by the stated rules of the English government, but the general rights of mankind. They looked not so much to Magna Charta as the original compact of society, and rejected Coke and Hale for Hooker and Harrington.

The house of lords, after this struggle against principles undoubtedly very novel in the discussions of parliament, gave way to the strength of circumstance and the steadiness of the commons. They resolved not to insist on their amendments to the original vote; and followed this up by a resolution, that the prince and princess of Orange shall be declared king and queen of England, and all the dominions thereunto belonging.* But the commons with a noble patriotism delayed to concur in this hasty settlement of the crown, till they should have completed the declaration of those fundamental rights and liberties for the sake of which alone they had gone forward with this great revolution.† That declaration, being at once an exposition of the misgovernment which had compelled them to dethrone the late king, and of the conditions

* This was carried by sixty-two to forty-seven, according to lord Clarendon; several of the tories going over, and others who had been hitherto absent coming down to vote. Forty peers protested, including twelve bishops, out of seventeen present. Trelawney, who had voted against the regency, was one of them; but not Compton, Lloyd of St. Asaph, Crewe, Sprat, or Hall; the three former, I believe, being in the majority. Lloyd had been absent when the vote passed against a regency, out of unwillingness to disagree with the majority of his brethren; but he was entirely of Burnet's mind. The votes of the bishops are not accurately stated in most books; which has induced me to mention them here. Lords' Journals, Feb. 6.

† It had been resolved, Jan. 29., that before the committee proceed to fill the throne now vacant, they will proceed to secure our religion, laws, and liberties.

upon which they elected his successors, was incorporated in the final resolution to which both houses came on the 13th of February, extending the limitation of the crown as far as the state of affairs required: "That William and Mary, prince and princess of Orange, be, and be declared king and queen of England, France, and Ireland, and the dominions thereunto belonging, to hold the crown and dignity of the said kingdoms and dominions to them, the said prince and princess, during their lives, and the life of the survivor of them; and that the sole and full exercise of the regal power be only in, and executed by, the said prince of Orange, in the names of the said prince and princess, during their joint lives; and after their decease the said crown and royal dignity of the said kingdoms and dominions to be to the heirs of the body of the said princess; for default of such issue, to the princess Anne of Denmark, and the heirs of her body; and for default of such issue, to the heirs of the body of the said prince of Orange."

Elevation of William and Mary to the throne.

Thus, to sum up the account of this extraordinary change in our established monarchy, the convention pronounced, under the slight disguise of a word unusual in the language of English law, that the actual sovereign had forfeited his right to the nation's allegiance. It swept away by the same vote the reversion of his posterity and of those who could claim the inheritance of the crown. It declared that, during an interval of nearly two months, there was no king of England; the monarchy lying, as it were, in abeyance from the 23d of December to the 13th of February. It bestowed the crown on William, jointly with his wife indeed, but so that her participation of the sovereignty should be only in name.*

* See Burnet's remarkable conversation with Bentinck, wherein the former warmly opposed the settlement of the crown on the prince of Orange alone, as Halifax had suggested. But nothing in it is more remarkable than that the bishop does not perceive that this was virtually done; for it would be difficult to prove that Mary's royalty differed at all from that of a queen consort, except in having her name in the style. She was exactly in the same predicament as Philip had been during his marriage with Mary I. Her admirable temper made her acquiesce in this exclusion from power, which the sterner character of her husband demanded; and with respect to the conduct of the convention, it must be observed that the nation owed her no particular debt of gratitude, nor had she any better claim than her sister to fill a throne by election, which had been declared vacant. In fact, there was no middle course between what was done, and following the precedent of Philip, as to which Bentinck

It postponed the succession of the princess Anne during his life. Lastly, it made no provision for any future devolution of the crown in failure of issue from those to whom it was thus limited, leaving that to the wisdom of future parliaments. Yet only eight years before, nay much less, a large part of the nation had loudly proclaimed the incompetency of a full parliament, with a lawful king at its head, to alter the lineal course of succession. No whig had then openly professed the doctrine, that not only a king, but an entire royal family, might be set aside for public convenience. The notion of an original contract was denounced as a republican chimera. The deposing of kings was branded as the worst birth of popery and fanaticism. If other revolutions have been more extensive in their effect on the established government, few perhaps have displayed a more rapid transition of public opinion. For it cannot, I think, be reasonably doubted that the majority of the nation went along with the vote of their representatives. Such was the termination of that contest, which the house of Stuart had obstinately maintained against the liberties, and of late, against the religion of England; or rather, of that far more ancient controversy between the crown and the people which had never been wholly at rest since the reign of John. During this long period, the balance, except in a few irregular intervals, had been swayed in favour of the crown; and though the government of England was always a monarchy limited by law, though it always, or at least since the admission of the commons into the legislature, partook of the three simple forms, yet the character of a monarchy was evidently prevalent over the other parts of the

said, he fancied the prince would not like to be his wife's gentleman usher; for a divided sovereignty was a monstruous and impracticable expedient in theory, however the submissive disposition of the queen might have prevented its mischiefs. Burnet seems to have had a puzzled view of this: for he says afterwards, "It seemed to be a double-bottomed monarchy, where there were two joint sovereigns; but those who know the queen's temper and principles had no apprehensions of divided counsels, or of a distracted government." Vol. ii. 2. The convention had not trusted to the queen's temper and principles. It required a distinct act of parliament (2 W. & M. c. 6.) to enable her to exercise the regal power during the king's absence from England. [It was urged by some, not without plausible grounds, on Mary's death, that the parliament was dissolved by that event, the writs having been issued in her name as well as the king's. A paper, printed but privately handed about, with the design to prove this, will be found in Parl. Hist. v. 867. But it was not warmly taken up by any party. — 1845.]

constitution. But, since the revolution of 1688, and particularly from thence to the death of George II., after which the popular element grew much stronger, it seems equally just to say, that the predominating character has been aristocratical; the prerogative being in some respects too limited, and in others too little capable of effectual exercise, to counterbalance the hereditary peerage, and that class of great territorial proprietors, who, in a political division, are to be reckoned among the proper aristocracy of the kingdom. This, however, will be more fully explained in the two succeeding chapters.

CHAPTER XV.

ON THE REIGN OF WILLIAM III.

Declaration of Rights — Bill of Rights — Military Force without Consent declared illegal — Discontent with the new Government — Its Causes — Incompatibility of the Revolution with received Principles — Character and Errors of William — Jealousy of the Whigs — Bill of Indemnity — Bill for restoring Corporations — Settlement of the Revenue — Appropriation of Supplies — Dissatisfaction of the King — No Republican Party in Existence — William employs Tories in Ministry — Intrigues with the late King — Schemes for his Restoration — Attainder of Sir John Fenwick — Ill Success of the War — Its Expenses — Treaty of Ryswick — Jealousy of the Commons — Army reduced — Irish Forfeitures resumed — Parliamentary Enquiries — Treaties of Partition — Improvements in Constitution under William — Bill for Triennial Parliaments — Law of Treason — Statute of Edward III. — Its constructive Interpretation — Statute of William III. — Liberty of the Press — Law of Libel — Religious Toleration — Attempt at Comprehension — Schism of the Non-jurors — Laws against Romon Catholics — Act of Settlement — Limitations of Prerogative contained in it — Privy Council superseded by a Cabinet — Exclusion of Placemen and Pensioners from Parliament — Independence of Judges — Oath of Abjuration.

THE Revolution is not to be considered as a mere effort of the nation on a pressing emergency to rescue itself from the violence of a particular monarch; much less as grounded upon the danger of the Anglican church, its emoluments, and dignities, from the bigotry of a hostile religion. It was rather the triumph of those principles which, in the language of the present day, are denominated liberal or constitutional, over those of absolute monarchy, or of monarchy not effectually controlled by stated boundaries. It was the termination of a contest between the regal power and that of parliament, which could not have been brought to so favourable an issue by any other means. But, while the chief renovation in the spirit of our government was likely to spring from breaking the line of succession, while no positive enactments would have sufficed to give security to freedom with the legitimate race of Stuart on the throne, it would have been most culpable, and even preposterous, to permit this occasion to pass by, without asserting and defining those rights and

liberties, which the very indeterminate nature of the king's prerogative at common law, as well as the unequivocal extension it had lately received, must continually place in jeopardy. The house of lords indeed, as I have observed in the last chapter, would have conferred the crown on William and Mary, leaving the redress of grievances to future arrangement; and some eminent lawyers in the commons, Maynard and Pollexfen, seem to have had apprehensions of keeping the nation too long in a state of anarchy.* But the great majority of the commons wisely resolved to go at once to the root of the nation's grievances, and show their new sovereign that he was raised to the throne for the sake of those liberties, by violating which his predecessor had forfeited it.

The declaration of rights presented to the prince of Orange by the marquis of Halifax, as speaker of the lords, in the presence of both houses, on the 18th of February, consists of three parts: a recital of the illegal and arbitrary acts committed by the late king, and of their consequent vote of abdication; a declaration, nearly following the words of the former part, that such enumerated acts are illegal; and a resolution, that the throne shall be filled by the prince and princess of Orange, according to the limitations mentioned in the last chapter. Thus the declaration of rights was indissolubly connected with the revolution-settlement, as its motive and its condition. Declaration of rights.

The lords and commons in this instrument declare: That the pretended power of suspending laws, and the execution of laws, by regal authority without consent of parliament, is illegal; That the pretended power of dispensing with laws by regal authority, as it hath been assumed and exercised of late, is illegal; That the commission for creating the late court of commissioners for ecclesiastical causes, and all other commissions and courts of the like nature, are illegal and pernicious; That levying of money for or to the use of the crown, by pretence of prerogative without grant of parliament, for longer time or in any other manner than the same is or shall be granted, is illegal; That it is the right of the subjects to petition the king, and that all commitments or prosecutions for such petitions are illegal; That the raising

* Parl. Hist. v. 54.

or keeping a standing army within the kingdom in time of peace, unless it be with consent of parliament, is illegal; That the subjects which are protestants may have arms for their defence suitable to their condition, and as allowed by law; That elections of members of parliament ought to be free; That the freedom of speech or debates, or proceedings in parliament, ought not to be impeached or questioned in any court or place out of parliament; That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted; That juries ought to be duly impannelled and returned, and that jurors which pass upon men in trials of high treason ought to be freeholders; That all grants and promises of fines and forfeitures of particular persons, before conviction, are illegal and void; And that, for redress of all grievances, and for the amending, strengthening, and preserving of the laws, parliaments ought to be held frequently.*

Bill of rights.

This declaration was, some months afterwards, confirmed by a regular act of the legislature in the bill of rights, which establishes at the same time the limitation of the crown according to the vote of both houses, and adds the important provision; That all persons who shall hold communion with the church of Rome, or shall marry a papist, shall be excluded, and for ever incapable to possess, inherit, or enjoy, the crown and government of this realm; and in all such cases, the people of these realms shall be absolved from their allegiance, and the crown shall descend to the next heir. This was as near an approach to a generalisation of the principle of resistance as could be admitted with any security for public order.

The bill of rights contained only one clause extending rather beyond the propositions laid down in the declaration. This relates to the dispensing power, which the lords had been unwilling absolutely to condemn. They softened the general assertion of its illegality sent up from the other house, by inserting the words "as it has been exercised of late."† In the bill of rights therefore a clause was introduced, that no dispensation by non obstante to any statute should be allowed, except in such cases as should be specially provided

* Parl. Hist. v. 108. † Journals, 11th and 12th Feb. 1688–9.

for by a bill to be passed during the present session. This reservation went to satisfy the scruples of the lords, who did not agree without difficulty to the complete abolition of a prerogative, so long recognised, and in many cases so convenient.* But the palpable danger of permitting it to exist in its indefinite state, subject to the interpretation of time-serving judges, prevailed with the commons over this consideration of conveniency; and though in the next parliament the judges were ordered by the house of lords to draw a bill for the king's dispensing in such cases wherein they should find it necessary, and for abrogating such laws as had been usually dispensed with and were become useless, the subject seems to have received no further attention.†

Except in this article of the dispensing prerogative, we cannot say, on comparing the bill of rights with what is proved to be the law by statutes, or generally esteemed to be such on the authority of our best writers, that it took away any legal power of the crown, or enlarged the limits of popular and parliamentary privilege. The most questionable proposition, though at the same time one of the most important, was that which asserts the illegality of a standing army in time of peace, unless with consent of parliament. It seems difficult to perceive in what respect this infringed on any private man's right, or by what clear reason (for no statute could be pretended) the king was debarred from enlisting soldiers by voluntary contract for the defence of his dominions, especially after an express law had declared the sole power over the militia, without giving any definition of that word, to reside in the crown. This had never been expressly maintained by Charles II.'s parliaments; though the general repugnance of the nation to what was certainly an innovation might have provoked a body of men, who did not always measure their words, to declare its illegality.‡ It was however at least un-

Military force without consent declared illegal.

* Parl. Hist. 345.

† Lords' Journals, 22d Nov. 1689. [Pardons for murder used to be granted with a "non obstantibus statutis." After the revolution it was contended that they were no longer legal: 1 Shower, 284. But Holt held "the power of pardoning all offences to be an inseparable incident of the crown and its royal power." This savours a little of old tory times. For there are certainly unrepealed statutes of Edward III., which materially limit the crown's prerogative of pardoning felonies. — 1845.]

‡ The guards retained out of the old army disbanded at the king's return

constitutional, by which, as distinguished from illegal, I mean a novelty of much importance, tending to endanger the established laws. And it is manifest that the king could never inflict penalties by martial law, or generally by any other course, on his troops, nor quarter them on the inhabitants, nor cause them to interfere with the civil authorities; so that, even if the proposition so absolutely expressed may be somewhat too wide, it still should be considered as virtually correct.* But its distinct assertion in the bill of rights put a

have been already mentioned to have amounted to about 5000 men; though some assert their number at first to have been considerably less. No objection seems to have been made at the time to the continuance of these regiments. But in 1667, on the insult offered to the coasts by the Dutch fleet, a great panic arising, 12,000 fresh troops were hastily levied. The commons, on July 25., came to an unanimous resolution, that his majesty be humbly desired by such members as are his privy council, that when a peace is concluded, the new-raised forces be disbanded. The king, four days after, in a speech to both houses, said, "he wondered what one thing he had done since his coming into England, to persuade any sober person that he did intend to govern by a standing army; he said he was more an Englishman than to do so. He desired, for as much as concerned him, to preserve the laws," &c. Parl. Hist. iv. 363. Next session the two houses thanked him for having disbanded the late raised forces. Id. 369. But in 1673, during the second Dutch war, a considerable force having been levied, the house of commons, after a warm debate, resolved, Nov. 3., that a standing army was a grievance. Id. 604. And on February following, that the continuing of any standing forces in this nation, other than the militia, is a great grievance and vexation to the people; and that this house do humbly petition his majesty to cause immediately to be disbanded that part of them that were raised since Jan. 1. 1663. Id. 665. This was done not long afterwards; but early in 1678, on the pretext of entering into a war with France, he suddenly raised an army of 20,000 men, or more, according to some accounts, which gave so much alarm to the parliament, that they would only vote supplies on condition that these troops should be immediately disbanded. Id. 985. The king, however, employed the money without doing so; and maintained, in the next session, that it had been necessary to keep them on foot; intimating, at the same time, that he was now willing to comply, if the house thought it expedient to disband the troops; which they accordingly voted with unanimity, to be necessary for the safety of his majesty's person, and preservation of the peace of the government. Nov. 25. Id. 1049. James showed, in his speech to parliament, Nov. 9. 1685, that he intended to keep on foot a standing army. Id. 1371. But, though that house of commons was very differently composed from those in his brother's reign, and voted as large a supply as the king required, they resolved that a bill be brought in to render the militia more useful; an oblique and timid hint of their disapprobation of a regular force, against which several members had spoken.

I do not find that any one, even in debate, goes the length of denying that the king might, by his prerogative, maintain a regular army; none at least of the resolutions in the commons can be said to have that effect.

* It is expressly against the petition of right, to quarter troops on the citizens, or to inflict any punishment by martial law. No court martial, in fact, can have any coercive jurisdiction except by statute; unless we should resort to the old tribunal of the constable and marshal. And that this was admitted, even in bad times, we may learn by an odd case in sir Thomas Jones's Reports, 147. (Pasch. 33 Car. 2. 1681). An action was brought for assault and false imprisonment. The defendant pleaded that he was lieutenant-

most essential restraint on the monarchy, and rendered it in effect for ever impossible to employ any direct force or intimidation against the established laws and liberties of the people.

A revolution so thoroughly remedial, and accomplished with so little cost of private suffering, so little of angry punishment or oppression of the vanquished, ought to have been hailed with unbounded thankfulness and satisfaction. The nation's deliverer and chosen sovereign, in himself the most magnanimous and heroic character of that age, might have expected no return but admiration and gratitude. Yet this was very far from being the case. In no period of time under the Stuarts were public discontent and opposition of parliament more prominent than in the reign of William III.; and that high-souled prince enjoyed far less of his subjects' affection than Charles II. No part of our history perhaps is read upon the whole with less satisfaction than these thirteen years, during which he sat upon his elective throne. It will be sufficient for me to sketch generally the leading causes, and the errors both of the prince and people, which hindered the blessings of the revolution from being duly appreciated by its contemporaries.

Discontent with the new government.

Its causes.

The votes of the two houses, that James had abdicated,

governor of the isle of Scilly, and that the plaintiff was a soldier belonging to the garrison; and that it was the ancient custom of the castle, that if any soldier refused to render obedience, the governor might punish him by imprisonment for a reasonable time; which he had therefore done. The plaintiff demurred, and had judgment in his favour. By demurring, he put it to the court to determine, whether this plea, which is obviously fabricated in order to cover the want of any general right to maintain discipline in this manner, were valid in point of law; which they decided, as it appears, in the negative.

In the next reign, however, an attempt was made to punish deserters capitally, not by a court martial, but on the authority of an ancient act of parliament. Chief justice Herbert is said to have resigned his place in the king's bench rather than come into this. Wright succeeded him; and two deserters, having been convicted, were executed in London. Ralph, 961. I cannot discover that there was any thing illegal in the proceeding; and therefore question a little whether this were really Herbert's motive. See 3 Inst. 96.

[I have since observed, in a passage which had escaped me, that the cause of sir Edward Herbert's resignation, which was in fact no resignation, but only an exchange of places with Wright, chief justice of the common pleas, was his objection to the king's insisting on the execution of one of these deserters at Plymouth, the conviction having occurred at Reading. State Trials, xii. 262., from Heywood's Vindication of Fox.—1845.]

or in plainer words forfeited, his royal authority, that the crown was vacant, that one out of the regular line of succession should be raised to it, were so untenable by any known law, so repugnant to the principles of the established church, that a nation accustomed to think upon matters of government only as lawyers and churchmen dictated, could not easily reconcile them to its preconceived notions of duty. The first burst of resentment against the late king was mitigated by his fall; compassion, and even confidence, began to take place of it; his adherents —some denying or extenuating the faults of his administration, others more artfully representing them as capable of redress by legal measures—having recovered from their consternation, took advantage of the necessary delay before the meeting of the convention, and of the time consumed in its debates, to publish pamphlets and circulate rumours in his behalf.* Thus at the moment when William and Mary were proclaimed (though it seems highly probable that a majority of the kingdom sustained the bold votes of its representatives), there was yet a very powerful minority who believed the constitution to be most violently shaken, if not irretrievably destroyed, and the rightful sovereign to have been excluded by usurpation. The clergy were moved by pride and shame, by the just apprehension that their influence over the people would be impaired, by jealousy or hatred of the non-conformists, to deprecate so practical a confutation of the doctrines they had preached, especially when an oath of allegiance to their new sovereign came to be imposed;

Incompatibility of the revolution with received principles.

* See several in the Somers Tracts, vol. x. One of these, a Letter to a Member of the Convention, by Dr. Sherlock, is very ably written; and puts all the consequences of a change of government, as to popular dissatisfaction, &c. much as they turned out, though, of course, failing to show that a treaty with the king would be less open to objection. Sherlock declined for a time to take the oaths; but, complying afterwards, and writing in vindication, or at least excuse, of the revolution, incurred the hostility of the Jacobites, and impaired his own reputation by so interested a want of consistency; for he had been the most eminent champion of passive obedience. Even the distinction he found out, of the lawfulness of allegiance to a king de facto, was contrary to his former doctrine. [A pamphlet, entitled "A Second Letter to a Friend," in answer to the declaration of James II. in 1692 (Somers Tracts, x. 378.), which goes wholly on revolution principles, is attributed to Sherlock by Scott, who prints the title as if Sherlock's name were in it, probably following the former edition of the Somers Tracts. But I do not find it ascribed to Sherlock in the Biographia Britannica, or in the list of his writings in Watt's Bibliotheca.—1845.]

and they had no alternative but to resign their benefices, or wound their reputations and consciences by submission upon some casuistical pretext. * Eight bishops, including the primate and several of those who had been foremost in the defence of the church during the late reign, with about four hundred clergy, some of them highly distinguished, chose the more honourable course of refusing the new oaths; and thus began the schism of the non-jurors, more mischievous in its commencement than its continuance, and not so dangerous to the government of William III. and George I. as the false submission of less sincere men.†

It seems undeniable that the strength of this Jacobite faction sprung from the want of apparent necessity for the

* 1 W. & M. c. 8.

† The necessity of excluding men so conscientious, and several of whom had very recently sustained so conspicuously the brunt of the battle against king James, was very painful; and motives of policy, as well as generosity, were not wanting in favour of some indulgence towards them. On the other hand, it was dangerous to admit such a reflection on the new settlement, as would be cast by its enemies, if the clergy, especially the bishops, should be excused from the oath of allegiance. The house of lords made an amendment in the act requiring this oath, dispensing with it in the case of ecclesiastical persons, unless they should be called upon by the privy-council. This, it was thought, would furnish a security for their peaceable demeanour, without shocking the people and occasioning a dangerous schism. But the commons resolutely opposed this amendment, as an unfair distinction, and derogatory to the king's title. Parl. Hist. 218. Lords' Journals, 17th April, 1689. The clergy, however, had six months more time allowed them, in order to take the oath, than the possessors of lay offices.

Upon the whole, I think the reasons for deprivation greatly preponderated. Public prayers for the king by name form part of our liturgy; and it was surely impossible to dispense with the clergy's reading them, which was as obnoxious as the oath of allegiance. Thus the beneficed priests must have been excluded; and it was hardly required to make an exception for the sake of a few bishops, even if difficulties of the same kind would not have occurred in the exercise of their jurisdiction, which hangs upon, and has a perpetual reference to, the supremacy of the crown.

The king was empowered to reserve a third part of the value of their benefices to any twelve of the recusant clergy. 1 W. & M. c. 8. s. 16. But this could only be done at the expense of their successors; and the behaviour of the non-jurors, who strained every nerve in favour of the dethroned king, did not recommend them to the government. The deprived bishops, though many of them, through their late behaviour, were deservedly esteemed, cannot be reckoned among the eminent characters of our church for learning or capacity. Sancroft, the most distinguished of them, had not made any remarkable figure; and none of the rest had any pretensions to literary credit. Those who filled their places were incomparably superior. Among the non-juring clergy a certain number were considerable men; but, upon the whole, the well-affected part of the church, not only at the revolution, but for fifty years afterwards, contained by far its most useful and able members. Yet the effect of this expulsion was highly unfavourable to the new government; and it required all the influence of a latitudinarian school of divinity, led by Locke, which was very strong among the laity under William, to counteract it.

change of government. Extreme oppression produces an impetuous tide of resistance, which bears away the reasonings of the casuists. But the encroachments of James II., being rather felt in prospect than much actual injury, left men in a calmer temper, and disposed to weigh somewhat nicely the nature of the proposed remedy. The revolution was, or at least seemed to be, a case of political expediency; and expediency is always a matter of uncertain argument. In many respects it was far better conducted, more peaceably, more moderately, with less passion and severity towards the guilty, with less mixture of democratic turbulence, with less innovation on the regular laws, than if it had been that extreme case of necessity which some are apt to require. But it was obtained on this account with less unanimity and heartfelt concurrence of the entire nation.

Character and errors of William.

The demeanour of William, always cold and sometimes harsh, his foreign origin (a sort of crime in English eyes) and foreign favourites, the natural and almost laudable prejudice against one who had risen by the misfortunes of a very near relation, conspired, with a desire of power not very judiciously displayed by him, to keep alive this disaffection; and the opposite party, regardless of all the decencies of political lying, took care to aggravate it by the vilest calumnies against one, who, though not exempt from errors, must be accounted the greatest man of his own age. It is certain that his government was in very considerable danger for three or four years after the revolution, and even to the peace of Ryswick. The change appeared so marvellous, and contrary to the bent of men's expectation, that it could not be permanent. Hence he was surrounded by the timid and the treacherous; by those who meant to have merits to plead after a restoration, and those who meant at least to be secure. A new and revolutionary government is seldom fairly dealt with. Mankind, accustomed to forgive almost every thing in favour of legitimate prescriptive power, exact an ideal faultlessness from that which claims allegiance on the score of its utility. The personal failings of its rulers, the negligences of their administration, even the inevitable privations and difficulties which the nature of human affairs or the misconduct of their predecessors create, are imputed

to them with invidious minuteness. Those who deem their own merit unrewarded, become always a numerous and implacable class of adversaries; those whose schemes of public improvement have not been followed, think nothing gained by the change, and return to a restless censoriousness in which they have been accustomed to place delight. With all these it was natural that William should have to contend; but we cannot in justice impute all the unpopularity of his administration to the disaffection of one party, or the fickleness and ingratitude of another. It arose in no slight degree from errors of his own.

Jealousy of the whigs.

The king had been raised to the throne by the vigour and zeal of the whigs; but the opposite party were so nearly upon an equality in both houses that it would have been difficult to frame his government on an exclusive basis. It would also have been highly impolitic, and, with respect to some few persons, ungrateful, to put a slight upon those who had an undeniable majority in the most powerful classes. William acted, therefore, on a wise and liberal principle, in bestowing offices of trust on lord Danby, so meritorious in the revolution, and on lord Nottingham, whose probity was unimpeached; while he gave the whigs, as was due, a decided preponderance in his council. Many of them, however, with that indiscriminating acrimony which belongs to all factions, could not endure the elevation of men who had complied with the court too long, and seemed by their tardy opposition* to be rather the patriots of the church than of civil liberty. They remembered that Danby had been impeached as a corrupt and dangerous minister; that Halifax had been involved, at least by holding a confidential office at the time, in the last and worst part of Charles's reign. They saw Godolphin, who had concurred in the commitment of the bishops, and every other measure of the late king, still in the treasury; and, though they could not reproach Nottingham with any misconduct, were shocked that his conspicuous opposition to the new settlement should be rewarded with the post of secretary of state. The mismanagement of affairs in Ireland during 1689, which was very glaring, furnished

* Burnet. Ralph, 174. 179.

specious grounds for suspicion that the king was betrayed.* It is probable that he was so, though not at that time by the chiefs of his ministry. This was the beginning of that dissatisfaction with the government of William, on the part of those who had the most zeal for his throne, which eventually became far more harassing than the conspiracies of his real enemies. Halifax gave way to the prejudices of the commons, and retired from power. These prejudices were no doubt unjust, as they respected a man so sound in principle, though not uniform in conduct, and who had withstood the arbitrary maxims of Charles and James in that cabinet, of which he unfortunately continued too long a member. But his fall is a warning to English statesmen, that they will be deemed responsible to their country for measures which they countenance by remaining in office, though they may resist them in council.

Bill of indemnity.

The same honest warmth which impelled the whigs to murmur at the employment of men sullied by their compliance with the court, made them unwilling to concur in the king's desire of a total amnesty. They retained the bill of indemnity in the commons; and excepting some by name, and many more by general clauses, gave their adversaries a pretext for alarming all those whose conduct had not been irreproachable. Clemency is indeed for the most part the wisest, as well as the most generous policy; yet it might seem dangerous to pass over with unlimited forgiveness that servile obedience to arbitrary power, especially in the judges, which, as it springs from a base motive, is best controlled by the fear of punishment. But some of the late king's instruments had fled with him, others were lost and ruined; it was better to follow the precedent set at the restoration, than to give them a chance of regaining public

* The parliamentary debates are full of complaints as to the mismanagement of all things in Ireland. These might be thought hasty or factious; but marshal Schomberg's letters to the king yield them strong confirmation. Dalrymple, Appendix, 26, &c. William's resolution to take the Irish war on himself saved not only that country but England. Our own constitution was won on the Boyne. The star of the house of Stuart grew pale for ever on that illustrious day, when James displayed again the pusillanimity which had cost him his English crown. Yet the best friends of William dissuaded him from going into Ireland, so imminent did the peril appear at home. Dalrymple, Id. 97. "Things," says Burnet, "were in a very ill disposition towards a fatal turn."

sympathy by a prosecution out of the regular course of law.* In one instance, the expulsion of sir Robert Sawyer from the house, the majority displayed a just resentment against one of the most devoted adherents of the prerogative, so long as civil liberty alone was in danger. Sawyer had been latterly very conspicuous in defence of the church; and it was expedient to let the nation see that the days of Charles II. were not entirely forgotten.† Nothing was concluded as to the indemnity in this parliament; but in the next, William took the matter into his own hands by sending down an act of grace.

I scarcely venture, at this distance from the scene, to pronounce an opinion as to the clause introduced by the whigs into a bill for restoring corporations, which

Bill for restoring corporations.

* See the debates on this subject in the Parliamentary History, which is a transcript from Anchitel Grey. The whigs, or at least some hot-headed men among them, were certainly too much actuated by a vindictive spirit, and consumed too much time on this necessary bill.

† The prominent instance of Sawyer's delinquency, which caused his expulsion, was his refusal of a writ of error to sir Thomas Armstrong. Parl. Hist. 516. It was notorious that Armstrong suffered by a legal murder; and an attorney-general in such a case could not be reckoned as free from personal responsibility as an ordinary advocate who maintains a cause for his fee. The first resolution had been to give reparation out of the estates of the judges and prosecutors to Armstrong's family; which was, perhaps rightly, abandoned.

The house of lords, who, having a power to examine upon oath, are supposed to sift the truth in such inquiries better than the commons, were not remiss in endeavouring to bring the instruments of Stuart tyranny to justice. Besides the committee appointed on the very second day of the convention, 23d Jan. 1689, to investigate the supposed circumstances of suspicion as to the death of lord Essex, (a committee renewed afterwards, and formed of persons by no means likely to have abandoned any path that might lead to the detection of guilt in the late king,) another was appointed in the second session of the same parliament (Lords' Journals, 2d Nov. 1689) "to consider who were the advisers and prosecutors of the *murders* of lord Russell, col. Sidney, Armstrong, Cornish, &c., and who were the advisers of issuing out writs of quo warrantos against corporations, and who were their regulators, and also who were the public assertors of the dispensing power." The examinations taken before this committee are printed in the Lords' Journals, 20th Dec. 1689; and there certainly does not appear any want of zeal to convict the guilty. But neither the law nor the proofs would serve them. They could establish nothing against Dudley North, the tory sheriff of 1683, except that he had named lord Russell's panel himself; which, though irregular and doubtless ill-designed, had unluckily a precedent in the conduct of the famous whig sheriff, Slingsby Bethell; a man who, like North, though on the opposite side, cared more for his party than for decency and justice. Lord Halifax was a good deal hurt in character by this report; and never made a considerable figure afterwards. Burnet, 34. His mortification led him to engage in an intrigue with the late king, which was discovered; yet, I suspect that, with his usual versatility, he again abandoned that cause before his death. Ralph, 467. The act of grace (2 W. & M. c. 10.) contained a small number of exceptions, too many indeed for its name; but probably there would have been difficulty in prevailing on the houses to pass it generally; and no one was ever molested afterwards on account of his conduct before the revolution.

excluded for the space of seven years all who had acted or even concurred in surrendering charters from municipal offices of trust. This was no doubt intended to maintain their own superiority by keeping the church or tory faction out of corporations. It evidently was not calculated to assuage the prevailing animosities. But, on the other hand, the cowardly submissiveness of the others to the quo warrantos seemed at least to deserve this censure; and the measure could by no means be put on a level in point of rigour with the corporation act of Charles II. As the dissenters, unquestioned friends of the revolution, had been universally excluded by that statute, and the tories had lately been strong enough to prevent their re-admission, it was not unfair for the opposite party, or rather for the government, to provide some security against men, who, in spite of their oaths of allegiance, were not likely to have thoroughly abjured their former principles. This clause, which modern historians generally condemn as oppressive, had the strong support of Mr. Somers, then solicitor-general. It was, however, lost through the court's conjunction with the tories in the lower house, and the bill itself fell to the ground in the upper; so that those who had come into corporations by very ill means retained their power, to the great disadvantage of the revolution party; as the next elections made appear.*

But if the whigs behaved in these instances with too much of that passion, which, though offensive and mischievous in its excess, is yet almost inseparable from patriotism and incorrupt sentiments in so numerous an assembly as the house of commons, they amply redeemed their glory by what cost them the new king's favour, their wise and admirable settlement of the revenue.

Settlement of the revenue.

The first parliament of Charles II. had fixed on 1,200,000*l.* as the ordinary revenue of the crown, sufficient in times of no peculiar exigency for the support of its dignity and for the public defence. For this they provided various resources; the hereditary excise on liquors

* Parl. Hist. 508. et post. Journals, 2d and 10th Jan. 1689, 1690. Burnet's account is confused and inaccurate, as is very commonly the case: he trusted, I believe, almost entirely to his memory. Ralph and Somerville are scarce ever candid towards the whigs in this reign.

granted in lieu of the king's feudal rights, other excise and custom duties granted for his life, the post-office, the crown lands, the tax called hearth-money, or two shillings for every house, and some of smaller consequence. These in the beginning of that reign fell short of the estimate; but before its termination, by the improvement of trade and stricter management of the customs, they certainly exceeded that sum.* For the revenue of James from these sources, on an average of the four years of his reign, amounted to 1,500,964*l.*; to which something more than 400,000*l.* is to be added for the produce of duties imposed for eight years by his parliament of 1685.†

William appears to have entertained no doubt that this great revenue, as well as all the power and prerogative of the crown, became vested in himself as king of England, or at least ought to be instantly settled by parliament according to the usual method.‡ There could indeed be no pretence for disputing his right to the hereditary excise, though this seems to have been questioned in debate: but the commons soon displayed a considerable reluctance to grant the temporary revenue for the king's life. This had been done for several centuries in the first parliament of every reign. But the accounts, for which they called on this occasion, exhibited so considerable an increase of the receipts on one hand, so alarming a disposition of the expenditure on the other, that they deemed it expedient to restrain a liberality, which was not only likely to go beyond their intention, but to place them, at least in future times, too much within the power of the crown.§ Its average expenses appeared to have been

* [Ralph puts the annual revenue about 1675 at 1,358,000*l.*; but with an anticipation, that is, debt upon it to the amount of 866,954*l.* The expense of the army, navy, ordnance, and the fortress of Tangier, was under 700,000*l.* The rest went to the civil list, &c. Hist. of England, i. 290.—1845.]

† Parl. Hist. 150.

‡ Burnet, 13. Ralph, 138. 194. Some of the lawyers endeavoured to persuade the house that the revenue, having been granted to James for his life, devolved to William during the natural life of the former; a technical subtlety, against the spirit of the grant. Somers seems not to have come into this; but it is hard to collect the sense of speeches from Grey's memoranda. Parl. Hist. 139. It is not to be understood that the tories universally were in favour of a grant for life, and the whigs against it. But as the latter were the majority, it was in their power, speaking of them as a party, to have carried the measure.

§ [Davenant, whom I quote at present from Harris's Life of Charles II., p. 378., computes the hereditary excise

1,700,000*l.* Of this 610,000*l.* was the charge of the late king's army, and 83,493*l.* of the ordnance. Nearly 90,000*l.* was set under the suspicious head of secret service, imprested to Mr. Guy, secretary of the treasury.* Thus, it was evident that, far from sinking below the proper level, as had been the general complaint of the court in the Stuart reigns, the revenue was greatly and dangerously above it; and its excess might either be consumed in unnecessary luxury, or diverted to the worse purposes of despotism and corruption. They had indeed just declared a standing army to be illegal. But there could be no such security for the observance of this declaration as the want of means in the crown to maintain one. Their experience of the interminable contention about supply, which had been fought with various success between the kings of England and their parliaments for some hundred years, dictated a course to which they wisely and steadily adhered, and to which, perhaps above all other changes at this revolution, the augmented authority of the house of commons must be ascribed.

Appropriation of supplies.

They began by voting that 1,200,000*l.* should be the annual revenue of the crown in time of peace; and that one half of this should be appropriated to the maintenance of the king's government and royal family, or what is now called the civil list, the other to the public defence and contingent expenditure.† The breaking out of an eight years' war rendered it impossible to carry into effect these resolutions as to the peace establishment: but they did not lose sight of their principle, that the king's regular and domestic expenses should be determined by a fixed annual sum, distinct from the other departments of public service. They speedily improved upon their original scheme of a definite revenue, by taking a more close and constant superintendence of these departments, the navy, army, and ordnance. Estimates of the probable expenditure were regularly laid before them, and the supply granted was strictly appropriated to each particular service.

on beer alone to have amounted, in 1689, to 694,496*l.* So extraordinarily good a bargain had the crown made for giving up the reliefs and wardships of military tenure.]

* Parl. Hist. 187. † Id. 193.

This great and fundamental principle, as it has long been justly considered, that the money voted by parliament is appropriated, and can only be applied, to certain specified heads of expenditure, was introduced, as I have before mentioned, in the reign of Charles II., and generally, though not in every instance, adopted by his parliament. The unworthy house of commons that sat in 1685, not content with a needless augmentation of the revenue, took credit with the king for not having appropriated their supplies.* But from the revolution it has been the invariable usage. The lords of the treasury, by a clause annually repeated in the appropriation act of every session, are forbidden, under severe penalties, to order by their warrant any monies in the exchequer, so appropriated, from being issued for any other service, and the officers of the exchequer to obey any such warrant. This has given the house of commons so effectual a control over the executive power, or, more truly speaking, has rendered it so much a participator in that power, that no administration can possibly subsist without its concurrence; nor can the session of parliament be intermitted for an entire year, without leaving both the naval and military force of the kingdom unprovided for. In time of war, or in circumstances that may induce war, it has not been very uncommon to deviate a little from the rule of appropriation, by a grant of considerable sums on a vote of credit, which the crown is thus enabled to apply at its discretion during the recess of parliament; and we have had also too frequent experience, that the charges of public service have not been brought within the limits of the last year's appropriation. But the general principle has not perhaps been often transgressed without sufficient reason; and a house of commons would be deeply responsible to the country, if through supine confidence it should abandon that high privilege which has made it the arbiter of court factions, and the regulator of foreign connexions. It is to this transference of the executive government (for the phrase is hardly too strong) from the crown to the two houses of parliament, and especially the commons, that we owe the proud attitude which England

* Parl. Hist. iv. 1359.

has maintained since the revolution, so extraordinarily dissimilar, in the eyes of Europe, to her condition under the Stuarts. The supplies meted out with niggardly caution by former parliaments to sovereigns whom they could not trust, have flowed with redundant profuseness, when they could judge of their necessity and direct their application. Doubtless the demand has always been fixed by the ministers of the crown, and its influence has retrieved in some degree the loss of authority; but it is still true that no small portion of the executive power, according to the established laws and customs of our government, has passed into the hands of that body, which prescribes the application of the revenue, as well as investigates at its pleasure every act of the administration.*

Dissatisfaction of the king.

The convention parliament continued the revenue, as it already stood, untill December, 1690.† Their successors complied so far with the king's expectation as to grant the excise duties, besides those that were hereditary, for the lives of William and Mary, and that of the survivor.‡ The customs they only continued for four years. They provided extraordinary supplies for the conduct of the war on a scale of armament, and consequently of expenditure, unparalleled in the annals of England. But the hesitation, and, as the king imagined, the distrust they had shown in settling the ordinary revenue, sunk deep into his mind, and chiefly alienated him from the whigs, who were stronger and more conspicuous than their adversaries in the two sessions of 1689. If we believe Burnet, he felt so indignantly what appeared a systematic endeavour to

* Hatsell's Precedents, iii. 80. et alibi. Hargrave's Juridical Arguments, i. 394.

† 1 W. & M. sess. 2. c. 2. This was intended as a provisional act "for the preventing all disputes and questions concerning the collecting, levying, and assuring the public revenue due and payable in the reigns of the late kings Charles II. and James II., whilst the better settling the same is under the consideration of the present parliament."

‡ 2 W. & M. c. 3. As a mark of respect, no doubt, to the king and queen, it was provided that, if both should die, the successor should only enjoy this revenue of excise till December, 1693. In the debate on this subject in the new parliament, the tories, except Seymour, were for settling the revenue during the king's life; but many whigs spoke on the other side. Parl. Hist. 552. The latter justly urged that the amount of the revenue ought to be well known before they proceed to settle it for an indefinite time. The tories, at that time, had great hopes of the king's favour, and took this method of securing it.

reduce his power below the ancient standard of the monarchy, that he was inclined to abandon the government, and leave the nation to itself. He knew well, as he told the bishop, what was to be alleged for the two forms of government, a monarchy and a commonwealth, and would not determine which was preferable; but of all forms he thought the worst was that of a monarchy without the necessary powers.*

The desire of rule in William III. was as magnanimous and public-spirited as ambition can ever be in a human bosom. It was the consciousness not only of having devoted himself to a great cause, the security of Europe, and especially of Great Britain and Holland, against unceasing aggression, but of resources in his own firmness and sagacity which no other person possessed. A commanding force, a copious revenue, a supreme authority in councils, were not sought, as by the crowd of kings, for the enjoyment of selfish vanity and covetousness, but as the only sure instruments of success in his high calling, in the race of heroic enterprise which Providence had appointed for the elect champion of civil and religious liberty. We can hardly wonder that he should not quite render justice to the motives of those who seemed to impede his strenuous energies; that he should resent as ingratitude those precautions against abuse of power by him, the recent deliverer of the nation, which it had never called for against those who had sought to enslave it.

But reasonable as this apology may be, it was still an unhappy error of William, that he did not sufficiently weigh the circumstances which had elevated him to the English throne, and the alteration they had inevitably made in the relations between the crown and the parliament. Chosen upon the popular principle of general freedom and public good, on the ruins of an ancient hereditary throne, he could expect to reign on no other terms than as the chief of a commonwealth, with no other authority than the sense of the nation and of parliament deemed congenial to the new constitution. The debt of gratitude to him was indeed immense, and not sufficiently remembered; but it was due for having enabled the

* Burnet, 35.

nation to regenerate itself, and to place barriers against future assaults, to provide securities against future mis-government. No one could seriously assert that James II. was the only sovereign of whom there had been cause to complain. In almost every reign, on the contrary, which our history records, the innate love of arbitrary power had produced more or less of oppression. The revolution was chiefly beneficial, as it gave a stronger impulse to the desire of political liberty, and rendered it more extensively attainable. It was certainly not for the sake of replacing James by William with equal powers of doing injury, that the purest and wisest patriots engaged in that cause; but as the sole means of making a royal government permanently compatible with freedom and justice. The bill of rights had pretended to do nothing more than stigmatise some recent proceedings: were the representatives of the nation to stop short of other measures, because they seemed novel, and restrictive of the crown's authority, when for the want of them the crown's authority had nearly freed itself from all restriction? Such was their true motive for limiting the revenue, and such the ample justification of those important statutes enacted in the course of this reign, which the king, unfortunately for his reputation and peace of mind, too jealously resisted.

No republican party in existence.

It is by no means unusual to find mention of a commonwealth or republican party, as if it existed in some force at the time of the revolution, and throughout the reign of William III.; nay some writers, such as Hume, Dalrymple, and Somerville, have, by putting them in a sort of balance against the Jacobites, as the extremes of the whig and tory factions, endeavoured to persuade us that the one was as substantial and united a body as the other. It may, however, be confidently asserted, that no republican party had any existence; if by that word we are to understand a set of men whose object was the abolition of our limited monarchy. There might unquestionably be persons, especially among the independent sect, who cherished the memory of what they called the good old cause, and thought civil liberty irreconcilable with any form of regular government. But these were too inconsiderable, and too far removed from political influence, to deserve the appellation of

a party. I believe it would be difficult to name five individuals, to whom even a speculative preference of a commonwealth may with probability be ascribed. Were it otherwise, the numerous pamphlets of this period would bear witness to their activity. Yet, with the exception perhaps of one or two, and those rather equivocal, we should search, I suspect, the collections of that time in vain for any manifestations of a republican spirit. If indeed an ardent zeal to see the prerogative effectually restrained, to vindicate that high authority of the house of commons over the executive administration which it has in fact claimed and exercised, to purify the house itself from corrupt influence, if a tendency to dwell upon the popular origin of civil society, and the principles which Locke, above other writers, had brought again into fashion, be called republican (as in a primary but less usual sense of the word they may), no one can deny that this spirit eminently characterised the age of William III. And schemes of reformation emanating from this source were sometimes offered to the world, trenching more perhaps on the established constitution than either necessity demanded or prudence warranted. But these were anonymous and of little influence; nor did they ever extend to the absolute subversion of the throne.*

William, however, was very early led to imagine, whether through the insinuations of lord Nottingham, as Burnet pretends, or the natural prejudice of kings against those who do not comply with them, that there not only existed a republican party, but that it numbered

William employs tories in ministry.

* See the Somers Tracts, but still more the collection of State Tracts in the time of William III., in three volumes folio. These are almost entirely on the whig side; and many of them, as I have intimated in the text, lean so far towards republicanism as to assert the original sovereignty of the people in very strong terms, and to propose various changes in the constitution, such as a greater equality in the representation. But I have not observed any one which recommends, even covertly, the abolition of hereditary monarchy. [It may even be suspected, that some of these were really intended for the benefit of James. See one in Somers Tracts, x. 148., entitled, "Good Advice before it be too late, being a Breviate for the Convention." The tone is apparently republican; yet we find the advice to be no more than imposing great restrictions on the king during his life, but not to prejudice a protestant successor; in other words, the limitation scheme, proposed by Halifax in 1679. It may here be observed, that the political tracts of this reign, on both sides, display a great deal of close and vigorous reasoning, and may well bear comparison with those of much later periods. —1845.]

many supporters among the principal whigs. He dissolved the convention-parliament, and gave his confidence for some time to the opposite faction.* But, among these, a real disaffection to his government prevailed so widely that he could with difficulty select men sincerely attached to it. The majority professed only to pay allegiance as to a sovereign de facto, and violently opposed the bill of recognition in 1690, both on account of the words "rightful and lawful king" which it applied to William, and of its declaring the laws passed in the last parliament to have been good and valid.† They had influence enough with the king to defeat a bill proposed by the whigs, by which an oath of abjuration of James's right

* The sudden dissolution of this parliament cost him the hearts of those who had made him king. Besides several temporary writings, especially the Impartial Inquiry of the earl of Warrington, an honest and intrepid whig (Ralph, ii. 188.), we have a letter from Mr. Wharton (afterwards marquis of Wharton) to the king, in Dalrymple, Appendix, p. 80., on the change in his councils at this time, written in a strain of bold and bitter expostulation, especially on the score of his employing those who had been the servants of the late family, alluding probably to Godolphin, who was indeed open to much exception. "I wish," says lord Shrewsbury, in the same year, "you could have established your party upon the moderate and honest-principled men of both factions; but, as there be a necessity of declaring, I shall make no difficulty to own my sense that your majesty and the government are much more safe depending upon the whigs, whose designs, if any against, are improbable and remoter, than with the tories, who many of them, questionless, would bring in king James; and the very best of them, I doubt, have a regency still in their heads; for, though I agree them to be the properest instruments to carry the prerogative high, yet I fear they have so unreasonable a veneration for monarchy, as not altogether to approve the foundation yours is built upon." Shrewsbury Correspond. 15.

† Parl. Hist. 575. Ralph, 194. Burnet, 41. Two remarkable protests were entered on the journals of the lords on occasion of this bill: one by the whigs, who were outnumbered on a particular division, and another by the tories on the passing of the bill. They are both vehemently expressed, and are among the not very numerous instances wherein the original whig and tory principles have been opposed to each other. The tory protest was expunged by order of the house. It is signed by eleven peers and six bishops, among whom were Stillingfleet and Lloyd. The whig protest has but ten signatures. The convention had already passed an act for preventing doubts concerning their own authority, 1 W. &. M. stat. 1. c. 1., which could of course have no more validity than they were able to give it. This bill had been much opposed by the tories. Parl. Hist. v. 122.

In order to make this clearer, it should be observed that the convention which restored Charles II., not having been summoned by his writ, was not reckoned by some royalist lawyers capable of passing valid acts; and consequently all the statutes enacted by it were confirmed by the authority of the next. Clarendon lays it down as undeniable that such confirmation was necessary. Nevertheless, this objection having been made in the court of king's bench to one of their acts, the judges would not admit it to be disputed, and said, that the act being made by king, lords, and commons, they ought not now to pry into any defects of the circumstances of calling them together, neither would they suffer a point to be stirred, wherein the estates of so many were concerned. Heath v. Pryn, 1 Ventris, 15.

was to be taken by all persons in trust.* It is by no means certain that even those who abstained from all connexion with James after his loss of the throne, would have made a strenuous resistance in case of his landing to recover it.† But we know that a large proportion of the tories were engaged in a confederacy to support him. Intrigues with the late king. Almost every peer, in fact, of any consideration, among that party, with the exception of lord Nottingham, is implicated by the secret documents which Macpherson and Dalrymple have brought to light; especially Godolphin, Carmarthen (Danby), and Marlborough, the second at that time prime minister of William (as he might justly be called), the last with circumstances of extraordinary and abandoned treachery towards his country as well as his allegiance.‡

* Great indulgence was shown to the assertors of indefeasible right. The lords resolved, that there should be no penalty in the bill to disable any person from sitting and voting in either house of parliament. Journals, May 5. 1690. The bill was rejected in the commons by 192 to 178. Journals, April 26. Parl. Hist. 594. Burnet, 41. ibid.

† Some English subjects took James's commission, and fitted out privateers, which attacked our ships. They were taken, and it was resolved to try them as pirates; when Dr. Oldys, the king's advocate, had the assurance to object that this could not be done, as if James had still the prerogatives of a sovereign prince by the law of nations. He was of course turned out, and the men hanged; but this is one instance among many of the difficulty under which the government laboured through the unfortunate distinction of *facto* and *jure*. Ralph, 423. The boards of customs and excise were filled by Godolphin with Jacobites. Shrewsb. Corresp. 51.

‡ The name of Carmarthen is perpetually mentioned among those whom the late king reckoned his friends. Macpherson's Papers, i. 457, &c. Yet this conduct was so evidently against his interest that we may perhaps believe him insincere. William was certainly well aware that an extensive conspiracy had been formed against his throne. It was of great importance to learn the persons involved in it and their schemes. May we not presume that lord Carmarthen's return to his ancient allegiance was feigned, in order to get an insight into the secrets of that party? This has already been conjectured by Somerville (p. 395.) of lord Sunderland (who is also implicated by Macpherson's publication), and doubtless with higher probability; for Sunderland, always a favourite of William, could not without insanity have plotted the restoration of a prince he was supposed to have betrayed. It is evident that William was perfectly master of the cabals of St. Germain's. That little court knew it was betrayed; and the suspicion fell on lord Godolphin. Dalrymple, 189. But I think Sunderland and Carmarthen more likely.

I should be inclined to suspect that by some of this double treachery the secret of princess Anne's repentant letter to her father reached William's ears. She had come readily, or at least without opposition, into that part of the settlement which postponed her succession, after the death of Mary, for the remainder of the king's life. It would indeed have been absurd to expect that William was to descend from his throne in her favour; and her opposition could not have been of much avail. But, when the civil list and revenue came to be settled, the tories made a violent effort to secure an income of 70,000*l.* a year to her and her husband. Parl. Hist. 492. As this on one hand seemed beyond all fair proportion to the income of the crown, so the whigs were hardly less unreasonable in contending that she should depend alto-

Two of the most distinguished whigs (and if the imputation

gether on the king's generosity; especially as by letters patent in the late reign, which they affected to call in question, she had a revenue of about 30,000*l.* In the end, the house resolved to address the king, that he would make the princess's income 50,000*l.* in the whole. This, however, left an irreconcilable enmity, which the artifices of Marlborough and his wife were employed to aggravate. They were accustomed, in the younger sister's little court, to speak of the queen with severity, and of the king with rude and odious epithets. Marlborough however went much farther. He brought that narrow and foolish woman into his own dark intrigues with St. Germain's. She wrote to her father, whom she had grossly, and almost openly, charged with imposing a spurious child as prince of Wales, supplicating his forgiveness, and professing repentance for the part she had taken. Life of James, 476. Macpherson's Papers, i. 241.

If this letter, as cannot seem improbable, became known to William, we shall have a more satisfactory explanation of the queen's invincible resentment toward her sister than can be found in any other part of their history. Mary refused to see the princess on her death-bed; which shows more bitterness than suited her mild and religious temper, if we look only to their public squabbles about the Churchills as its motive. Burnet, 90. Conduct of Duchess of Marlborough, 41. But the queen must have deeply felt the unhappy, though necessary, state of enmity in which she was placed towards her father. She had borne a part in a great and glorious enterprise, obedient to a woman's highest duty; and had admirably performed those of the station to which she was called; but still with some violation of natural sentiments, and some liability to the reproach of those who do not fairly estimate the circumstances of her situation: —

Infelix! utcunque ferant ea facta minores.

Her sister, who had voluntarily trod the same path, who had misled her into a belief of her brother's illegitimacy, had now, from no real sense of duty, but out of pique and weak compliance with cunning favourites, solicited, in a clandestine manner, the late king's pardon, while his malediction resounded in the ears of the queen. This feebleness and duplicity made a sisterly friendship impossible.

As for lord Marlborough, he was among the first, if we except some Scots renegades, who abandoned the cause of the revolution. He had so signally broken the ties of personal gratitude in his desertion of the king on that occasion, that, according to the severe remark of Hume, his conduct required for ever afterwards the most upright, the most disinterested, and most public-spirited behaviour to render it justifiable. What then must we think of it, if we find in the whole of this great man's political life nothing but ambition and rapacity in his motives, nothing but treachery and intrigue in his means! He betrayed and abandoned James, because he could not rise in his favour without a sacrifice that he did not care to make; he abandoned William and betrayed England, because some obstacles stood yet in the way of his ambition. I do not mean only, when I say that he betrayed England, that he was ready to lay her independence and liberty at the feet of James II. and Louis XIV.; but that in one memorable instance he communicated to the court of St. Germain's, and through that to the court of Versailles, the secret of an expedition against Brest, which failed in consequence, with the loss of the commander and eight hundred men. Dalrymple, iii. 13. Life of James, 522. Macpherson, i. 487. In short, his whole life was such a picture of meanness and treachery, that one must rate military services very high indeed to preserve any esteem for his memory.

The private memoirs of James II., as well as the papers published by Macpherson, show us how little treason, and especially a double treason, is thanked or trusted by those whom it pretends to serve. We see that neither Churchill nor Russell obtained any confidence from the banished king. Their motives were always suspected; and something more solid than professions of loyalty was demanded, though at the expense of their own credit. James could not forgive Russell for saying that, if the French fleet came out, he must fight. Macpherson, i. 242. If Providence in its wrath had visited this island once more with a Stuart restoration, we may be sure that

is not fully substantiated against others* by name, we know generally that many were liable to it,) forfeited a high name among their contemporaries, in the eyes of a posterity which has known them better; the earl of Shrewsbury, from that strange feebleness of soul which hung like a spell upon his nobler qualities, and admiral Russell, from insolent pride and sullenness of temper. Both these were engaged in the vile intrigues of a faction they abhorred; but Shrewsbury soon learned again to revere the sovereign he had contributed to raise, and withdrew from the contamination of Jacobitism. It does not appear that he betrayed that trust which William is said with extraordinary magnanimity to have reposed on him, after a full knowledge of his connexion with the court of St. Germain.† But Russell, though compelled to win the battle of La Hogue against his will, took care to render his splendid victory as little advantageous as possible. The cre-

these perfidious apostates would have been no gainers by the change.

* During William's absence in Ireland in 1690, some of the whigs conducted themselves in a manner to raise suspicions of their fidelity; as appears by those most interesting letters of Mary, published by Dalrymple, which display her entire and devoted affection to a husband of cold and sometimes harsh manners, but capable of deep and powerful attachment, of which she was the chief object. I have heard that a late proprietor of these royal letters was offended by their publication; and that the black box of king William that contained them has disappeared from Kensington. The names of the duke of Bolton, his son the marquis of Winchester, the earl of Monmouth, lord Montague, and major Wildman, occur as objects of the queen's or her minister's suspicion. Dalrymple, Appendix, 107, &c. But Carmarthen was desirous to throw odium on the whigs; and none of these noblemen, except on one occasion lord Winchester, appear to be mentioned in the Stuart Papers. Even Monmouth, whose want both of principle and sound sense might cause reasonable distrust, and who lay at different times of his life under this suspicion of a Jacobite intrigue, is never mentioned in Macpherson, or any other book of authority, within my recollection. Yet it is evident generally that there was a disaffected party among the whigs, or, as in the Stuart Papers they were called, republicans, who entertained the baseless project of restoring James upon terms. These were chiefly what were called compounders, to distinguish them from the thorough-paced royalists, or old tories. One person whom we should least suspect is occasionally spoken of as inclined to a king whom he had been ever conspicuous in opposing — the earl of Devonshire; but the Stuart agents often wrote according to their wishes rather than their knowledge; and it seems hard to believe what is not rendered probable by any part of his public conduct.

† This fact apparently rests on good authority; it is repeatedly mentioned in the Stuart Papers, and in the Life of James. Yet Shrewsbury's letter to William, after Fenwick's accusation of him, seems hardly consistent with the king's knowledge of the truth of that charge in its full extent. I think that he served his master faithfully as secretary, at least after some time, though his warm recommendation of Marlborough, "who has been with me since this news [the failure of the attack on Brest] to offer his services with all the expressions of duty and fidelity imaginable," (Shrewsbury Correspondence, 47.) is somewhat suspicious, aware as he was of that traitor's connexions.

dulity and almost wilful blindness of faction is strongly manifested in the conduct of the house of commons as to the quarrel between this commander and the board of admiralty. They chose to support one who was secretly a traitor, because he bore the name of whig, tolerating his infamous neglect of duty and contemptible excuses; in order to pull down an honest, though not very able minister, who belonged to the tories.* But they saw clearly that the king was betrayed, though mistaken, in this instance, as to the persons; and were right in concluding that the men who had effected the revolution were in general most likely to maintain it; or, in the words of a committee of the whole house, "That his majesty be humbly advised, for the necessary support of his government, to employ in his councils and management of his affairs such persons only whose principles oblige them to stand by him and his right against the late king James, and all other pretenders whatsoever."† It is plain from this and other votes of the commons, that the tories had lost that majority which they seem to have held in the first session of this parliament.‡

It is not, however, to be inferred from this extensive combination in favour of the banished king, that his party embraced the majority of the nation, or that he could have been restored with any general testimonies of satisfaction. The friends of the revolution were still by far the more powerful body. Even the secret emissaries of James confess that the common people were strongly prejudiced against his return. His own enumeration of peers attached to his cause cannot be brought to more than thirty, exclusive of catholics§; and

* Commons' Journals, Nov. 28. et post. Dalrymple, iii. 11. Ralph, 346.

† Id. Jan. 11. 1692–3.

‡ Burnet says, "The elections of parliament (1690) went generally for men who would probably have declared for king James, if they could have known how to manage matters for him." P. 41. This is quite an exaggeration; though the tories, some of whom were at this time in place, did certainly succeed in several divisions. But parties had now begun to be split; the Jacobite tories voting with the malecontent whigs. Upon the whole, this house of commons, like the next which followed it, was well affected to the revolution settlement and to public liberty. Whig and tory were becoming little more than nicknames.

§ Macpherson's State Papers, i. 459. These were all tories, except three or four. The great end James and his adherents had in view, was to persuade Louis into an invasion of England; their representations therefore are to be taken with much allowance, and in some cases we know them to be false; as when James assures his brother of Versailles that three parts at least in four of the English clergy had not taken the oaths to William. Id. 409.