

NYPL RESEARCH LIBRARIES



3 3433 08253361 7

AB

Roscoe



Digitized by the Internet Archive
in 2007 with funding from
Microsoft Corporation

LIVES

OF

EMINENT BRITISH LAWYERS.

BY

HENRY ROSCOE, ESQ.,

BARRISTER AT LAW.

IN TWO VOLUMES.

VOL. I.

PHILADELPHIA :

CAREY & HART.

1841.



BIOGRAPHICAL TABLE.

	Born.		Died	Office.	Page
	When.	Where.			
SIR EDWARD COKE	1550	Norfolk	1634	Ld. Chief Justice	13
JOHN SELDEN	1584	Sussex	1654		61
SIR MATTHEW HALE	1609	Gloucestershire	1676	Ld. Chief Justice	79
LORD GUILFORD	1640		1685	Lord Keeper	106
LORD JEFFERIES	1648	Denbigh	1689	Lord Chancellor	140
LORD SOMERS	1650	Worcester	1716	Lord Chancellor	169
LORD MANSFIELD	1704	Perth	1776	Ld. Chief Justice	203

BIOGRAPHY.

BRITISH LAWYERS.

SIR EDWARD COKE.

1550—1634.

EDWARD COKE, afterward solicitor and attorney-general, and successively lord chief justice of the courts of common pleas and of the king's bench, was descended from an ancient family in the county of Norfolk. He was the son of Robert Coke, Esq., of Mileham, in that county, a barrister of great practice, and a bencher of Lincoln's Inn, by Winifred, daughter and coheiress of William Knightley, of Morgrave Knightley, in the same county. He was born at Mileham in the year 1550; and at the age of ten years was sent to the free-school at Norwich; whence he was removed to Trinity College, Cambridge, where he remained for four years. At the expiration of that period he became a member of Clifford's Inn; and in the course of the next year of the Inner Temple. While a student of the latter society, he is said to have exhibited proofs of the high legal talents by which he was afterward so greatly distinguished. At the end of six years he was called to the bar; a very short probation, the usual period being at that time eight years.*

The first case in which he appeared in the king's bench was the Lord Cromwell's case, in Trinity term,

* Dugdale's *Origines*, p. 159.

1578.* About the same period he was appointed reader of Lyon's Inn, where the excellence of his lectures attracted much attention. A few years after he was called to the bar he married Bridget, daughter and coheirress of John Paston, Esq., of Norfolk; an alliance which not only brought him a very considerable fortune, but connected him with several of the noblest families in the kingdom. His practice now began to increase rapidly; he was chosen recorder of Coventry and of Norwich; in 1592 he was appointed solicitor-general, and was soon afterward advanced to the post of attorney-general. Having been returned to parliament as the representative of his native county, he was chosen speaker in the thirty-fifth of Queen Elizabeth.

One of the most celebrated cases in which Coke appeared, while he held the office of attorney-general, was that of the Earls of Essex and Southampton; who, on the 19th of February, 1600, were tried before the lords for high treason. In the conduct of the charge against the accused, the attorney-general displayed some of that acerbity of temper and coarseness of feeling which have stained a character, in other respects deserving of the highest esteem. "Now, in God's most just judgment," said he, "he of his earldom shall be Robert the last, that of the kingdom thought to be Robert the first."† Essex indignantly answered him, "Will your lordships give us our turns to speak? for he playeth the orator, and abuseth our ears and us with slanders; but they are but fashions of orators in corrupt states." But it was during the trial of Sir Walter Raleigh, which took place three years subsequently to that of Essex, that the full violence of Coke's temper displayed itself. It is difficult to assign any adequate cause for the indecent eagerness with which he pressed the

* 4 Rep. 126.

† State Trials, vol. i. p. 1339.

case against the prisoner, and for the harsh and cruel language with which he assailed him. In the course of the attorney-general's address, Raleigh interrupted him. "To whom speak you this? you tell me news I never heard of." To which Coke replied: "Oh, sir, do I? I will prove you the notoriest traitor that ever came to the bar. After you have taken away the king, you would alter religion, as you, Sir Walter Raleigh, have followed them of the bye in imitation, for I will charge you with the words." "Your words cannot condemn me," said Raleigh: "my innocency is my defence. Prove one of those things wherewith you have charged me, and I will confess the whole indictment, and that I am the horriblest traitor that ever lived, and worthy to be crucified with a thousand cruel torments." "Nay," answered Coke, "I will prove all. Thou art a monster; thou hast an English face, but a Spanish heart. Now, you must have money. Aremberg was no sooner in England, (I charge thee, Raleigh,) but thou incitest Cobham to go unto him, and to deal with him for money, to bestow on discontented persons to raise rebellion in the kingdom." "Let me answer for myself," said Raleigh. "Thou shalt not," was the fierce and brutal reply of Coke. Again, on Raleigh observing that the guilt of Lord Cobham was no evidence against himself, Coke replied, "All that he did was by thy instigation, thou viper! for I *thou* thee, thou traitor." "It becometh not a man of quality and virtue to call me so," was Raleigh's dignified rebuke; "but I take comfort in it, it is all you can do." "Have I angered you?" said Coke. "I am in no case to be angry," was Raleigh's answer. In other instances, during the trial, similar language was held by Coke toward the prisoner, till at length Cecil observed, "Be not so impatient, Mr. Attorney-General: give him leave to speak." On

this rebuke Coke sat down in anger, and was with difficulty persuaded to proceed. When, at length, he resumed, he burst forth into a fresh torrent of invective, accusing Raleigh, not only of the darkest treasons, but applying to him the epithet of "Damnable atheist." Nor was it merely by the intemperance of his language that Coke on this occasion disgraced himself. He adduced evidence against the prisoner, which, even in the then lax practice in the case of trials for treason, was obviously illegal. The declarations of living witnesses were brought forward ; and it was very principally upon this proof that the prisoner was convicted. Many years after this conviction, and notwithstanding the implied pardon upon which Raleigh insisted, arising out of his subsequent employment under the crown, he was brought before the court of king's bench to have execution awarded against him ; and upon this occasion Sir Edward Coke, who presided as chief justice, retracted the slander which he had cast on the religious opinions of the prisoner. "I know," said he, addressing Raleigh, "you have been valiant and wise, and I doubt not but you retain both these virtues ; for now you shall have occasion to use them. Your faith hath heretofore been questioned ; but I am resolved you are a good Christian ; for your book, which is an admirable work, doth testify as much."*

In the year 1606, Sir Edward Coke, as attorney-general, conducted the prosecution against the parties implicated in the gunpowder conspiracy. His speech on this occasion exhibited a considerable portion of the same acrimony which had distinguished him on the trials of Essex and Raleigh. The violence which had before been directed against individuals, was now extended to the whole body of the jesuits, against whom he declaimed with the utmost vehemence.

* State Trials, vol. ii. p. 35.

Nor was he satisfied with denouncing the pains of the law against the accused. When Sir Everard Digby, interrupting him, said, "that he did not justify the fact, but confessed, that he deserved the vilest death, and the most severe punishment that might be, but that he was an humble petitioner for mercy and some moderation of justice," Coke replied, with a cold-blooded cruelty, which must for ever stain his memory, "that he must not look to the king to be honoured in the manner of his death, having so far abandoned all religion and humanity in his action; but that he was rather to admire the great moderation and mercy of the king, in that, for so exorbitant a crime, no new torture answerable thereto was devised to be inflicted on him. And for his wife and children: whereas he said that for the Catholic cause he was content to neglect the ruin of himself, his wife, his estate, and all, he should have his desire, as it is in the Psalms: 'Let his wife be a widow, and his children vagabonds; let his posterity be destroyed, and in the next generation let his name be quite put out.'" The peculiar quaintness of Coke's style was frequently displayed in the course of this speech. "S. P. Q. R.," says the orator, "was sometimes taken for these words, *Senatus populusque Romanus*, the senate and people of Rome; but now they may truly be expressed thus, *Stultus populus quærit Romam*, a foolish people that runneth to Rome." "And here," continues the reporter, "was very aptly and delightfully inserted and narrated the apologue or tale of the cat and the mice. The cat having a long time preyed upon the mice, the poor creatures at last, for their safety, contained themselves within their holes; but the cat, finding his prey to cease, as being known to the mice that he was indeed their enemy and a cat, deviseth this course following, viz., changeth his hue, getting on

a religious habit, shaveth his crown, walks gravely by their holes, and yet perceiving that the mice kept their holes, and looking out suspected the worst, he formally and father-like said unto them, *Quod fueram non sum, frater, caput aspice tonsum!* Oh, brother! I am not as you take me for, no more a cat; see my habit and shaven crown! Hereupon, some of the more credulous and bold among them were again, by this deceit, snatched up; and therefore, when afterward he came as before to entice them forth, they would come out no more, but answered, *Cor tibi restat idem, vix tibi præsto fidem.* Talk what you can, we will never believe you; you have still a cat's heart within you. You do not watch and *pray*, but you watch to *prey*. And so have the jesuits, yea, and priests too; for they are all joined in the tails like Samson's foxes. Ephraim against Manasses, and Manasses against Ephraim; and both against Judah."* Upon the trial of Garnet, for his participation in the same conspiracy, Coke thus described the prisoner: "He hath many gifts and endowments of nature; by art learned, a good linguist, and by profession a jesuit, and a superior, as indeed he is superior to all his predecessors in devilish treason; a doctor of jesuits, that is, a doctor of five D.D.'s, as dissimulation, deposing of princes, disposing of kingdoms, daunting and deterring of subjects, and destruction."† Such was the whimsical style sanctioned by the taste of the day.

It is gratifying to turn from scenes like these, where contumely and insult were added to the severe and inhuman penalties which the law itself inflicted. On the 20th of June, 1606, shortly after the trials for the gunpowder plot, Sir Edward Coke was promoted from the office of attorney-general to the chief justiceship of the common pleas. From

* State Trials, vol. ii. p. 181.

† Id. p. 234.

the period of his ascending the bench, the violence of temper which he had so frequently exhibited at the bar appears to have been much softened. He was succeeded in the office of attorney-general by Sir Henry Hobart, while Sir Francis Bacon was made solicitor-general, an office to which he had long aspired, and which, as he imagined, he had been debarred from filling by the efforts of Sir Edward Coke. From some cause, which it is now difficult to trace, probably from dissimilarity of character and pursuits, these celebrated men had contracted a mutual dislike for each other. Bacon envied the reputation and advancement of Coke, and Coke despised and slighted the professional acquirements of his younger rival. At length, shortly before the promotion of Coke to the bench, as it is said, Bacon gave way to his passionate feelings, and addressed to the attorney-general the following extraordinary letter:—

“ Mr. Attorney,

“ I thought it best, once for all, to let you know in plainness what I find of you, and what you shall find of me. You take to yourself a liberty to disgrace and disable my law, my experience, my discretion: what it pleaseth you, I pray, think of me: I am one that knows both mine own wants and other men's; and it may be, perchance, that mine mend, and others' stand at a stay. And surely I may not endure in public place to be wronged without repelling the same, to my best advantage to right myself. You are great, and therefore have the more enviers, which would be glad to have you paid at another's cost. Since the time I missed the solicitor's place, (the rather I think by your means,) I cannot expect that you and I shall ever serve as attorney and solicitor together; but either to serve with another on

your remove, or to step into some other course, so as I am more free than I ever was from any occasion of unworthy conforming myself to you more than general good manners or your particular good usage shall provoke; and if you had not been short-sighted in your own fortune, (as I think,) you might have had more use of me. But that side is passed. I write not this to show my friends what a brave letter I have written to Mr. Attorney. I have none of those humours; but that I have written it to a good end, that is, to the more decent carriage of my master's service, and to our particular better understanding one of another. This letter, if it should be answered by you in deed and not in word, I suppose it will not be worse for us both, else it is but a few lines lost, which for a much smaller matter I would have adventured. So this being to yourself, I for my part rest," &c.*

Bacon has likewise left on record a relation of the manner in which the attorney-general occasionally treated him, in which the courtesy and dignity of Ccke appear to little advantage.

"I moved to have a reseizure of the lands of George Moore, a relapsed recusant, a fugitive, and a practising traytor; and showed better matter for the queen against the discharge by plea, which is ever with a *salvo jure*. And this I did in as gentle and reasonable terms as might be.

"Mr. Attorney kindled at it, and said, 'Mr. Bacon, if you have any tooth against me, pluck it out; for it will do you more hurt than all the teeth in your head will do you good.' I answered coldly, in these very words:—'Mr. Attorney, I respect you: I fear you not; and the less you speak of your own greatness, the more I will think of it.'

"He replied, 'I think scorn to stand upon terms

* Bacon's Works, vol. iv. p. 570. Biogr. Brit. vol. iii. p. 681.

of greatness toward you, who are less than little, less than the least;’ and other such strange light terms he gave me, with that insulting which cannot be expressed.

“Herewith stirred, yet I said no more but this : ‘ Mr. Attorney, do not depress me so far ; for I have been your better, and may be again, when it please the queen.’

“ With this he spake, neither I nor himself could tell what, as if he had been born attorney-general ; and in the end bade me not meddle with the queen’s business, but with mine own ; and that I was unsworn, &c. I told him, sworn or unsworn was all one to an honest man ; and that I ever set my service first, and myself second ; and wished to God that he would do the like.

“ Then he said, it were good to clap a *cap. utlagatum* upon my back ! To which I only said, he could not, and that he was at fault ; for he hunted upon an old scent.

“ He gave me a number of disgraceful words besides ; which I answered with silence, and showing that I was not moved with them.”*

It is probable that these complaints were recorded for the purpose of being submitted to the king ; but it does not appear that any proceedings took place in consequence.

The conduct of Sir Edward Coke on the bench, in maintaining the integrity of the judicial character, at a period when the judges were dependent on the favour of the court, deserves a very particular examination. One of the earliest cases in which he was called upon to assert the independence of his judgment, arose out of the proceedings of the high commission court. The unconstitutional and dan

* Bacon’s Letters, by Birch, p. 22. Bacon’s Works, by Montagu, vol. vii. p. 338.

gerous measures of which that court was made the instrument have been described by many historians. Cases in which it would have been impossible to procure a conviction in a court of common law were referred to the ecclesiastical commissioners, who did not hesitate to lend themselves to the violent and arbitrary designs of the court. The parties who were aggrieved by these unconstitutional proceedings not unfrequently appealed for protection to the courts of common law; and soon after Coke's accession to the bench, many prohibitions were moved for and granted, to stay the proceedings both of the court of high commission and of the presidents of the council of York and Wales. At length, the number of these prohibitions attracted the attention of the court; and the judges were called upon to justify their proceedings. This justification was prepared and communicated to the council by Sir Edward Coke, and contains a full and bold defence of the conduct pursued by himself and his brothers in granting prohibitions to the courts of the lords' president.* [See Note 1.] The churchmen and courtiers, however, were far from being satisfied with these reasons; and Bancroft, the archbishop of Canterbury, preferred a formal complaint to the king against the conduct of the judges of the common law. In consequence of this complaint, both the archbishop and the judges were, in the month of November, 1608, summoned before his majesty; when Bancroft insisted that the king had power in his own person to determine of what matters the ecclesiastical court had cognizance; and that, if he was so pleased, he might take any cause from the determination of the judges and decide it himself. And the archbishop said, "that this was clear in divinity, that such authority belongs to the king by

* 12 Rep. 50.

the word of God in the Scripture." This singular doctrine received an immediate and unqualified denial from Coke, with the assent of all his brethren present; "and it was," says he, "greatly marvelled that the archbishop durst inform the king that such absolute power and authority belonged to the king by the word of God." The conclusion of this conference is admirably told by the chief justice himself. "Then the king said, that he thought the law was founded upon reason, and that he and others had reason as well as the judges. To which it was answered by me, that true it was that God had endowed his majesty with excellent science and great endowments of nature; but his majesty was not learned in the laws of his realm of England. [Note 2.] And causes which concern the life or inheritance, or goods or fortunes, of his subjects, are not to be decided by natural reason, but by the artificial reason and judgment of law; which law is an act which requires long study and experience, before that a man can attain to a cognizance of it; and that the law was the golden met-wand and measure to try the causes of the subjects, and which protected his majesty in safety and piece. With which the king was greatly offended, and said, that then he should be under the law, which was treason to affirm, as he said. To which I said, that Bracton saith, '*Quod rex non debet esse sub homine, sed sub Deo et lege.*'"* The event of this conference soon became public, and is thus related in a contemporary letter: "On Sunday, before the king's going to Newmarket, * * * my Lord Coke and all the judges of the common law were before his majesty, to answer some complaints of the civil lawyers for the general granting of prohibitions. I heard that the Lord Coke among other offensive speech, should

* 12 Rep. 63. See also 2d Inst. 601. State Trials, vol. ii. p. 131.

say to his majesty that his highness was defended by his laws ; at which saying, and with other speech then used by the Lord Coke, his majesty was very much offended, and told him that he spake foolishly, and said that he was not defended by his laws, but by God ; and so gave the Lord Coke, in other words, a very sharp reprehension both for that and other things, and withal told him that Sir Thomas Compton (the judge of the admiralty court) was as good a judge as Coke.”* The boldness and ready learning displayed by Sir Edward Coke at this interview cannot be too much admired.

About four years after this attempt to depress the courts of common law, Abbott, who had succeeded Bancroft in the see of Canterbury, renewed the complaints against the judges, and, as before, both parties were summoned before the king. A vehement controversy ensued between the archbishop and Coke, and he and the other judges of the common pleas offered reasons in support of the course they had adopted. They were again questioned on a subsequent day ; but, remaining constant in their opinion, the other judges were sent for, and, under the direction of Ellesmere, the lord chancellor, declared themselves of a contrary opinion. Upon this, all the judges were again directed to attend the council ; but the justices of the common pleas were commanded to retire, because, as they were informed by the lord treasurer, they had contested with the king. Ultimately, the judges of the king’s bench and the barons of the exchequer differing in their opinions, it was resolved in council, that the court of high commission should be reformed.† This was the most successful blow that had yet been aimed

* Lodge’s Illustrations, vol. iii p. 364. Aikin’s Court of King James, vol. i. p. 349.

† 12 Rep. 85.

at the exorbitant powers of these dangerous tribunals.

The reformed commission, as it was termed in the language of the court, was accordingly prepared; and, in order, no doubt, to prevent his voice being raised against it, the name of Sir Edward Coke, together with those of some others of the judges, was inserted in it. On its being published in the great chamber of the archbishop at Lambeth, the chief justice of the common pleas and the other judges named in it duly attended. But Coke, on being commanded to sit by force of the commission, refused; and stated the reasons of his refusal, in which his brethren seemed to concur. He then requested that the commission might be read, when it was found to contain many points against the laws and statutes of England, upon which the other judges expressed their satisfaction that they had not sat under it. While the commission was read, Coke stood, refusing to sit as he was requested by the archbishop and the lords, and by his example this course was adopted by the other judges.* Nothing could have been accomplished more favourable to the interests of freedom than the stripping these illegal courts of the sanction which a notion of their legality afforded. For this inestimable service the country was indebted to Coke.

In the year 1612 another most important constitutional question, respecting the nature and efficacy of the king's proclamations, was submitted to the consideration of Sir Edward Coke. From the first commencement of his reign, James had been in the habit of issuing numbers of these edicts, in which he frequently usurped the province of parliament, and denounced penalties upon the commission of acts to which no punishment was affixed by the law.

* 12 Rep. 88.

The first proclamation which he issued upon his arrival in England was dated from Burghley, and related to the apprehension of William Ruthven and Patrick Ruthven, two of the Gowrie conspirators. This was followed by a proclamation against monopolies, and subsequently by a variety of others, making the total number of those issued in the first year of his reign thirty-seven.* For some time the issuing of these edicts does not appear to have excited much jealousy. "The people," says Wilson, the historian,† "took them for good payment a great while, till the multitude of them lessened their valuation." At length the frequency of these extraordinary attempts to supersede the usual functions of the legislature roused the attention of the commons; and, on the 7th of July, 1610, a petition of grievances was presented to the king, in which the number and nature of the proclamations which his majesty had promulgated occupied a conspicuous place. "Nevertheless," say the complainants, "it is apparent both that proclamations have been of late years much more frequent than before, and that they are extended not only to the liberty, but also to the goods, inheritances, and livelihood of men; some of them tending to alter some points of the law, and making them new; other some made shortly after a session of parliament, for matter directly rejected in the same session; others appointing punishments to be inflicted before lawful trial and conviction; some containing penalties in form of penal statutes; some referring the punishment of offenders to courts of arbitrary discretion, which have laid heavy and grievous censures upon the delinquents; some, as the proclamation for starch, accompanied with letters commanding inquiry to be made against transgressors at the quarter-sessions; and some vouching for-

* Booke of Proclamations.

† Kennet, vol. ii. p. 667.

mer proclamations, to countenance and warrant the latter.”* Among the proclamations complained of were two issued in 1608: the first relating to the making of starch; the second forbidding the erection of buildings in London, and commanding the justices of the peace to pull down the same if erected contrary to the proclamation, to sell the materials, and to commit the workmen to prison.† In presenting the petition of grievances to the king, Sir Francis Bacon, one of the members commissioned to perform that duty, endeavoured to palliate the ungracious proceeding by expressions of great humility and submission. “Let not the sound of grievances,” said he, in his address to the king, “though it be sad, seem harsh to your princely ears. It is but *gemitus columbæ*, the mourning of a dove, with that patience and humility of heart which appertaineth to loving and loyal subjects.”‡ James, however, had sufficient discretion to perceive that the gentle complaints of the dove might be changed into the angry cry of the eagle; and he, therefore, thought it necessary to take some steps to establish the legality of his edicts. It was accordingly determined that the judges should be consulted, doubtless under the expectation that an opinion favourable to the royal wishes might be procured from that venerable body.

On the 20th of September Sir Edward Coke was summoned to attend the lord chancellor, lord treasurer, and some other members of the council; and was directed to give his opinion respecting the legality of the two proclamations relating to the making of starch, and the erecting of new buildings in London. Excusing himself from giving an immediate answer, he begged that he might be allowed to con-

* Petition of Grievances, Howell's State Trials, vol. ii. p. 525.

† Booke of Proclamations, p. 151, 159.

‡ Bacon's Works, vol. ii. p. 212. 4to. ed.

fer with his brother judges on the matter, "and then make an advised answer according to law and reason." The members of the council present were careful that the chief justice should not be ignorant of the wishes entertained by the court. The lord chancellor said, "that every precedent had first a commencement, and that he would advise the judges to maintain the power and prerogative of the king; and in cases in which there is no authority and precedent, to leave it to the king to order in it according to his wisdom, and for the good of his subjects, or otherwise the king would be no more than the Duke of Venice; and that the king was so much restrained in his prerogative, that it was to be feared the bonds would be broken." The lord privy seal said, "that the physician was not always bound to a precedent, but to apply his medicine according to the quality of the disease." "And all concluded," adds Sir Edward Coke, "that it should be necessary at that time to confirm the king's prerogative with our opinions, although that there were not any former precedent or authority in law; for every precedent ought to have a commencement." In reply to these observations, the chief justice intimated an opinion against the legality of the proclamations, and again urged his request to be allowed a conference with his brethren, which was ultimately granted; and the two chief justices, the chief baron, and Baron Altham were directed to take the subject into their consideration. In the course of Michaelmas term, their resolution was communicated to the privy council; and there can be little doubt that the constitutional terms in which that very important opinion was conveyed, were chiefly owing to the influence exerted by the chief justice of the common pleas over the minds of his brothers. The resolution was delivered in the following words:

“ It was resolved, that the king by his proclamation cannot create any offence which was not an offence before, for then he may alter the law of the land by his proclamation in a high point ; for if he may create an offence where none is, upon that ensues fine and imprisonment. Also the law of England is divided into three parts : common law, statute law, and custom ; but the king’s proclamation is none of them. Also; *malum aut est malum in se, aut prohibitum*, that which is against common law is *malum in se* ; *malum prohibitum* is such an offence as is prohibited by act of parliament. Also it was resolved, that the king hath no prerogative but that which the law of the land allows him. But the king, for prevention of offences, may admonish his subjects by proclamation that they keep the laws, and do not offend them, upon punishment to be inflicted by the law, &c. Lastly, if the offence be not punishable in the star-chamber, the prohibition of it by proclamation cannot make it punishable there.”* Nothing more decisive than these resolutions could have been devised by the warmest advocates of constitutional liberty ; and so conclusive were they deemed, even by the court, that after this period, as we learn from a note appended to Sir Edward Coke’s own report of the proceedings, no proclamation imposing fine and imprisonment was issued by the court. [Note 3.]

It might have been supposed, that the independent and uncompromising conduct of Sir Edward Coke on these occasions would have precluded all chance of his promotion ; and still less did it seem probable that he should owe that promotion to the suggestion of his rival, Sir Francis Bacon. That ambitious and crafty man, who still eagerly desired to obtain the office of attorney-general, seeing that

* 12 Rep. 74.

his own promotion depended on that of Sir Edward Coke, prepared a memoir under the title, "Reasons why it should be exceeding much for his majesty's service to remove the Lord Coke from the place he now holdeth, to be chief justice of England, and the attorney to succeed him, and the solicitor the attorney." Among the reasons offered for the change Bacon states, "the remove of my Lord Coke to a place of less profit, though it be with his will, yet will be thought abroad a kind of discipline to him for opposing himself in the king's causes, the example whereof will contain others in more awe." He also says, that the projected change "will strengthen the king's causes greatly among the judges; for both my Lord Coke will think himself near a privy counsellor's place, and thereupon turn obsequious; and the attorney-general, a new man and a grave person in a judge's place, will come in well with the other, and hold him hard to it, not without emulation between them, who shall please the king best."* According to these suggestions, Coke was, on the 25th of October, 1613, raised to the chief justiceship of the king's bench; and a few days afterward was sworn in as a member of the privy council. Hobart was appointed chief justice of the common pleas; and Bacon succeeded to the vacant office of attorney-general.

Of the obsequiousness which Bacon anticipated, the new chief justice betrayed no symptoms, though in the year 1615 an opportunity occurred to recover his credit in the estimation of the court. A sermon, written by one Peacham, was seized in his study; and being said to contain treasonable passages, it was proposed to indict the writer for treason. As a preliminary, the accused was examined "before torture, in torture, between torture, and after torture,"

* Bacon's Works, vol. vii. p. 340. Montagu's ed.

but no confession was drawn from him ; “ his raging devil,” as Bacon expressed himself in a letter to the king, “ seeming to be turned into a dumb devil.” It was then resolved to take the opinion of the judges of the king’s bench, extrajudicially, as to the nature of the offence of which Peacham had been guilty. This delicate task was confided to Bacon, who applied all his art to win over the chief justice. Coke replied, “ that such auricular taking of opinions was not according to the custom of the realm ;” and intimated that his brothers, probably, would not comply with it. Of their opinion, however, Bacon felt well assured. “ Nor am I,” he adds in his letter to the king, “ out of hope that my Lord Coke himself, when I have in some dark manner put him in doubt that he shall be left alone, will not continue singular.” At length the chief justice so far complied with the requisitions of the court as to declare his opinion in writing [Note 4.] ; though, from the expressions made use of by Bacon, it seems not to have been of a nature very satisfactory to the court.*

In a case which occurred in the course of the same year, (1613,) Sir Edward Coke has been supposed to have exhibited something like a compliance with the wishes of the court ; and to have sanctioned, by his opinion, the illegal mode of taxation which was known by the name of “ a benevolence.” Mr. Oliver St. John, a gentleman of an ancient family, addressed a letter to the mayor of Marlborough, in which he questioned the legality of the benevolence lately set on foot. For this offence an information was exhibited against him in the star-chamber, where he was adjudged to pay a fine of £5000, and to be imprisoned during the king’s pleasure. In a letter addressed by Bacon to James, giving him an account of the proceedings in the star-chamber, he says,

* State Trials, vol. ii. p. 870 ; and see 3 Inst. 29.

“My lord chief justice delivered the law for the benevolence strongly; I would he had done it timely.” In order to form a correct judgment with regard to the honesty of the opinion thus delivered by Coke, it is necessary shortly to examine the state of the law as to benevolences, as it existed at this time. By the statute 1 Rich. 3. c. 2., the charge or tax which was collected under this name was declared illegal. “But it appears,” says Coke, “by the preamble, that this benevolence was against the will and liberty of the subject; but a free-will offering is not restrained.”* He also mentions a case in the 40th Elizabeth, in which “it was resolved by all the justices and barons, that a free grant to the queen without coercion is lawful, and accordingly they granted it to the queen.”† This and other authorities appear to have been collected by Sir Edward Coke, when his opinion was required in *St. John’s* case; and they probably satisfied his mind that the proceeding, though it might not be strictly constitutional, yet was not illegal. That the court did not profess to impose it as a compulsory tax, appears from the address of Bacon to the lords of the star-chamber. “It will,” he says, “appear most evidently what care was taken that that which was then done might not have the effect, no, nor the show, no, nor so much as the shadow of a tax.”‡ Coke, therefore, was bound to declare the law as it existed, and might conscientiously deliver his opinion in favour of a voluntary benevolence.

The discovery of the murder of Sir Thomas Overbury, in the year 1615, and the tracing of that dark and intricate plot to its authors, not only occupied much of the time and attention of Sir Edward Coke, but likewise placed him in a situation of great difficulty. It is impossible, within reasonable limits,

* 12 Rep. 119.

† *Ibid.*

‡ *State Trials*, vol. ii. p. 904.

to give any idea of this "grand oyer of poisoning." In the inquiry which took place previously to the trials, Sir Edward Coke examined upward of two hundred witnesses; and, in the course of these arduous proceedings, conducted himself with a zeal and industry which even forced an encomium from Bacon. "This I will say of him, and I would say as much to ages, if I should write a story, that never man's person and his place were better met in a business than my Lord Coke and my lord chief justice in the cause of Overbury."* Much of the mystery in which these infamous proceedings were enveloped has never been unravelled. From various passages of the trial, it is obvious that the chief justice was impressed with an idea that certain persons, whose names could not be breathed, were in some manner implicated in the transaction. [Note 5.] With unwearied diligence, however, he searched out and brought to punishment the actual perpetrators of the crime, though the king's favourite was included among them.

It was rumoured at the time that the conduct of Sir Edward Coke during these proceedings had given much displeasure to the court; and a circumstance soon afterward happened, which increased the odium under which the chief justice laboured. The king had been informed that Sergeant Chiborne, in arguing a question in the common pleas, had maintained certain positions contrary to the royal prerogative. Sir Francis Bacon was, therefore, directed to inform the judges that it was his majesty's pleasure to be first consulted before they proceeded to pronounce their judgment in the cause. The attorney-general accordingly signified the royal commands to the chief justice,† who desired that each of

* State Trials, vol. ii. p. 1027. But see his Letter in the Biogr. Brit. p. 687.

† See the Letter, Bacon's Works, by Montagu, vol. vii. p. 321.

his brethren might receive a similar intimation. Upon this the judges met, and, after a conference, resolved that it was their duty to proceed notwithstanding the royal mandate. In order to justify this resolution, they addressed a modest and respectful letter to the king, in which they stated the reasons in law, and the oath which compelled them to proceed.* This document was signed by all the twelve judges. James replied by a letter, in which he pronounced the alleging their oath for their non-compliance a weak and impertinent pretence ; and that as to the statute they mentioned, it was very improbable that any of his predecessors should be so far off their guard as to pass an act so very prejudicial to the prerogative. He concluded with reiterating his commands not to proceed. Soon afterward the judges were summoned to the council-table. The king himself was present to administer the reproof. He reprimanded them for their remissness in permitting counsel to dispute his prerogative at the bar ; telling them that it was their duty to check such intemperate sallies ; that deferring their judgment, upon just and necessary reasons, was neither a denial nor delay of justice ; that to say the point was a private contest between subject and subject, was wide of the case ; and, lastly, that their letter was indecently couched, and failed in form. Upon the latter accusation all the judges knelt, acknowledged their error, and craved pardon. It was now that the high and independent spirit of Coke was boldly and nobly displayed. He entered at once upon his defence. He insisted that the king's command for stopping the proceedings was a delay of justice, and, by consequence, against law and the judges' oath ; and that as they intended to manage the pleading, the king's prerogative should not have

* Biogr. Brit. art. Coke, p. 688. Bacon's Works, by Montagu, vol. vii. p. 322.

been concerned. To this James replied, that for them to pronounce whether his prerogative was concerned or not, without consulting him, was a preposterous management. He then required the lord chancellor to deliver his opinion, whether his commands had been against law and the oath of the judges. The chancellor, wisely excusing himself, referred the matter to the king's council; who, with Bacon at their head, at once declared that the royal command was no denial of justice. Coke, however, was not silenced. Indignant at the obsequious conduct of the crown lawyers, he urged that it was the duty of the king's council to argue before the judges, and not against them. After some farther discussion, the following question was propounded by the lords of the council: "Whether, in a case where the king believed his prerogative or interest concerned, and required the judges to attend him for their advice, they ought not to stay proceedings till his majesty had consulted them?" To this all the judges answered in the affirmative, excepting Sir Edward Coke, who said, *that when the case happened, he would do his duty*;* an answer at once honest, bold, and discreet.

It unfortunately happened, that about this time a violent dispute occurred between Sir Edward Coke and the Lord Chancellor Ellesmere; "which," says the historian Wilson, "made a passage to both their declines." At the trial of a cause before Coke, one of the witnesses was kept back by the practice of the opposite party. "A pragmatist fellow," a friend of the party who withheld the witness, undertook to account for his non-appearance. Carrying him to a tavern, and calling for a pot of sack, he bade him drink; and leaving him drinking, went into court, where, being called to prove the inca-

* Biog. Brit. art. Coke, p. 689.

capacity of the witness to attend, he swore "that he left him in such a condition, that if he continued in it a quarter of an hour, he would be a dead man." On this evidence a verdict was obtained; but the party who had been injured by the fraud filed a bill in chancery against his adversary, who, refusing to put in his answer, was committed. Upon this the defendant petitioned the star-chamber for relief; and Coke, as it is said, mingling himself with the dispute, threatened the chancellor with a *præmunire*.* This was merely the revival of a former controversy. After a judgment in the king's bench, one Glanville had been committed for refusing to obey a decree of the court of chancery in the same matter; whereupon he applied to the court of king's bench, who held that he ought to be bailed, and bailed him accordingly.† The consequence of these proceedings was a reference of the disputed jurisdiction to the king, who, after hearing the matter argued, affirmed the authority of the court of chancery.

The patience of the court was now exhausted, and it was resolved to inflict upon Sir Edward Coke the disgrace and punishment which he had incurred by his uniform opposition to the irregular and arbitrary designs of the government. On the 27th July, 1616, he was summoned before the council, when three several charges were preferred against him. The first related to some malversation while he was attorney-general; the second, to his conduct in Glanville's case, mentioned above; and the third, to his behaviour before the king, when the judges were called on to account for their proceedings, notwithstanding the royal prohibition. To these accusations Coke returned clear and distinct answers.

* Wilson in Kennet, vol. ii. p. 704.

† Collectanea Juridica, vol. i. p. 20. ,

Soon afterward he again appeared at the council-table on his knees, when he was informed by Secretary Winwood, that though a favourable report had been made to the king of the proceedings which had taken place there a few days before, his majesty was not satisfied with the explanations given. Out of his clemency, however, his majesty had been pleased not to deal heavily with him, and had decreed, 1. That he should be sequestered from the council-table until his majesty's farther pleasure was known; 2. That he should forbear to ride his summer circuit as judge of assize; 3. That during the vacation, while he had time to live privately and dispose himself at home, he should take into his consideration and review his book of reports, wherein, as his majesty was informed, were many extravagant and exorbitant opinions set down and published for positive and good law. Among other things, the king was not well pleased with the title of those books, wherein he styled himself lord chief justice, &c., whereas he could challenge no more than lord chief justice of the king's bench. Having corrected what in his discretion he found meet in those reports, his majesty's pleasure was that he should bring the same privately to himself, that he might consider thereof as in his princely judgment should be found expedient. To this reprimand Coke replied, that he did in all humility prostrate himself to his majesty's good pleasure; that he acknowledged the decree to be just, proceeding rather from his majesty's exceeding mercy than his justice; that he gave humble thanks to their lordships for their favours and goodness toward him, and hoped that his behaviour for the future would be such as to merit their lordships' favours.* On his thus retiring in disgrace from the council-table, the lord treasurer

* Biogr. Brit. art. Coke, p. 691.

availed himself of the opportunity, in the quaint language of Wilson,* “to give him a wipe.” He told him that he had one thing more to let him know, which belonged to the earl marshal to take notice of, which was that his coachman used to ride bareheaded before him, which was more than any ways he could assume or challenge to himself, and he required him to forbear it for the future. Coke replied, that his coachman did it for his own ease, and not by his commandment; and again making his acknowledgments, departed.

The reprimand at the council-table was followed, in the course of the same year, by Coke’s removal from office. This measure was probably hastened by the desire of Villiers, who was anxious to obtain possession of a valuable office in the king’s bench which Coke had promised to Somerset, and which might be obtained without difficulty from a new chief justice. On seeing the *supersedeas* which deprived him of his high judicial rank, Coke’s fortitude forsook him, and he is said to have received it with tears.† On the 15th November, 1616, Sir Henry Montague was appointed chief justice, and the lord chancellor, in the address which it was at that time customary to deliver on such occasions, warned him not to follow the steps of his predecessor, against whom the greater part of the speech was directed. “Remember,” he concluded, “the removing and putting down of your late predecessor, and by whom.”‡

Thus, by the vengeance of an arbitrary court and the artifices of a needy favourite, was a judge of profound learning and incorruptible integrity driven from the seat which he had occupied with so much honour. Though the reflections which accompanied

* In Kennet, vol. ii. p. 705. † D’Israeli’s James I., p. 125.

‡ Moor’s Rep. 828.

him in his disgrace must have been most consolatory, yet to a mind like that of the late chief justice, wholly devoted to the science of his profession, a retreat from its labours must have been productive of nothing but irksomeness and disquiet. In the midst of his misfortunes his ancient adversary, Sir Francis Bacon, did not fail to take advantage of so favourable an opportunity to goad still more deeply the wounded spirit of his rival. He addressed to him an "Expostulation," for the purpose, as he informed Coke, of showing to him "his true shape in a glass." As many of these observations had, doubtless, a foundation in truth, though they may have been aggravated by the feelings of the writer, they are not to be overlooked in forming an estimate of the real character of Sir Edward Coke.

"First, therefore, behold your errors. In discourse you delight to speak too much, not to hear other men: this, some say, becomes a pleader, not a judge; for by this sometimes your affections are entangled with a love of your own arguments, though they be the weaker, and rejecting of those which, when your affections were settled, your own judgment would allow for strongest. Thus while you speak in your own element, the law, no man ordinarily equals you; but when you wander, as you often delight to do, you wander indeed, and give never such satisfaction as the curious time requires. This is not caused by any natural defect, but, first, for want of election, when you, having a large and fruitful mind, should not so much labour what to speak, as to find what to leave unspoken: rich soils are often to be weeded.

"Secondly, you cloy your auditory when you would be observed: speech must be either sweet or short.

"Thirdly, you converse with books, not men, and

books especially human ; and have no excellent choice with men, who are the best books ; for a man of action and employment you seldom converse with, and then but with your underlings ; not freely, but as a schoolmaster with his scholars, ever to teach, never to learn ; but if sometimes you would in your familiar discourse hear others, and make election of such as know what they speak, you should know many of the tales you tell to be but ordinary ; and many other things which you delight to repeat and serve in for novelties, to be but stale. As in your pleadings you were wont to insult over misery, and to inveigh bitterly at the persons, which bred you many enemies, whose poison yet swelleth, and the effects now appear, so are you still wont to be a little careless in this point, to praise or disgrace upon slight grounds, and that sometimes untruly ; so that your reproofs or commendations are for the most part neglected and contemned ; when the censure of a judge, coming slow but sure, should be a brand to the guilty and a crown to the virtuous. You will jest at any man in public, without respect of the person's dignity or your own : this disgraceth your gravity more than it can advance the opinion of your wit ; and so do all actions which we see you do directly with a touch of vain-glory, having no respect for the true end. You make the law to lean too much to your own opinion, whereby you show yourself to be a legal tyrant, striking with that weapon where you please, since you are able to turn the edge any way ; for thus the wise master of the law gives warning to young students, that they should be wary, lest, while they hope to be instructed by your integrity and knowledge, they should be deceived with your skill armed with authority. Your too much love of the world is too much seen, when, having the living of a thousand, you relieve few or

none : the hand that has taken so much, can it give so little ? Herein you show no bowels of compassion, as if you thought all too little for yourself, or that God hath given you all that you have, if you think wealth to be his gift, I mean that you get well, for I know sure the rest is not, only to that end, you should still gather more, and never be satisfied ; but try how much you would gather, to account for all at the great and general audit-day. We desire you to amend this, and let your poor tenants in Norfolk find some comfort ; where nothing of your estate is spent toward their relief, but all brought up hither to the impoverishing of your country.”*

In pursuance of the royal command, Coke applied himself to the revision of his reports, and after the expiration of three months submitted *five* errors which he had discovered to his majesty ; “ being rather,” as it is said in a paper which appears to have been drawn up by Bacon, “ a scorn than a satisfaction to his majesty.”† James was therefore pleased that Sir Edward’s “ memory should be refreshed, and that he should be put in mind of some passages dispersed in his books which his majesty did distaste ;” and the attorney and solicitor general selected five points upon which the explanations of the late chief justice were desired. A warrant was issued to some of the judges to examine these errors, but the inquiry was subsequently dropped.

At length an opportunity occurred to Coke of restoring himself to the royal favour, without being guilty of any compliances disgraceful to his political character. Sir John Villiers, the brother of the favourite, the Earl of Buckingham, had formerly made proposals for an alliance between himself and the youngest daughter of Sir Edward Coke. The

* Bacon’s Works, by Montagu, vol. vii. p. 298.

† Id. vol. vii. p. 352.

offer had, however, been slighted ; but now, by the advice of Sir Ralph Winwood, the secretary of state, who had been offended by some want of courtesy on the part of Bacon, and who, therefore, attached himself to the interests of his rival, Sir Edward Coke, a renewal of the negotiation for the marriage was proposed. A large portion was offered with the lady, and Buckingham approved of the alliance. At the moment when Coke was on the point of accomplishing his wishes, and securing the good offices of the favourite, a formidable obstacle presented itself.

On the death of his first wife, Coke had married the Lady Hatton, widow of Sir William Hatton, and sister to Thomas Lord Burleigh, afterward Earl of Exeter. The temper of this lady was such as to afford her husband very little pleasure in their domestic intercourse ; and she now opposed with violence the match which he had so greatly at heart. In order to prevent it, she carried away her daughter secretly, and lodged her in the house of Sir Edmund Withipole, near Oatlands. Coke made immediate application to the Earl of Buckingham for a warrant from the privy council to procure the restoration of his daughter, and, discovering the place of her confinement, he proceeded to Sir Edmund Withipole's house, accompanied by his sons, and carried her from thence by force. For this prompt exertion of the paternal authority, Lady Hatton preferred a complaint against her husband in the star-chamber.

In the meanwhile Bacon, who had been created lord keeper, was not idle. He saw the necessity of crushing at once the hopes which Coke had formed of a restoration to power, and he applied himself with diligence to frustrate them. In the first instance he addressed himself to Buckingham, stating the reasons against the alliance. " First, he shall marry into a disgraced house, which, in reason

of state, is never held good ; next, he shall marry into a troubled house of man and wife, which in religion and Christian discretion is disliked," &c. He then addressed the king, urging, in the same manner, many reasons against the match, and attributing the peaceable and submissive state of the country to "the disauctorising" of Coke, and hinting, that if he again came into power, strengthened by such an alliance, it would cause a relapse of affairs into their former state. Resolving to lose no advantage in the controversy, Bacon promoted the filing of an information against Coke in the star-chamber for his conduct in recovering his daughter ; but every effort was vain against the wishes of the favourite. By the intervention of Lady Compton, the mother of Buckingham, a truce was declared between Sir Edward and his wife. The lord keeper was severely censured by the king,* the proceedings in the star-chamber were directed to be suspended, and Coke, restored to favour, was reinstated in his place at the council-table. With that mean subserviency, which degraded a mind of the highest and noblest order, Bacon, perceiving that he could not prevent the marriage, became equally zealous in promoting it. [Note 6.] It was accordingly solemnized with much pomp at Hampton Court ; but Lady Hatton, at the instance of her husband, was placed for some time under restraint. The domestic disputes between these parties were never entirely reconciled. Many letters remain to prove the bad terms on which they lived ; but the history of their domestic quarrels is neither edifying nor amusing. [Note 7.] On her release, the Lady Hatton gave a magnificent entertainment in honour of the marriage of her daughter ; but her husband was forbidden the feast. "The expectancy of Sir Edward's rising is

* See James's letter, Bacon's Works, by Montagu, vol. vii. p. 359.

much abated," says a letter-writer of the day,* "by reason of his lady's liberty; who was brought in great honour to Exeter House by my Lord of Buckingham from Sir William Craven's, whither she had been remanded, presented by his lordship to the king, received gracious usage, reconciled to her daughter by his majesty, and her house in Holborn enlightened by his presence at dinner, where there was a royal feast, and to make it more absolutely her own, express commandment given by her ladyship, that neither Sir Edward Coke nor any of his servants should be admitted." [Note 8.] On one occasion, upon a rumour of Sir Edward's death at his house at Stoke Pogis, Lady Hatton, accompanied by her brother, set off immediately to take possession of the place; but on their way were stopped by one of the physicians, with the disagreeable intelligence of Sir Edward's amendment.†

Notwithstanding Coke's restoration to favour, he never again received any judicial appointment; though his name was included in a great number of commissions for the management and arrangement of various public affairs.‡

In the third parliament of James I., which assembled in 1620, Sir Edward Coke appeared as one of the representatives of Leskard, in Cornwall. His character, age, and experience, added to the ability and zeal with which he devoted himself to the service of the country, gave great weight to all the measures which he supported. He exerted himself particularly to procure the abolition of the many injurious monopolies which had been lately granted; and to bring to punishment the persons who, under colour of them, had oppressed the country. [Note 9.] In almost every debate of importance the name of Sir Edward

* *Strafford's Letters*, vol. i. p. 5. † *Id.* vol. i. p. 265.

‡ *Rymer's Fœdera*, vol. xvii. *Biogr. Brit.* art. *Coke*, p. 693.

Coke appears as a speaker, supporting on all occasions the cause of freedom and liberality. He was one of the very few persons of that age who had the capacity to perceive the injurious nature of those restrictions with which, at that period, almost every branch of trade was fettered. On a bill being brought in "for the free trade and traffic of Welsh cloths, cottons, plains, &c., in and through the kingdom of England and principality of Wales," Sir Edward Coke said, "Whereas it is alleged that for a reason of state there was a restriction on the buying of those Welsh cloths, &c. : a reason of state is often used as a trick to put a man out of the right way ; for when a man can give no reason for a thing, then he flieth to a higher strain, and saith it is a reason of state. *Freedom of trade is the life of trade : and all monopolies and restrictions of trade do overthrow trade.*"* Again, in the debate on a bill to enable merchants of the staple to transport woollen cloths to Holland, &c., Coke expressed a similar sentiment ; saying, "that he thought it best for the kingdom to have a liberty of trade, so it be well governed."† On another occasion we find him opposing the first project of a corn-law which was ever proposed in parliament. A bill having been brought in under the title of "A bill against the importation of corn," was opposed by Mr. Towerson, Sir Dudley Digges, and Sir Edward Coke. Sir Dudley Digges said, that if we bar the importation of corn when we have no need of it, we shall not have it imported when we want it. Sir Edward Coke said, that he never heard of any bill that was ever preferred in parliament against the importation of corn ; that he loved to follow ancient precedents ; that he thought the bill spoke Dutch, but that it was certainly for the benefit of the Low Countrymen.‡

* Proceedings and Debates, &c., vol. i. p. 308 ; and vol. ii. p. 155.

† Id. vol. ii. p. 35. ‡ Proceedings and Debates, vol. ii. p. 87.

In the session of 1621 the commons began to show evident signs of that discontent which afterward broke out into such serious controversies with the crown. Sir Richard Grosvenor said, "We have hitherto sung nothing but *placebo*, and danced to the king's heart; but it hath now pleased his majesty to change this tune, and to make us sing nothing but *lachrymæ*, and sing *loath to depart*."* The subject of religion, and the sufferings of the protestant cause in Germany, roused all the sympathies of the house, and they passed a declaration in favour of supporting the palsgrave, amid waving of hats and acclamations of triumph. Scarcely had the declaration been read, ere the king adjourned the parliament. "Then Sir Edward Coke, one of the king's privy council, with tears in his eyes, standing up, said the prayer (which is in the common prayer-book) for the king and his issue; adding only to it, *and defend them from their cruel enemies*."†

The activity displayed by Coke in procuring the condemnation of various monopolies irritated several of the persons who had benefited by those exactions to such a degree, that in conjunction, as it seems probable, with some other of Sir Edward's enemies, among whom his own wife and Bacon were found, they resolved to annoy him, by instituting proceedings against him in the star-chamber. The nature of these charges against him was various, but they chiefly related to malpractices in his official stations; and they concluded with an accusation of "ridiculous and barbarous behaviour and carriage in the place of a judge, comparing of himself, blasphemously, to Samuel."‡ There is every reason to conclude that the offences with which he was charged had no existence but in the malicious imaginations of the accusers. The commons, indignant that one

* Proceedings and Debates, vol. ii. p. 123.

† Id. p. 174.

‡ Id. p. 250.

of their most active and respected members should be thus assailed, took the matter up with much warmth, and proceeded to animadvert on the parties who ventured to attack a member for that which had been done in the course of his parliamentary duty.* The king also, on the other hand, interested himself in "Sir Edward Coke's foolish business," as he was pleased to term it; and had not more important matters supervened, it is probable that the business, foolish as his majesty might regard it, would have caused a breach between the crown and the parliament. But the "apologetic petition," and the king's answer, occupied the attention of the house so deeply, that the matter appears to have been forgotten.

At length the misunderstanding between James and the commons attained such a height, that the king, with his own hand, erased from the journals of the commons the celebrated protestation or declaration of their liberties and privileges, which they had passed in anticipation of a dissolution; and on the 6th January, 1621, published a proclamation, declaring the parliament dissolved, and animadverting with severity on those ill-tempered spirits who had compelled him thus to exercise his prerogative. But James was not contented with the bare expression of his displeasure: several leading members of the country party, among whom was Sir Edward Coke, were committed to the tower. Orders were issued to seize his papers at his chambers in the Temple, and to seal up the doors: and such was the animosity of the court, that it is said to have been debated in the council whether he could not be excluded from the benefit of the general pardon.† Nor was this the only persecution to which he was subjected. He was once more cited before the star-chamber, on a charge of concealing some examina-

* Proceedings and Debates, vol. ii pp. 201, 248, 254, 260, 294, 305, 314, 326, 328, 262.

† Parl. Hist. vol. v. p. 525.

tions during the trial of the Earl of Somerset : but this proceeding appears to have been soon abandoned. He was also again dismissed from his place at the council-table ; and from this time he wholly forfeited the countenance of the court.

His appointment on a commission, in the year 1623, to inquire into the church establishment of Ireland, may at first seem to show that Coke had not fallen into entire disgrace ; but there is little doubt that this was, in fact, intended as an honourable banishment. During the examinations into the conspiracy to accuse Coke in the star-chamber, Lep-ton, one of the parties, was represented to have said, “ that some of the greatest men in the kingdom were acquainted with this business ; and that if the business of the star-chamber did not hit Sir Edward Coke home, that then he should be sent over a commissioner into Ireland.* Some years afterward, when speaking of the practice of foreign employment, Coke said, “ No restraint, be it ever so little, but is imprisonment ; and foreign employment is a kind of honourable banishment : I myself was designed to go to Ireland ; I was willing to go, and hoped, if I had gone, to have found some Mompessons there.”†

At the commencement of the reign of Charles I. many of those who had watched with jealousy and distrust the events of the last reign, looked forward with better hopes to the measures of the new government. Sir Benjamin Rudyard, commending the good natural disposition of the new sovereign, his freedom from vice, his knowledge acquired by travel, and his “ being bred in parliaments,” moved that the “ house should take such a course as might sweeten all things between the king and the people.” He was followed by Sir Edward Coke, who moved that

* Proceedings and Debates, &c., 1621, vol. ii. p. 254. ✓

† Rushworth, vol. i. p. 523.

there might be no committees for grievances or courts of justice ; first, in respect of the plague ; next, because this was the very beginning of the new king's reign, in which there can be no grievances as yet."* But this favourable disposition was speedily destroyed by the obvious bias of the court to those measures which, in the last reign, had been productive of so much confusion. The subject of grievances was resumed by the commons ; while the crown incessantly demanded supplies. In the debates on this subject, Coke took a conspicuous part, and was one of the first who ventured to point at Buckingham as one of the great grievances of the country. "The last speaker on this side we shall mention," say the compilers of the Parliamentary History, "was old Sir Edward Coke ; who began again with his leaks, and said, 'That two would drown any ship. That *solum et malum consilium* was a bottomless sieve. An officer should not be *cupidus alienæ rei, parcus suæ ; avarus reipublicæ ; super omnia expertus. Misera servitus est ubi lex incerta aut incognita.* That in the 11th of Henry 3., Hubert de Burgh, chief justice, advised the king that *Magna Charta* was not to hold, because the king was under age when the act was made. He was Earl of Kent, but degraded for this some time after. In the 16th of Henry 3., Segrave, chief justice, was sentenced for giving sole counsel to the king against the commonwealth. That it was *malum consilium* to press more subsidies when they had given two, and to bring them thither only for £40,000. Lastly, he offered to give £1000 out of his own estate, rather than grant any subsidy now.'"[†] The advice of Sir Edward Coke prevailed ; the subsidy was denied ; and the king in anger dissolved the parliament.

* Parl. Hist. vol. vi. p. 351.

† Id. p. 401.

A short time only elapsed before the king again resolved to summon a new parliament; but measures were adopted to exclude from it those who had made themselves obnoxious by opposing the supplies to the crown. Several of the most distinguished members of opposition were accordingly appointed sheriffs, in order that they might be prevented from being returned as knights of the shire. Sir Edward Coke was nominated sheriff of Buckinghamshire. In order to escape the burden thus imposed upon him, Sir Edward made various exceptions to the sheriff's oath; all of which exceptions but one were overruled, and in that one particular the oath was reformed.* Notwithstanding his appointment to be sheriff of Bucks, Coke was returned as knight of the shire for Norfolk; upon which the king sent a message to the commons, desiring them to issue a new writ for the latter county. The matter was referred to a committee of privileges and elections, who, without giving an opinion on the eligibility of Coke, desired that a search might be made for precedents. In the meantime, Sir Edward did not take his seat; though it appears that no new member was returned for Norfolk; as on the day before the dissolution of the parliament, it was resolved, "That Sir Edward Coke, standing *de facto* returned a member of this house, shall have privilege against a suit in chancery, commenced against him by the Lady Clare."†

In the third parliament of Charles I., which assembled in March, 1627, O. S., Sir Edward Coke, being no longer disabled by his shrievalty, appeared as one of the representatives for Buckinghamshire. The commons immediately recurred to the subject of grievances; among which the levying of taxes, by the authority of the king alone, under the name

* Kennet, vol. iii. p. 13.

† Parl. Hist. vol. vi. p. 425.

of loans, occupied a conspicuous station. The following is the speech delivered by Coke on this occasion :—

“ *Dum tempus habemus bonum operemur.* I am absolutely for giving supply to his majesty ; yet with some caution. To tell you of foreign dangers and inbred evils, I will not do it.

“ The state is inclining to a consumption, yet not incurable ; I fear not foreign enemies ; God send us peace at home. For this disease I will propound remedies : I will seek nothing out of my own head, but from my heart and out of acts of parliament. I am not able to fly at all grievances, but only at loans. Let us not flatter ourselves. Who will give subsidies, if the king may impose what he will ? and if, after parliament, the king may enhance what he pleaseth ? I know the king will not do it. I know he is a religious king, free from personal vices ; but he deals with other men’s hands, and sees with other men’s eyes. Will any give a subsidy, if they are to be taxed after parliament at pleasure ? The king cannot lawfully tax any by way of loans. I differ from them who would have this of loans go among grievances ; for I would have it go alone.

“ I’ll begin with a noble record ; it cheers me to think of it,—26 Edw. III. It is worthy to be written in letters of gold. Loans against the will of the subject are against reason, and the franchises of the land ; and they desire restitution. What a word is that franchise ? The lord may tax his villein high or low ; but it is against the franchises of the land for freemen to be taxed but by their consent in parliament. Franchise is a French word, and in Latin it is *libertas*. In *Magna Charta* it is provided, that *Nullus liber homo capiatur, vel imprisonetur, aut disseisetur de libero tenemento suo, &c., nisi per*

legale iudicium parium suorum, vel per legem terræ. This charter hath been confirmed by sundry good kings above thirty times.*

At length the commons resolved to frame a bill which should include a remedy for the various grievances under which the nation was suffering; and, with the assistance of Sir Edward Coke, the famous petition of rights was framed. Various conferences took place on the subject of this bill between the lords and the commons; in which Coke argued strenuously in support of the petition. After vainly endeavouring to elude it, Charles gave his assent to the bill in the usual form. The joy of the commons at this event is said to have been "unspeakable;" but it was expressed to the king in a manner more satisfactory. A bill was passed, granting five subsidies to the crown; and it was carried up to the lords by Sir Edward Coke, almost the whole house attending him.†

Shortly before the passing of this bill the commons had fallen with great violence upon Buckingham; and, notwithstanding the speaker's injunction that they should not proceed with that subject, Sir Edward Coke openly denounced the favourite as the cause of all their misfortunes. A singular picture of this debate has been preserved in a contemporary letter, which proves the earnest feelings with which the popular speakers of that day were affected. "Then Sir Robert Philips spake, and mingled his words with weeping. Mr. Prynne did the like; and Sir Edward Coke, overcome with passion, seeing the desolation likely to ensue, was forced to sit down, when he began to speak, through the abundance of tears." "The naming of the duke," says the same writer, "was entertained and answered with a cheerful acclamation of the house, as when

* Parl. Hist. vol. vii. p. 371.

† Id., vol. viii. p. 203.

one good hound recovers the scent, the rest come in with a full cry.”*

The latest service rendered by Sir Edward Coke to his country is said to have been the managing of a conference with the lords respecting the issuing of a commission of excise, for the raising of money by imposition.†

At the dissolution of parliament, which took place in March, 1628, O. S., Sir Edward Coke, weighed down with the burden of years, retired from public life to his seat at Stoke Pogis, where he continued to reside till the period of his death. That event took place on the 3d of September, 1634. He died repeating the words, “Thy kingdom come, thy will be done.” He was buried at Titeshall church, in Norfolk.

A short time before his death, Sir Francis Windbank, under the authority of an order from the privy council, came to search his house for treasonable and seditious papers. Many manuscripts of value were on this occasion carried away; among which were the First and Second Institutes, the Eleventh and Twelfth Reports, and upward of fifty other manuscripts, together with his last will. Some years afterward, on the petition of one of Sir Edward's sons, such of the manuscripts as could be found were returned to his family, but the will was never recovered.‡

By his first wife, Sir Edward Coke had seven sons and three daughters; by his second wife, two daughters. The alliances and descents of the family are traced in the *Biographia Britannica*. Henry, the fifth son of Edward, left a son, Robert Coke, who married the Lady Anne Osborne, daughter of the Duke of Leeds, by whom he had an only

* Rushworth, vol. i. p. 609.

† Id. p. 614, 615.

‡ Roger Coke's Detection, sub anno 1634.

son, Edward Coke. Edward Coke married Carey, the daughter of Sir John Newton, of Gloucestershire, by whom he had several children, the eldest of whom, Thomas Coke, was afterward created Baron Lovell and Earl of Leicester. Anne, the youngest daughter of this Edward Coke, married Philip Roberts, Esq., a major in the second troop of life-guards, from whom the present Mr. Coke is lineally descended.

The personal appearance of Sir Edward Coke is said to have been prepossessing; a representation which the portraits remaining of him confirm. His features were regular, and their expression engaging. His frame was vigorous and well proportioned; his air and manner grave and full of dignity. In his habits of life he was temperate, laborious, and exact; neat in his dress, and studious of the cleanliness of his person. It was a common saying of his, "That the cleanliness of a man's clothes ought to put him in mind of keeping all clean within."* It was his custom to "measure out his time at regular hours," retiring to rest at nine o'clock, and rising at three in the morning.†

In estimating the political character of Sir Edward Coke, it is very necessary to consider it with relation to the times in which he lived, and the station in life which he filled. The king had not yet abandoned any of those high pretensions, which had been so imperiously advanced by the Tudor princes; and the people had not learned to regard with indifference the frowns of the sovereign. The favour of the court was still all-sufficient, not merely to dignify, but also to enrich the fortunate object of it; and to be excluded from the rays of that favour was destructive, not merely to the pride, but often to the

* Biog. Brit. art. Coke, p. 679.

† Roger Coke's Detection, ed. 1696. p. 49.

prosperity, of the offender. To a disgraced courtier the popular cause had few attractions to offer. The country party did not yet occupy such a station as to render their service either very profitable or very honourable in the eyes of the nation at large. To one who held a judicial office under the crown the motives to a subservient policy were still stronger. The judges had been long regarded as in some degree bound, by virtue of their office of royal counsellors, to justify the acts of the crown. They held their offices merely during the king's pleasure, which they had in but too many instances been in the habit of scrupulously regarding. To preserve the character free from stain in such times, and under such circumstances, required not merely integrity of heart and honesty of purpose, but a mind of singular resolution and constancy.

A writer,* who seldom makes an assertion without a competent authority to sustain it, in reviewing the character of Sir Edward Coke, has termed him "a flatterer and tool of the court till he obtained his ends." It is very difficult to say, upon what particular actions of Coke's life this censure is grounded. Until he was raised to the bench it does not appear that he took any part in politics; for the asperity and violence with which he conducted the charges against Essex and Raleigh cannot be properly referred to any political feeling. They doubtless arose from the exuberance of professional and official zeal, heightened by the uncontrollable vehemence of a temper never well regulated. While he filled the office of attorney-general, we find no instances of undue compliance with the wishes of the court; no dishonourable attempts to advance the prerogative at the expense of the liberties of the people. The very temper and disposition of Coke

* Hallam's Const. Hist. vol. i. p. 360. 4to.

refute the idea of his having ever acted the flatterer or the tool. Had he, indeed, possessed the capacity of thus shaping his conduct according to the necessities of his fortunes, he would scarcely have evinced that unbending opposition to the court, which he must have known would ultimately lead to his disgrace. His conduct through a long course of years, and in situations of the most critical difficulty, was obviously guided by a strong overruling principle of integrity. Maturity of years seldom adds to honesty of purpose ; and it is not probable that he, who in his youth was the flatterer and the tool, should in his manhood and in his decline be the firm and constant patriot. Of Sir Edward Coke's conduct, while on the bench, in resisting the aggressions of the court, it is difficult to speak in terms of adequate praise. Exposed to the arts and dissimulations of the most subtle man of his age, to the frowns of the king, and to the ill-offices both of the courtiers and of the clergy, he still persisted in vindicating the laws against every attempt to overthrow them. Even when abandoned by the whole body of his brethren, who meanly and tamely submitted themselves to the court, Coke did not hesitate singly and alone to persist in justifying the rectitude of his conduct, and exhibited a stubbornness of virtue, which, in those times of lax political morality, was as honourable as it was singular. To him was the nation very principally indebted for that high and independent tone in the debates of parliament which elevated the character of the commons, and enabled them to struggle so successfully against the arm of prerogative.

In his judicial character, Sir Edward Coke was scarcely less deserving of commendation. At a period when corruption was so much more common than it has been in later times, that the stain which

it impressed upon the character was of a lighter dye, his reputation for judicial purity and integrity was blameless. The violence of temper which distinguished and disgraced him at the bar seems to have been softened down in his maturer years ; and we find no instance, while he sat on the bench, of grossness or intemperance of language, or of any want of courtesy either to the suitors or the practisers in his court. [Note 10.] As a lawyer, Coke has, perhaps, never been equalled in the copious extent and variety of his information. No legal question could arise which he was unable to illustrate out of the superabundant stores of his learning. His mind naturally fertile, was cultivated with unceasing care and diligence. In reporting the arguments of counsel and the judgments of the court, which were at that time remarkable for their learning and fulness, he has frequently added, from the inexhaustible sources of his own information, a mass of legal matter, which has now become equally valuable with the decisions themselves. The chief fault of his powerful intellect appears to have been the absence of that admirable faculty of distribution and arrangement, which, like discipline in an army, gives irresistible power to those forces, which without it would be oppressed and rendered useless by their very extent. The mind of Coke had also suffered from its devotion to the logic of his profession. In his reverence for legal principles and legal maxims, he sometimes forgot the higher dictates of reason and good sense. As an antiquarian lawyer, he was not deeply learned, and was surpassed by Selden, and, perhaps, by Hale. Yet even with these defects he stood the acknowledged and unrivalled head of his profession, at a period fruitful in eminent men, and when the ambition of Bacon led him to devote his high genius to the same pursuits.

It will not, perhaps, be altogether useless to compare the characters and fortunes of these two celebrated men. With powers of mind which have probably never been equalled ; with philosophy to unravel the errors of ages, and to link with the highest of human sciences his own immortal name ; with an intellect so subtle and searching, as not only to traverse the world of matter, but to pierce into the unexplored realms of mind ; with sagacity to read, and with ingenuity to govern, the characters of others ; with a bland and copious tongue ; and with an obedient and powerful pen ; above all, with the richest of human gifts, the capacity of taking the most enlarged views of man's true happiness ; with all these countless blessings showered lavishly upon him, Bacon has left a name which, in despite of its immortality, every honest and honourable man would scorn to bear ; a name debased by the most mean and grovelling ambition, by thorough want of principle, and by the profligate abandonment of high and honourable feeling. Nor did he fail to reap his due reward in the insolence and ingratitude of those whom he had helped to raise and to flatter, and in the contempt of all to whom such debasement was odious.

Far inferior in intellectual capacity, with none of the science, and with little of the literature of Bacon, [Note 11.,] Sir Edward Coke, in all the essentials of a truly noble character, was immeasurably his superior. Unimpeached in his integrity, consistent, honest, and firm in his political principles, he exhibited an admirable example of the most difficult of all virtues—virtue in public life. The dignified self-respect with which he conducted himself in his contests with the court, forms a striking contrast to the abject submission of Bacon, whenever he discovered that he had offended the king or his favourite. Nor is the conclusion of the lives of these great

men less instructive. They had both been dismissed from their high stations ; they had both disgraced at court : but Coke retired with the enlivening consciousness of his honest and honourable life ; Bacon, “ with wasted spirits and an oppressed mind,” and with bitter reflections on his shattered fortunes.

The most celebrated of the works of Sir Edward Coke is the Comment on Littleton ; a wonderful monument of the extraordinary extent and profundity of his learning, and of which it has been observed by the most competent judge, that “ Neither England nor the continent can produce any contemporaneous work of equal or even approximating merit.”* It may be regarded as a complete *corpus* of our elder jurisprudence, and as such will never cease to be diligently studied by all who are desirous of forming an intimate acquaintance with the principles of the common law.

The very copious and valuable collection of reports which were prepared and published by Sir Edward Coke are unequalled in that branch of legal literature. In Calvin’s case† he has stated the method which he used in reporting, from which we may understand the nature of the labour to which he subjected himself. “ And now that I have taken upon me to make a report of their arguments, I ought to do the same as fully, truly, and sincerely as possibly I can ; howbeit, seeing that almost every judge had, in the course of his argument, a particular method, and I must only hold myself to one, I shall give no just offence to any if I challenge that which of right is due to every reporter, that is, to reduce the sum and effect of all to such a method as, upon consideration had of all the arguments, the reporter himself thinketh to be fittest and clearest for the right understanding of the true reasons and causes

* Butler’s Reminis., vol. i. p. 115.

† 8 Rep. 4. a.

of the judgment and resolution of the case in question." Of the reports, Bacon himself has left the following opinion: "To give every man his due, had it not been for Sir Edward Coke's reports, which, though they have many errors, and some peremptory and extrajudicial resolutions more than are warranted, yet they contain infinite good decisions and rulings over of cases; the law by this time had been like a ship without ballast, for that the cases of modern experience are fled from those that are adjudged and ruled in former time." It may be observed, that the 12th and 13th Reports were not published until after the chief justice's death; but that these are genuine there cannot be the least doubt. They contain the numerous political cases in which Coke was engaged or consulted; and are invaluable, not merely to the constitutional lawyer, but to the historian. The publication of these cases was, in all probability, forbidden by the king.*

The remaining works of Sir Edward Coke consist of the Second Institute, containing commentaries on various ancient statutes; the Third Institute, on Criminal Law; the Fourth Institute, on the Jurisdiction of Courts; a volume of Entries, or Forms of Pleading, and three tracts; on Bail and Mainprize; The complete Copyholder; and a Reading on Fines, which were published in one volume by Sergeant Hawkins in 1764.

Sir Edward Coke may be considered as the founder of the invaluable library of MSS. at Holkham. A number of those manuscripts bear his autograph name, and several volumes appear to be wholly written by his own hand. There are eight copies in MS. of the *Registrum brevium*, several volumes of the Statutes, and some treatises which do not appear to have been published.

* See Tomlinson's case, 12 Rep. 104.

JOHN SELDEN.

1584—1654.

IN the very first rank of our antiquarian lawyers stands the name of John Selden. The profundity of his learning and the extent of his researches render a critical examination of his writings, or even a familiar acquaintance with them, a task which few persons have either the power or the resolution to undertake. The following pages will be confined to an attempt to trace the principal incidents of the life of this learned and celebrated person. [Note 12.]

John Selden was born on the 16th December, 1584, at Salvington, near Tering, in Sussex. His father was a person of inconsiderable rank; his mother a member of the knightly family of Baker, in Kent. He received his early education at the free-school of Chichester; and at the age of fourteen was admitted of Hart-hall, in the university of Oxford. With regard to the course of his early studies little is known. At the age of eighteen he became a resident in London and a member of Clifford's Inn, it being customary at that time for students at law to enter themselves at one of the minor inns of court before they became members of the greater societies. In May, 1604, he was admitted of the Inner Temple, and in due time was called to the bar. His practice in court was very inconsiderable. "He seldom or never," says Wood, "appeared at the bar; but sometimes gave chamber counsel, and was good at conveyancing." The leisure which he derived from this mode of life was devoted to subjects more congenial to his taste than the practical details of his profession. Having formed an acquaintance with Spelman, Cotton, and Camden, he was led at

an early period to the study of our national antiquities; and before he had attained the age of twenty-three, he had compiled a volume of collections on the early history of England, under the title of *Analectwn Anglo-Britannicwn libri duo*. This work was, several years afterward, printed at Frankfort, in a very incorrect manner; and though it has been censured by Bishop Nicholson, it was regarded by its author, at a more mature age, as a performance not discreditable to his youth. Pursuing the same line of study, Selden, in 1610, published two tracts relative to early English history, under the title of *England's Epinomis*, and *Jani Anglorum facies altera*. In the same year he gave to the world a short but learned piece, entitled the *Duello, or single combat*; in which he investigates the origin and method of the judicial combat, as practised among our Norman ancestors. The reputation which Selden had acquired by these smaller essays of his learning and industry, was greatly enhanced by the publication, in 1614, of a work in which he displayed his profound acquaintance with the antiquities both of his own and other nations. In this treatise on *Titles of Honour* [Note 13.] a mass of legal and constitutional learning is accumulated, which renders it one of the most valuable works in the English historical library. A second edition, with large additions, was printed in 1631; and a third edition appeared in 1672.

For several years Selden did not appear again before the public; but in 1616 he edited the treatise of Sir John Fortescue, *De laudibus legum Angliæ*, together with the *Summæ* of Hengham, to both of which he subjoined numerous notes. In the same year, also, he addressed to Sir Francis Bacon, who had just obtained the great seal, his *Brief Discourse* touching the office of lord chancellor of England.

In the following year he communicated to Purchas, who was then publishing his "Pilgrimage," a short tract "*Of the Jews, sometimes living in England.*"

It will be observed, that in the foregoing works Selden had confined himself to the illustration of the laws and antiquities of his own country; but in the year 1617 he appeared in the new character of a biblical scholar and antiquarian. In that year was published his celebrated work, *De Diis Syriis syntagmata duo*; in which he treated of the false deities mentioned in the Old Testament, and of the nature of the Syrian idolatry in general. This learned performance made the name of Selden generally known to the scholars of the continent; and, in 1627, it was reprinted by the Elzevirs, under the superintendence of De Dieu, one of the professors in the Walloon college at Leyden, and of Daniel Heinsius, to whom the author dedicated the edition. Such was the reputation which this work gained abroad, that in 1662, and in 1680, it was again reprinted at Leipsic.

As yet the labours of Selden had served but to contribute to his honour and fame: but his next publication was productive of different consequences. In the year 1618 he gave to the public his *History of Tithes*; in which he traced, with great learning and ingenuity, the rise and progress of that ecclesiastical payment, so as to overthrow the theory of those zealous churchmen who contended for the divine right of tithes. It was not to be expected that, at a period when the church of England exercised so triumphant a sway, a work tending to subvert the divine title of her ministers to their temporalities would be suffered to appear without incurring every censure, ecclesiastical and temporal, which it was in the power of the church and her sons to inflict. Indignant at the learned outrage of which Selden had been guilty, the head of the church resolved to

vindicate the rights of his servants. Accordingly, in December, 1618, Selden was summoned to appear before the king at his palace of Theobalds. The guilty scholar was introduced by his friends Ben Jonson and Edward Heyward, and the royal theologian was pleased to point out to him the obnoxious passages in his work. A kingly critic is seldom mistaken; and Selden submissively promised to write an explanation of the passages to which his majesty had objected. Not content with this retractation, the churchmen, in the following month, summoned Selden before the court of high commission, when the unfortunate scholar was compelled to subscribe the following ignominious declaration :

“My good lords, I most humbly acknowledge the error I have committed in publishing the *History of Tithes* ; and especially in that I have at all, by showing any interpretation of Holy Scriptures, by meddling with councils, fathers, or canons, or by what else soever occurs in it, offered any occasion of argument against any right of maintenance, *jure divino*, of the ministers of the gospel : beseeching your lordships to receive this ingenuous and humble acknowledgment, together with the unfeigned protestation of my grief, for that through it I have so incurred both his majesty’s and your lordships’ displeasure, conceived against me on behalf of the church of England. JOHN SELDEN.”

That Selden displayed upon this occasion a want of that high moral courage which is one of the first and noblest qualities of a good citizen must be admitted ; but the nerves of the martyr and of the patriot are not found in every frame : nor can it justly be made the subject of peculiar reproach, that the learning of Selden was not accompanied by the courage of Hampden. The studious habits of the scholar were but too well calculated to engender that “indulgence to his safety,” of which Clarendon

speaks as one of the characteristics of Selden's disposition ; and it has been well and justly remarked, that this error, "proceeding from natural timidity, and operating only defensively, is much less culpably in a moral estimate, than that spontaneous assumption of unreal sentiments and opinions which we see too often practised for profit or advancement."* Still it must be confessed, that it is impossible to view the character of Selden with that deep respect and fervent admiration with which we regard those resolute and high-minded men, whom no threats can prevail upon to retract, where they are conscious of having acted rightly.

Not content with employing the royal influence and the strong arm of the high commissioners to silence the unfortunate Selden, his antagonists resolved also to attack him with his own weapons ; and accordingly numerous answers were poured out by the exasperated champions of the church. But to every answer there might be a reply ; and Selden was not a man who would willingly decline a controversy. To prevent so dangerous a warfare, in which it was probable that the doctrine of divine right, as applied to temporal matters, would be treated with no gentle hand, the king interposed his royal authority ; and, sending for Selden, sternly forbade him to make any reply to the refutation which Mountagu, one of the state chaplains, was about to publish of the *History of Tithes*. "If you, or any of your friends," said his majesty, "shall write against this confutation, I will throw you into prison !" In answer to this cogent and conclusive argument Selden had nothing to offer, and contented himself with circulating among his friends some observations upon the works of his critics.

The anger of the king had been so greatly excited

* Aikin's Life of Selden, p. 37.

by this attack upon the privileges of his clergy, that Selden, who had not yet learned to withstand the frowns of royalty, found it necessary to propitiate his majesty by a recantation of certain opinions, in which it had been his misfortune to differ from him. Pursuant to the royal pleasure, he therefore published three tracts, "*Of the Number 666 in the Revelations*;" "*Of Calvin's Judgment on the Book of Revelations*;" and "*Of the Birth-day of our Saviour*;" upon all of which subjects he had the discretion to perceive the error of his former opinions. In the mystic number he found new and more recondite meanings; in the Judgment of Calvin he no longer discovered the good sense and the modesty which had formerly distinguished it; and in Christmas-day he saw the actual return of the anniversary which he had formerly had the temerity to doubt. It is a painful spectacle to see learning and genius thus made the tools of oppression and terror.

But the period was now fast approaching when Selden was about to act a more noble and manly part. An important change in the state of society and in the general condition of the people had taken place, which at this time was beginning to render itself visible in the transactions between the crown and the parliament. In the year 1621 the commons assumed a tone, to which, however unpleasant it might sound in the royal ears, their constitutional station in the country entitled them. They complained in bold and decided terms of the grievances under which the nation laboured; and, notwithstanding the strong expression of the royal displeasure, they persisted in exercising this their great constitutional privilege. At length the king, moved to anger by the patriotic obstinacy of the commons, ventured to threaten them in language unbecoming the sovereign of a limited monarchy, asserting, that all their

privileges were derived from himself and his ancestors, and hinting that their very existence depended upon his pleasure. Indignant at this assumption of absolute power, the house immediately took measures to vindicate their rights; and, in the course of the inquiries instituted with regard to the nature and extent of their privileges, they consulted Selden, though not at that time a member of the house, who entered into a long and learned dissertation on the subject, in which he took occasion to enlarge upon some of the more prominent grievances of the times. In pursuance of the advice thus given, the house resolved to resist the aggressions of the prerogative; but such was the indignation of the court at these proceedings, that Selden, together with Sir Edward Sandys, a very active member of the country party, was committed to the custody of the sheriffs of London. His imprisonment, however, was far from being rigorous; and, after a few weeks' confinement, he was set at liberty. It appears that his release was procured at the intercession of Bishop Williams, who represented his case favourably to the Marquis of Buckingham.*

About this period Selden composed, by the order of the house of lords, a tract entitled *The Privilege of the Baronage*, first printed in the year 1642; and about the same time he wrote the tract on *The Judicature of Parliament*; a work of inferior reputation, and by some persons supposed to have been composed by Sir Simon D'Ewes. It was not printed until the year 1681. In the year 1623, Selden edited the historical work of *Eadmer*, an early chronicler, and appended to it a number of learned notes.

In the same year Selden entered for the first time

* See the appendix to the Proceedings and Debates of the Commons in 1620, vol. ii.

into public life, and in the parliament which was summoned in February, 1623-4, appeared as one of the representatives for the borough of Lancaster, and in the parliament which assembled after the death of James I. he was returned for Great Bedwin. In both of these assemblies Selden ranged himself on the popular side, and conducted himself with a courage and decision which could scarcely have been expected from a man who had yielded without a struggle to the frowns of James I. But the hearts even of the weak and timid are animated into resolution and bravery by the presence and example of the resolute and the brave; and in the society of Coke and Hollis and Ellyot, Selden ventured to act the part of an intrepid man and good citizen. The details of his conduct connected with the proceedings of parliament are matter of history, and do not require repetition in this place. It is sufficient to state, that in all the great constitutional debates of that stormy period he took an active and prominent part, and that he does not appear on any occasion to have shrunk from the performance of his weighty and dangerous duty. [Note 14.] On the dissolution of the parliament in 1628, Selden reaped the fruits of his patriotic exertions, and in company with Hollis, Ellyot, Stroud, and other eminent members of the commons, was committed under warrants from the council and the king to the Tower.

The history of the imprisoned members is well known. After a long, and for some time a very rigorous confinement, they were brought before the king's bench to be bailed, when the question of the legality of their imprisonment was raised, and decided against them by a suborned bench. Upon a second application to the court, the judges, who had, without doubt, received their instructions from the court, offered to admit them to bail provided they gave

sureties in large sums for their future good behaviour. This proffer being rejected, the prisoners were remanded, and a similar proposal made soon afterward met with a similar fate.* Upon this occasion Selden was instructed to speak for the rest; and on the refusal to find sureties, all the prisoners were remanded. At length various circumstances concurred to induce the court to relax its severity, and Selden, on application, was transferred by *habeas corpus* to the Marshalsea, and subsequently to the Gatehouse, where he was detained until May, 1630, in a confinement little more than nominal, being even permitted to visit his friend the Earl of Kent at his country seat. On these circumstances coming to the knowledge of the judges, and there being an irregularity in his removal to the Gatehouse, he was remanded to his former custody in the Marshalsea; but ultimately, at the intercession of several noblemen, who were desirous of availing themselves of his great professional services, he was released upon bail.

It is probable that the atmosphere of the Tower and Marshalsea produced a considerable effect on the political constitution of Selden, for on his liberation he seems to have recurred with zeal to the more tranquil pursuits of the scholar. Even during the active engagements of his parliamentary life he had not altogether lost sight of the studies so congenial to his disposition; and besides the composition of two short tracts, *Of the Original of Ecclesiastical Jurisdiction of Testaments*, and *Of the Disposition or Administration of Intestates' Goods*, he had added greatly to his literary reputation by the publication of his history of the Arundel Marbles, under the title of *Marmora Arundelliana, sive saxa Græca incisa*, [Note 15.,] a work which excited great interest both

* State Trials, vol. iii. pp. 235, 264.

among the scholars of England and of the continent. During his confinement in the Marshalsea, Selden had employed himself upon a work of Hebrew antiquities, which, in 1631, was published under the title of *De Successionibus in bona defuncti ad leges Ebræorum*, and of which a second edition was published in 1636, with a treatise *De Successione in pontificatum Ebræorum*. Both of these treatises were dedicated to Archbishop Laud; a circumstance from which we may infer that the fervour of the author's political feelings had suffered some abatement. These learned performances were re-edited at Leyden, in 1638, with additions by the author, and again at Frankfort in 1673.

In the year 1636 appeared the *Mare Clausum*, one of the most celebrated of the many learned works which Selden produced. It is probable that it was originally intended as an answer to the *Mare Liberum* of Grotius; but it is, in fact, a full history and exposition of the right claimed by the English to the sovereignty of the seas. This work had been composed many years, and so early as the year 1618 it was submitted, in MS., to James I. On the occurrence of the disputes with the Dutch in 1635, the treatise attracted the attention of Charles I., by whose order it was committed to the press. It was dedicated to the king; and such was the satisfaction with which the work was regarded at court, that copies of it were ordered to be preserved in the council-chest, in the court of the exchequer, and in the court of admiralty. In 1652 the *Mare Clausum* was translated into English by Marchmont Needham, and another translation appeared by J. H., probably James Howell, which is said by Mr. Butler to be the better version.*

On the assembling of the long parliament in 1640,

* Notes to Coke's Litt. 261. a.

Selden again appeared in public life, as one of the representatives of the university of Oxford. From the circumstance of his having been returned by that learned body, it is probable that, notwithstanding the course which he had adopted when he formerly sat in the commons, he was considered, upon the whole, as not disaffected to the royal cause. However, during the stormy period which preceded the breaking forth of the civil war, Selden does not appear to have swerved from the line of conduct which he had on former occasions pursued. He sat and acted on the committee for inquiring into the arbitrary proceedings of the earl marshal's court, and on the committee for preparing the remonstrance on the state of the nation. He was joined in all the proceedings preparatory to the impeachment of the Earl of Strafford, though his name does not appear as one of the members appointed to manage the evidence at the trial; and as he opposed the mode of proceeding against that nobleman by a bill of attainder,* he was ranked at this time by the populace as one of the "enemies of justice." He was on the committee appointed to examine into the unconstitutional decision of the court of exchequer-chamber on the subject of ship-money; but when the question of the abolition of episcopacy was brought before the house, he ranked himself among the friends of the church of England. In the year 1641, Selden was appointed, probably in violation of his private feelings, a member of the committee to prepare articles of impeachment against Archbishop Laud.

The part which Selden had taken in the argument for the abolition of episcopacy, to which his education and principles inclined him, had, doubtless, the effect of creating a favourable disposition toward

* State Trials, vol. iii. p. 1469.

him on the part of the court, insomuch that, upon the displacing of Littleton, who held the great seal, a serious design was entertained of conferring it upon Selden. It does not appear that the offer was actually made, since Lord Falkland and Sir Edward Hyde persuaded the king that it would be in vain. Clarendon tells us, that "the Lord Falkland and himself, to whom his majesty referred the consideration of a proper person for it, (the custody of the seal,) did not doubt of Mr. Selden's affection for the king; but withal they knew him so well, that they concluded he would absolutely refuse the place if it were offered to him. He was in years, and of a tender constitution; he had for many years enjoyed his ease which he loved: he was rich, and would not have made a journey to York, nor have lain out of his bed, for any preferment, which he had never affected."* However Selden may have been led by the timidity of his nature to make terms with power, it is obvious, from the opinion thus expressed by one who knew him well, that he was not esteemed to be a man who could be induced, by the prospect of honours and preferment, to abandon even his ease, much less his integrity.

The affairs of the kingdom were now fast tending to a crisis; and Selden, with the more moderate men of both parties, witnessed with dismay the approaching appeal to arms. On the one hand, the parliament appointed their lieutenants in the different counties; while, on the other, the king issued his commissions of array. Against the latter proceeding, as a dangerous and unconstitutional measure, Selden spoke with much earnestness in his place in parliament; and such was the respect with which his opinion was universally regarded, that his speech had a decided influence upon the manner in which

* Clarendon, *Hist. Rebell.*, vol. ii. p. 497. ed. 1826.

the measure was received by the country at large. The king was much disturbed with the violent opposition which the commissions of array met with from one whom he had been taught to regard as not altogether adverse to his cause; and with the royal permission Lord Falkland addressed to Selden a letter, in which he inquired into the grounds of such a determined opposition. Selden replied by recapitulating shortly the arguments which he had made use of in the house, and added a similar opinion against the legality of the ordinance of parliament for the appointment of lieutenants.* That opinion he took occasion to express in his place; but the assembly that had listened so willingly to the learned arguments against the measures of the court paid little regard to the same authorities when urged against their own irregular courses.

The moderate part taken by Selden on this and other occasions appears to have excited the suspicions of the more violent portion of the parliamentary party, for, in the year 1643, on the discovery of Waller's plot, that person was interrogated by the house as to the supposed participation of Selden, Whitelocke, and Pierpoint, in the conspiracy. This he strenuously denied, saying, "that he did come one evening to Selden's study, where Pierpoint and Whitelocke then were with Selden, on purpose to impart it to them all; and speaking of such a thing in general terms, these gentlemen did so inveigh against any such thing as treachery and baseness, and that which might be the occasion of shedding much blood, that he durst not, for the respect he had for Selden and the rest, communicate any of the particulars to them, but was almost disheartened himself to proceed in it."† With this explanation

* Hist. of Rebell. vol. iii. p. 91. ed. 1826.

† Whitelocke's Mem., p. 66.

the house were satisfied. In common with the other members who adhered to the party of the parliament, Selden subscribed the solemn league and covenant in 1644. A few months previous to this, the office of keeper of the records in the Tower had been conferred upon him by a vote of the house.

Amid all the disturbances of civil broils Selden did not neglect his literary pursuits. In 1640 appeared one of his most learned productions, entitled *De jure naturali et gentium, juxta disciplinam Ebræorum, libri septem*, containing a full discourse on the civil and religious polity of the Jews. In 1642 he published a version into Latin of a tract of the Patriarch Eutychius in the Arabic language, illustrating certain controverted points in ecclesiastical antiquities. This work was reprinted in 1656, under the superintendence of the learned Pococke, at the expense of Selden. In the year 1644 appeared a new work by this indefatigable scholar, *De anno civili veteris ecclesiæ, seu reipublicæ Judaicæ dissertatio*; which, in 1646, was followed by his *Uxor Hebraica, seu de nuptiis et divortiis, ex jure civili, id est, divino et Talmudico, veterum Ebræorum, libri tres*. In the following year he resumed the study of English antiquities, and employed himself upon an edition of *Fleta*, to which he prefixed a learned dissertation. In 1650 he sent to the press his great work, *De Synedris et præfecturis Juridicis veterum Hebræorum*; which, with the *Vindiciæ Maris clausi*, published in 1653, closes the long catalogue of his literary labours. In the latter work may be found much information relative to the biography of the author.

When the party to which Selden had principally attached himself rose into power, he made use of this circumstance for the protection, on various occasions, of the interests of literature. In particular,

he exerted himself in favour of the university of Oxford, where he had received his education, sheltering it from the attacks of the more zealous members of his party. He extended the same fostering care to the university of Cambridge; and, in 1645, had the honour conferred upon him of being unanimously elected master of Trinity-hall, an office which he thought proper to decline.

At length, in the year 1654, the constitution of Selden began to give way, and a frame never remarkably robust yielded to the pressure of age and infirmities. Conscious of the change which was approaching, he summoned to his side his friends, the primate Usher and Dr. Langbaine, to whom he expressed his confidence in the consolations of religion. He said, "that he had his study full of books and papers of most subjects in the world; yet at that time he could not recollect any passage wherein he could rest his soul, save out of the Holy Scriptures, wherein the most remarkable passage that lay most upon his spirit was *Titus* ii. 11, 12, 13, 14." Soon afterward he sent for his friend Whitelocke, to advise with him on the subject of his temporal affairs, but was prevented from entering into them by increasing debility. He died (unmarried) on the last day of November, 1654, and on the 14th of December was interred in the Temple church, where a mural monument was raised to his memory. [Note 16.] He left considerable wealth, chiefly acquired, as it appears, by means of his connexion with the family of the Earl of Kent. His library, which was of great extent and value, he had originally designed to bequeath to the Bodleian; but being offended by the refusal of the loan of a MS. from that library without the usual pledge for its safe restitution, he bequeathed his books to his executors, Edward Hayward, John Vaughan, and Matthew

Hale ; who, regarding themselves “ as the executors, not of his anger, but of his will,” carried their testator’s original intentions into effect, and deposited his valuable collection in the Bodleian. [Note 17.] A collection of ancient marbles, the property of Selden, was also deposited at Oxford. [Note 18.]

The character of Selden has been drawn by one who knew and admired him. “ He was a person whom no character can flatter, nor transmit in any expressions equal to his merit and virtue. He was of so stupendous a learning in all kinds, and in all languages, (as may appear in his excellent and transcendent writings,) that a man would have thought he had been entirely conversant among books, and had never spent an hour but in reading and writing ; yet his humanity, courtesy, and affability were such, that he would have been thought to have been bred in the best courts, but that his good-nature, charity, and delight in doing good, exceeded that breeding. His style in all his writings seems harsh, and sometimes obscure, which is not wholly to be imputed to the abstruse subjects of which he commonly treated, out of the paths trod by other men, but to a little undervaluing the beauty of style, and too much propensity to the language of antiquity ; but in his conversation he was the most clear discourser, and had the best faculty of making hard things easy and presenting them to the understanding that hath ever been known. Mr. Hyde was wont to say, that he valued himself upon nothing more than upon having had Mr. Selden’s acquaintance from the time he was very young ; and held it with very great delight as long as they were suffered to continue together in London ; and he was much troubled always when he heard him blamed, censured, and reproached for staying in London, and in the parliament, after they were in rebellion, and in the worst times, which his

age obliged him to do ; and how wicked soever the actions were which were every day done, he was confident he had not given his consent to them, but would have hindered them if he could with his own safety, to which he was always enough indulgent. If he had some infirmities with other men, they were weighed down with wonderful and prodigious abilities and excellencies in the other scale.”*

Some traits of Selden’s personal character remain to be mentioned. His kindness to scholars in distress has been recorded in a letter from Merrick Casaubon to the primate Usher : “ I was with Mr. Selden after I had been with your grace, whom, upon some intimation of my present condition and necessities, I found so noble as that he did not only presently furnish me with a considerable sum, but was so free and forward in his expressions, as that I could not find in my heart to tell him much of my purpose of selling, lest it might sound as a farther pressing upon him, of whom I had already received so much.” [Note 19.] Notwithstanding the courtesy and affability of which Lord Clarendon speaks, it appears that upon some occasions the habits of the scholar overcame the usual urbanity of Selden’s disposition. We are told by Calomies, that when Isaac Vossius was sometimes ascending his staircase to pay him a visit, Selden, being engaged in some deep research, would call out to him from his study that he was not at leisure for conversation. Whitelocke, however, says that “ his mind was as great as his learning ; that he was as hospitable and generous as any man, and as good company to those whom he liked.”† As to his religious opinions, we have the testimony of Sir Matthew Hale. “ I know,” says Baxter, in his additional notes on the life of Hale, “ you are acquainted how greatly he valued Mr. Selden, being

* Life of Clarendon.

† Memor. p. 608.

one of his executors, his books and picture being still near him. I think it meet, therefore, to remember that because many Hobbists do report that Mr. Selden was at the heart an infidel, and inclined to the opinions of Hobbes, I desired him to tell me the truth herein : and he oft professed to me that Mr. Selden was a resolved, serious Christian, and that he was a great adversary to Hobbes' errors, and that he had seen him openly oppose him so earnestly, as either to depart from him or drive him out of the room." In another place, Baxter tells us that Selden would not have Hobbes in his chamber while he was dying, calling out "No atheists!" But, according to Mr. D'Israeli, it appears from Aubrey's papers that Hobbes stood by the side of his dying friend.*

After the death of Selden, a small volume of apophthegms was published by his amanuensis, Richard Milward, under the title of *Selden's Table Talk*. The authenticity of these apophthegms has been sometimes doubted, and especially by Dr. Wilkins, who considers many parts of the volume as derogatory to the character of Selden. Another of Selden's biographers,† however, is of opinion that the *Table Talk* has a great air of genuineness, and has accordingly extracted from it many passages as illustrative of the sentiments and habits of Selden. "There are some of the thoughts and maxims recorded in *Selden's Table Talk*," observes that judicious writer, "in which there appears a sufficient conformity with his conduct and writings to remove all suspicion that they were not his real sentiments. There are, besides, many of a lighter kind, and some, as has been hinted, more lax and worldly in their morality than might have been expected from a man of his honourable character, but which, perhaps, were advanced in conversation as plausible deductions from prin-

* Quarrels of Authors, vol. iii. p. 33.

† Dr. Aikin.

principles only assumed for the sake of argument.”
[Note 20.]

A collected edition of the works of Selden was published in the year 1726, by Dr. David Wilkins, archdeacon of Suffolk, &c., in 3 vols. folio, (usually bound in six,) to which the editor has prefixed a life of the author.

Some specimens of Selden's poetical attempts remain ;* but they are not such as to induce any regret that he devoted so little of his time to the Muses. He is, however, introduced by Sir John Suckling, in his “ Session of the Poets.”

“ There was Selden, and he sat close by the chair.”

MATTHEW HALE.

1609—1676.

MATTHEW HALE was born on the 1st November, 1609, at Alderley, in the county of Gloucester. [Note 21.] His grandfather, Robert Hale, had acquired a considerable fortune in trade, which he divided among his five sons ; the second of whom, Robert, was educated for the bar, and married Joan, the daughter of Matthew Poyntz, esquire, of Alderley, a branch of the noble family of Poyntzes of Acton. Matthew, the subject of this memoir, was the only issue of the marriage. His father was a man of highly scrupulous conscience, and is said to have abandoned his profession, on the ground that the practice of it was not consistent with a strict adherence to truth and justice. According to Burnet, “ he gave over the practice of the law because he could not understand the reason of giving colour in pleading,

* See his verses in Greek, Latin, and English, in Brown's Britannia's Pastorals.

which, as he thought, was to tell a lie.”* While yet an infant, Matthew Hale was deprived of both his parents, and was educated under the directions of Anthony Kingscot, of Kingscot, esquire, his next kinsman, after his uncles, on the maternal side.

His guardian, being attached to the doctrines of the Puritans, placed young Hale under the tuition of teachers professing similar opinions; and at this period of his life it is probable that those habits of strictness, which afterward distinguished both his principles and manners, were formed. At the age of seventeen he became a student of Magdalen-hall, Oxford; and for some time distinguished himself there, as at school, by his proficiency in his studies. The dissipations of the university, however, offered temptations which the youthful Puritan was unable to resist; and he plunged into the abomination of stage-plays with a looseness proportioned to his former austerity. Rejecting the precise garments to which he had been accustomed, he began to indulge in the sinfulness of fashionable habiliments; and being gifted by nature with a powerful and agile frame, he forsook the lectures of his tutor for the lessons of the fencing-master. To such an extent, at this period, did he carry his love for martial weapons, that on his tutor's departure to the Low Countries, as the chaplain of the celebrated Lord Vere, young Hale resolved to accompany him, and, in the military phrase of the seventeenth century, to trail a pike in the Prince of Orange's army.

From the execution of this warlike resolution he was deterred by an accident. Being engaged in a suit at law relating to his estate, he was induced to visit London, with a view of forwarding the interests of his suit. Having retained Sergeant Granville, [Note 22.] he became personally acquainted with

* Life of Hale, p. 2.

that learned lawyer, who, remarking the many valuable qualities which his young client possessed, persuaded him to relinquish his idea of military service, and to devote himself to the study of the law. Accordingly, on the 8th November, 1629, he was admitted a student of Lincoln's Inn. The ardour which he had lately displayed in the pursuit of pleasure was now applied to better purposes; and he commenced his studies with a zealous industry which could not fail to ensure success. Discarding his gay clothing, he assumed a plain and student-like habit, and for some years [Note 23.] devoted sixteen hours each day to study. But in despite of this change, his attachment to convivial society still occasionally over-mastered him, till an incident occurred which produced a powerful effect upon his mind. Having joined a party of his companions, they indulged so deeply in draughts of wine, that one of the company became insensible, and the most serious apprehensions were entertained for his life. Hale was so much affected by this accident, that, retiring into another room, he fell upon his knees, and prayed earnestly to God that his friend might be restored, and that he might be himself pardoned for having been a participator in such excesses. At the same time he made a vow never more to be guilty of similar intemperance, nor again to drink a health while he lived, a vow which he is said to have observed with much strictness. It was probably under the influence of these feelings that he composed that scheme of daily employments, which his reverend biographer has preserved,* and which is remarkable for the tone of strict religious feeling pervading it. His early impressions appear to have recurred in full force; and so austere did he become, as to exhibit the greatest negligence in his personal appearance, insomuch, that upon one occasion he

* Burnet's *Life*, p. 9.

was impressed as a fit person to serve his majesty, and was only released in consequence of his being recognised by some passing acquaintance.

The diligence and ability displayed by Hale attracted the attention of Noy, the attorney-general, [Note 24.] who undertook to direct his studies, and evinced so warm an interest in his success, that he was distinguished among his fellow-students by the name of young Noy. The patronage of less important personages than an attorney-general has been found beneficial to many an unknown young lawyer; and under the auspices of Noy the talents of Hale speedily became known. Nor did he himself neglect any means which industry and perseverance could afford of ensuring success. According to the laborious practice of that day, he compiled in the course of his professional studies a common-place book, exhibiting so much learning and diligence, that when he was afterward raised to the dignity of chief baron, it was borrowed from him by one of the judges of the king's bench, who, on perusing it, declared that, though composed at so early an age, it was a performance which no lawyer in England could have surpassed. [Note 25.] In prosecuting his studies, Hale did not confine himself to an acquaintance with the principles of our own municipal law, but likewise turned his attention to the writers on Roman jurisprudence, in whose works he discovered the origin and grounds of many of the rules which prevail in our own system. It was to him a subject of regret, and the sentiment may at the present day be repeated, that the principles of the civil law are so seldom studied by our common lawyers.

It was the good fortune of Hale, at this early period of his life, to secure the friendship of two very eminent persons, the learned Selden* and John Vaughan, [Note 26.] afterward chief justice of the court of

* See his Life, in this volume.

common pleas. The various acquirements and instructive conversation of the former led young Hale to extend the scope of his studies, and to apply himself to literary and scientific pursuits. Some branches of the mathematics and of natural philosophy engaged a considerable portion of his attention, and his writings on these subjects attest the diligence of his application. He took a pleasure, also, in studying medicine and anatomy, in which his biographer affirms him to have made no inconsiderable progress. Ancient history and chronology also afforded an employment for his leisure hours; but his principal delight was the study of divinity, to which he was probably led by the associations of his childhood. These pursuits he used to call his diversions, to which he recurred for refreshment, when fatigued with his professional studies. Like many men of ardent genius, he possessed the valuable faculty of applying the powers of his strong and active mind to various subjects, without that distraction of thought to which persons of inferior capacity are subject. His indefatigable industry also enabled him to accomplish tasks which to the indolent would seem incredible. He rose early in the morning, and as he sacrificed no portion of the day to idle society, nor even indulged in any useless correspondence by letter, he found leisure to apply to his various literary pursuits without injury to his professional prospects. His temperance also was highly favourable to mental occupations; and so sparing was he in his diet, that his meals never prevented him from immediately resuming the labours which they had interrupted. It is, perhaps, to the variety of studies in which Hale engaged that his extensive learning is to be attributed. A complete change in the nature of the objects upon which the mind is engaged is almost equivalent to repose, and is, perhaps, equally salutary to the mental health.

With all the advantages which his long and laborious studies could confer, Hale was called to the bar. The period of his entrance into public life was unfavourable. The civil dissensions with which the country was beginning to be harassed rendered it difficult for the members of a profession standing so conspicuously in the eye of the public to play a wise and honest part. The early prepossessions of Hale must have led him to favour the country party, while his intimacy with Noy might probably induce him to regard the friends of prerogative with less detaste. In forming the scheme of his conduct at this difficult period of his life, he is said to have proposed to himself as a model the character of Atticus, who, amid the turbulence of contending factions, met with the esteem and regard of all. [Note 27.] In imitation of the Roman, Hale resolved to take no part in the political contests with which the country was agitated. The only interest which he manifested in public affairs was in succouring the distressed of both parties. The strict neutrality thus professed by Hale, at a period when so much was at stake on both sides, is not a subject for applause. When the violent and the indiscreet of all parties are roused to action, it does not become the moderate and sensible portion of society to remain unmoved, and to preserve their individual repose at the expense of the tranquillity of the state. At a later period of his life Hale appears to have been sensible of this error, and exerted the influence which his high character gave him in endeavouring to place the liberties of his country upon a sure foundation.

The neutrality which he observed in politics, and the esteem in which he was held by both parties, on account of his general character, rendered him a very desirable advocate to such of the prerogative

party as were put upon their trials for political offences. He was accordingly engaged in many of the great state trials of this period, and appeared as counsel for the Earl of Strafford and for Archbishop Laud.* The argument delivered on this occasion by Herne, the archbishop's leading counsel, is said to have been compiled by Hale. [Note 28.] He was also counsel for the Duke of Hamilton, Lords Holland, Capel, and Craven. On the trial of the latter nobleman, it is said, that on being threatened by the attorney-general for appearing against the government, he answered, "that he was pleading in defence of those laws which they declared they would maintain and preserve, and he was doing his duty to his client, so that he was not to be daunted with threatenings."

Notwithstanding his aversion to political engagements, we are told by Wood,† that in the year 1643 Hale took the covenant, and appeared several times with other lay persons in the assembly of divines at Westminster. He was held in much esteem by the members of the parliamentary party, and in his capacity of counsel was added to the commissioners deputed by parliament to treat with the royal commissioners, as to the reduction of Oxford. On this occasion he exerted himself to save that ancient seat of learning from the destruction with which it was threatened. On the death of Charles I., and the establishment of the commonwealth, Hale, less scrupulous than his friend Vaughan, who wholly declined practice until the restoration, took the engagement "to be true and faithful to the commonwealth of England, without a king or house of lords;" an act which the high court of justice seem to have required before they would permit counsel to argue.‡

* 4 State Trials, 338.

† Ath. Ox., vol. ii. col. 574.

‡ See the trial of Love, 5 State Trials, 211.

Having by this engagement secured the confidence of the parliament, Hale was, on the 20th of January, 1651-2, appointed one of a committee to consider the reformation of the law. In this labour he had some singular associates, among whom may be mentioned Major-general Desborough, Colonel Tomlinson, and the celebrated Hugh Peters. The latter was one of the most active members of the committee: according to Whitelocke, "he understood little of law, [Note 29.] was very opinionative, and would frequently mention some proceedings of law in Holland, wherein he was altogether mistaken."* The committee met several times in the house of lords; but considering the nature of the times and of the materials of which it was composed, it is not wonderful that little was effected by its labours. Some resolutions were, however, passed, which may afford suggestions not unworthy of the attention of those who are desirous of seeing the abuses of our suits at law amended.† The following may be taken as a specimen. "If the defendant in a personal action before pleading tender satisfaction to the plaintiff, with costs of suit, and it appear afterward at the trial to the jury sufficient, and not accepted of, the plaintiff to lose his own and pay the other's costs in the suit." [Note 30.]

On the death of the king, and the destruction of that authority from which, according to the theory of the constitution, the judges derived their powers, six out of the twelve judges immediately resigned their offices. The two chief justices, the chief baron, and three of the puisne judges, however, signified their readiness to continue in the exercise of their functions, provided the commons passed a declaration in favour of maintaining the fundamental laws of the realm, and at the same time repealed the oaths of allegiance and supremacy. A vote was

* Memorials, p. 520.

† Id. p. 520.

also passed for filling up the six vacant seats, which were mostly supplied by the promotion of sergeants.* On a vacancy again occurring in the common pleas, the place was offered to Hale, who had previously, on the 25th of January, 1653, been created a sergeant.† It has been supposed that this offer was made by the desire of Cromwell, who was willing to remove from the bar a man whose honest and resolute character might prove injurious to his service; but it is more probable that Hale was raised to the bench as one whose early connexions with the country party rendered him not unacceptable to the predominant faction. At first he hesitated as to the acceptance of the proffered dignity. His practice was considerable and lucrative, and he had some doubts as to the propriety of acting under a commission from the then ruling powers. Upon being urged, however, by many persons, and even by Sir Orlando Bridgman and Sir Geoffrey Palmer, men of his own profession, and much attached to the royal party, and having satisfied some of his scruples by conversing with two eminent divines, Dr. Sheldon and Dr. Henchman, he came to the resolution, "that as it was absolutely necessary to have justice and property kept up at all times, it was no sin to take a commission from usurpers." [Note 31.] On his appointment to the bench, Hale did not hesitate for some time, in the usual routine of his judicial duties, to preside at the trial of criminals, though he refused to take any part in the proceedings instituted against individuals for political offences. At length he began to entertain scruples, which would appear to be wholly unfounded, with regard to the lawfulness of inflicting punishment by virtue of the commission under which he sat, and accordingly he refused to sit on the crown side at the assizes. It

* Com. Journ. 1 June, 1649.

† Wood. Ath. Ox. ubi sup.

is probable that this refusal was not displeasing to the government, as upon more than one occasion Hale had displayed a resolution not to favour the wishes of those in power at the expense of justice. Soon after he was raised to the bench, two soldiers were tried before him at Lincoln for murder, under the following circumstances. An inhabitant of Lincoln, who had been one of the royal party, was met by one of the soldiers in the fields with a fowling-piece in his hand. The soldier observing him with the arms informed him that the protector had ordered that none who had been of the king's party should carry arms, and attempted to force them from him. The man resisted, and, throwing the soldier down, beat him and left him. The soldier having met with one of his companions, prevailed upon him to accompany him for the purpose of taking revenge. They accordingly watched for their adversary, and on his approach, the soldier who had before demanded the fowling-piece again addressed him; and while they were struggling for the possession of the arms, the other soldier, coming behind the man, ran his sword through his body. For this act the men were tried: one of them was found guilty of manslaughter, the other of murder. At the trial Colonel Whaley, who was in command of the garrison, came into court, and, addressing the bench, urged that the deceased was killed for disobeying the protector's orders, and that the soldier had but done his duty. The judge, however, was neither convinced by the colonel's arguments nor daunted by his threats; and passing judgment upon the prisoner, ordered speedy execution to be done, lest a reprieve should be granted. Upon another occasion, also, he displayed a degree of moral courage, and a sense of justice, highly honourable to him. Understanding that the protector had ordered a jury to be

returned to try a cause in which he was particularly interested, the judge called upon the sheriff to give an explanation of this transaction. The sheriff professed himself wholly ignorant of it, and referred to the under-sheriff, who admitted the jury had been returned by an order from Cromwell. Hale, having pointed out the statute which directs that all juries shall be returned by the sheriff or by his lawful officer, dismissed the jury, and refused to try the cause. On his return from the circuit the protector expressed his high displeasure at his conduct, and told him, in anger, that he was not fit to be a judge ; to which the only answer Hale returned was, that it was very true.

In some instances he was prevented, by the exertion of an authority which he could not control, from giving a clear way to the course of justice. Some anabaptists had rushed into a church, and violently disturbed the congregation while engaged in receiving the sacrament. This outrage having reached the ears of Hale while on the circuit, he resolved to have the offenders brought to justice, it being intolerable, as he well observed, that those who pretended so highly to liberty of conscience should molest others in the exercise of their religion. The proceedings against these offenders were, however, stayed by an authority superior to that of the judge. It would, perhaps, have been more honourable to Hale if, notwithstanding the disgust which the injustice of such proceedings occasioned, he had still persevered in distributing the criminal laws of the country with honesty and impartiality. It does not appear that his secession from the crown courts was the consequence of any hint from the government ; for on the trial of Penruddock a special messenger was despatched to him requiring him to assist at it. It was at this time vacation, and the

judge was resident at his country house at Alderley. His answer was, that he thought four terms and two circuits were enough, and that the short interval of rest was barely sufficient for the arrangement of his own affairs, and upon this ground he excused himself.

In the year 1654, while filling the office of one of the justices of the common pleas, Hale was elected one of the five knights of the shire returned to parliament for the county of Gloucester. [Note 32.] He does not appear to have entertained any scruples at the lawfulness of appearing in that assembly, where he proposed a resolution which indicated very clearly the nature of his political sentiments. He moved that the legislative authority should be affirmed to be in the parliament of the people of England, and a single person qualified with such instructions as that assembly should authorize, but that the military power for the present should reside in the protector.* He likewise exerted himself as became his character to moderate the wild designs which were brought forward by various enthusiastic members. Among other extravagant motions, was one to destroy all the records in the Tower, and to settle the nation on a new foundation. The opposition of Hale, whose intimate acquaintance with those relics of former ages was well known, was successful; and such was the zeal with which he spoke, that "he stopped even the mouths of the frantic people themselves."

On the death of Oliver Cromwell, Hale refused to act under a commission from the Protector Richard, alleging that he could no longer sit under such authority. In the same year, he was returned as one of the members for the university of Oxford;

* Goddard's Journal, prefixed to Burton's Diary, vol. i. Godwin, vol. iv. p. 118.

and, in 1660, he appeared as knight of the shire for the county of Gloucester, in the parliament which recalled Charles II. When the return of the king was loudly demanded, Hale distinguished himself by a motion, the policy of which has been questioned, but which, had he been fortunate enough to carry it, might have prevented many of the evils and much of the misgovernment which followed the restoration. He moved that a committee might be appointed to look into the propositions that had been offered by the late king during the war, particularly at the treaty of Newport, that from thence such propositions might be digested as might be fit to be sent over to the king. The motion was opposed by Monk, who urged the danger of delay in the then agitated state of the country, and moved, that commissioners should be immediately despatched to bring over the king. To this the house assented with a shout, and Hale's motion was not again mentioned.* The part which he acted on this occasion does not appear to have made an ill impression on the court, and his name is found among the commissioners for the trial of the regicides.†

When it became necessary, on the Restoration, to remodel the bench, Clarendon wisely resolved to fill the vacant seats with men of probity and character. He had observed the ill effects which, in the reign of Charles I., had followed the appointment of profligate men, and the conversion of the judges into the instruments of government, and he resolved to prevent the repetition of the evil by elevating such men as Hale to the bench.‡ But it was not without considerable reluctance that Hale was prevailed upon again to undergo the arduous duties of a judicial station. He has left a statement of the reasons

* Burnet's Own Times.

† 5 State Trials, 986.

‡ See Clarendon's Life, vol. ii. p. 42. ed. 1759.

which at this time disinclined him to accept office.* From this document we learn the amount of his fortune ; the smallness of which he urges as an objection to his acceptance of the dignity. " Because the smallness of my estate, the greatness of my charge, and some debts, make me unable to bear it with that decency which becomes it, unless I should ruin myself and family ; my estate not above £500 per annum ; six children unprovided for ; and a debt of £1000 lying upon me." [Note 33.] Notwithstanding these objections, Hale was soon afterward appointed chief baron of the exchequer ; and, on delivering to him his commission, the chancellor, Lord Clarendon, expressed in warm terms the singular esteem he entertained for his character, telling him, " that if the king could have found an honester and fitter man for that employment, he would not have advanced him to it ; but that he had preferred him, because he knew no other who deserved it so well." The retiring disposition of the chief baron induced him to shun the customary honour of knighthood ; and it was only upon meeting the king at the house of the chancellor, by an arrangement unknown to himself, that he submitted to the ceremony.

In his new station he devoted himself with diligence to the duties of the bench, but seldom took any part in political transactions. After the great fire of London he sat at Clifford's Inn, as one of the commissioners for settling the disputes between landlord and tenant ; and to his labours, and to those of Sir Orlando Bridgman, the chief justice of the common pleas, the amicable arrangement of the disputes, and the peaceful rebuilding of the city were generally attributed.

When the project was set on foot for the comprehension of the dissenters, or an accommodation

* Preface to Hargrave's Law Tracts, p. x.

between that body and the church of England, a conference took place between the heads of both parties, and Sir Matthew Hale was applied to by Dr. Wilkins, on the part of the church, and by Baxter, on behalf of the dissenters, to prepare a bill for the purpose of effecting the desired accommodation. This task Hale readily undertook, as he had lived on terms of friendship and intimacy with persons of both parties : but the design was abandoned, in consequence of a vote of the commons in opposition to it, at the commencement of the next session. The dissenters had to struggle, not only against the prejudices of the church of England, but against the machinations of those who favoured the church of Rome ; and who sought, by preventing a junction between the churchmen and the dissenters, to compel the latter to join their own party, and to insist with them upon a general toleration.

In the year 1665, Sir Matthew Hale was unfortunately called upon to preside at the trial of two wretched women who were indicted for the crime of witchcraft. In reviewing his conduct upon this occasion, allowance must be made for the prejudices of the times in which he lived ; prejudices, perhaps, strengthened in his case by the zeal with which he had devoted himself to the speculative part of theological learning. Still it is impossible to acquit him of a too easy credulity on this occasion, since in the course of the trial some experiments were instituted with regard to the correctness of the representations made by the person supposed to be affected, the result of which induced some impartial by-standers to declare that they believed the whole transaction a mere imposture.* At the conclusion of the trial Hale did not sum up the evidence, but left the case to the jury, with a very short direction,

* State Trials, vol. vi. p. 698.

professing, at the same time, his belief in the crime of witchcraft. He said, "that there were such creatures as witches he made no doubt at all; for, first, the Scripture had affirmed so much; secondly, the wisdom of all nations had provided laws against such persons, which is an argument of their confidence of such a crime. And such hath been the judgment of this kingdom, as appears by that act of parliament which hath provided punishments proportionable to the quality of the offence." The prisoners were found guilty, and, no reprieve being granted, were executed pursuant to their sentence without making any confession; which, upon some other occasions, had been extorted, by their own superstitious terrors, from the unhappy persons accused of this crime. [Note 34.]

On the 18th of May, 1671, Sir Matthew Hale was promoted to the office of chief justice of the court of king's bench; and such was the reputation which he had acquired in his judicial capacity, that he is said to have drawn after him into that court much of the business which had been depending in the exchequer. He did not, however, preside long in this court: his strength and health shortly began to fail him, and though for a time he endeavoured to perform the duties of his office, being supported to the bench by his servants, he at length resolved to resign the seat for which he found himself unfit. He made an earnest application for his *writ of ease*; but such was the general satisfaction which his conduct as chief justice had given, that the king delayed for some time the granting of his request. At length, wearied with the burthen of duties which he was unable to perform, he prepared, in his own hand, a short deed of surrender of his office, which, on the 21st of February, 1675, going before a master in chancery, he sealed and delivered and acknowledged

for the purpose of enrolment. On the previous day he had surrendered to the king in person, who was pleased to dismiss him with great grace, and to promise the continuance of his pension during life. After his retirement he suffered much from attacks of the asthma, and from dropsy, under which he sank, and died on Christmas day, 1676. He was buried on the 4th of January, in the churchyard at Alderley, among his ancestors.

Sir Matthew Hale was twice married: his first wife was Ann, the daughter of Sir Henry Moore, of Faly, in Berkshire, by whom he had ten children: his second wife was Ann, the daughter of Mr. Joseph Bishop, of Faly, and had been, according to the Honourable Roger North, a servant in his household.

The character of Sir Matthew Hale as a judge was splendidly pre-eminent. His learning was profound; his patience unconquerable; his integrity stainless. In the words of one who wrote with no friendly feeling toward him, "his voice was oracular, and his person little less than adored."* The temper of mind with which he entered upon the duties of the bench is best exemplified in the following resolutions, which appear to have been composed on his being raised to the dignity of chief baron at the restoration.

"Things necessary to be continually had in remembrance:

"1. That in the administration of justice I am intrusted for God, the king, and country; and therefore,

"2. That it be done, 1. uprightly; 2. deliberately; 3. resolutely.

"3. That I rest not upon my own understanding nor strength, but implore and rest upon the direction and strength of God.

* Roger North's *Life of Lord Guilford*, vol. i. p. 126.

“ 4. That in the execution of justice I carefully lay aside my own passions, and not give way to them however provoked.

“ 5. That I be wholly intent upon the business I am about, remitting all other cares and thoughts as unseasonable and interruptions.

“ 6. That I suffer not myself to be prepossessed with any judgment at all, till the whole business and both parties be heard.

“ 7. That I never engage myself in the beginning of any cause, but reserve myself unprejudiced till the whole be heard.

“ 8. That in business capital, though my nature prompt me to pity, yet to consider there is a pity also due to the country.

“ 9. That I be not too rigid in matters purely conscientious, where all the harm is diversity of judgment.

“ 10. That I be not biassed with compassion to the poor, nor favour to the rich, in point of justice.

“ 11. That popular or court applause or distaste have no influence in anything I do, in point of distribution of justice.

“ 12. Not to be solicitous what men will say or think, so long as I keep myself exactly according to the rule of justice.

“ 13. If in criminals it be a measuring cast, to incline to mercy and acquittal.

“ 14. In criminals that consist merely in words, where no more harm ensues, moderation is no injustice.

“ 15. In criminals of blood, if the fact be evident, severity is justice.

“ 16. To abhor all private solicitations, of what kind soever, and by whomsoever, in matters depending.

“ 17. To charge my servants, 1. Not to interpose

in any matter whatsoever ; 2. Not to take more than their known fees ; 3. Not to give any undue precedence to causes ; 4. Not to recommend counsel.

“ 18. To be short and sparing at meals, that I may be the fitter for business.”

Under the influence of resolutions like these, the conduct of Hale on the bench appears to have been almost irreproachable. So rooted and vehement was his abhorrence of everything like improper influence, that he carried his punctilious feelings on this subject to an almost fantastical excess. Some anecdotes of this “unreasonable strictness” have been preserved. A gentleman who happened to be a party in a cause which stood for trial at the assizes sent a buck to the judge as a present. On the trial coming on, Hale remembered the name, and desired to know “if he was the same person who sent him the venison ?” On discovering that this was the fact, he told the donor, that “he could not suffer the trial to go on till he had paid him for his buck.” The gentleman answered, “that he never sold his venison, and that he had done nothing to him which he did not do to every judge that had gone that circuit,” an assertion confirmed by several gentlemen present. The judge, however, calling to mind the maxim of Solomon, that *a gift perverteth the ways of judgment*, would not suffer the trial to proceed until the venison was paid for, which the gentleman resenting as an insult, withdrew the record. In the same manner, Hale directed his servants to pay for the six sugar-loaves which, according to custom, were presented to him at Salisbury by the dean and chapter. He carried the same spirit into the common transactions of life, and on making purchases insisted upon paying more than was demanded ; a refinement which even the most jealous construction of his actions could scarcely have rendered necessary. On being

told that he seemed to make ill bargains, he replied, "that it became judges to pay more for what they bought than the true value, that so those with whom they dealt might not think they had any right to their favour by having sold such things to them at an easy rate." He added, that it was suitable to the reputation which a judge ought to preserve to make such bargains that the world might see they were not too well used on some secret account. But even this over-scrupulous delicacy has not preserved Sir Matthew Hale from the imputation of showing favour to those toward whom his prejudices inclined him. "He was an upright judge," says the Honourable Roger North,* "if taken within himself; and when he appeared, as he often did and really was, partial, his inclination or prejudice, insensibly to himself, drew his judgment aside. His bias lay strangely for and against characters and denominations, and sometimes the very habits of persons. If one party was a courtier and well dressed, and the other a sort of puritan with a black cap and plain clothes, he insensibly thought the justice of the cause was with the latter. If the dissenting or anti-court party was at the back of a cause, he was very seldom impartial, and the loyalists had always a great disadvantage before him. It is said he was once caught. A courtier, who had got a cause to be tried before him, got one to go to him, as from the king, to speak in favour of his adversary, and so carried his point; for the chief justice could not think any person to be in the right that came so unduly recommended."

[Note 35.] Taking into the account the temper of this lively writer, it is not improbable that the partiality toward the puritans, of which he complains, was nothing more than that due and decent degree of favour with which a judge is bound to regard all the

* Life of Lord Guilford, vol. i. p. 119.

suitors before him, but which, being seldom extended by prerogative magistrates toward persons of that class, would naturally appear to a prerogative writer to be the result of democratical prejudices. The same author, who accuses Hale of professing "demagogical principles," has yet borne testimony to the impartiality with which he conducted himself, while presiding in the exchequer, in cases in which the crown was concerned. "I have heard him (Lord Guilford) say, that while Hale was chief baron of the exchequer, by means of his great learning, even against his inclination, he did the crown more justice in that court than any others in his place had done with all their good will and less knowledge. But his lordship knew also his foible, which was leaning toward the popular; yet when he knew the law was for the king, (as well he might, being acquainted with all the records of that court, to which men of the law are commonly strangers,) he failed not to judge accordingly."*

In the demeanour of Hale on the bench, gravity, patience, and urbanity were mingled. He exhibited nothing of that hasty and captious bearing, toward the counsel who appeared before him, into which some judges have been betrayed; although, when he saw them wandering from the point, he led them back to it; a course by which he divested the cases argued before him of many difficulties and perplexities. In summing up to the jury, he would require the bar to interrupt him in case they perceived any mistake or omission in his statement; an interruption which many judges of meaner abilities have regarded as an insult. To the younger professors of the law, and to the students, Hale was singularly urbane, endeavouring to encourage them, and taking every opportunity of affording them instruction. "I

* Life of Lord Guilford, vol. i. p. 118.

have known the court of king's bench," says the Honourable Roger North, "sitting every day from eight to twelve, and the Lord Chief Justice Hale managing matters of law to all imaginable advantage to the students, and in that he took a pleasure, or rather pride. He encouraged arguing when it was to the purpose, and used to debate with the counsel, so as the court might have been taken for an academy of sciences as well as the seat of justice."*

On the trial of criminals, Hale displayed that temper and moderation so requisite to the ends of justice, when the accused and the accusers meet on unequal terms. He indulged in no levity, he exhibited no harshness or severity, but summed up with an impartiality which left even the prisoners nothing of which to complain. He would never suffer the witnesses to be intimidated nor confused by the examination of counsel. When it became necessary for him to pronounce sentence of death, the solemn and earnest exhortations with which he accompanied it, so free from all affectation, so serious and so devout, are said to have attracted strangers to listen to the impressive lesson.

As a lawyer, and especially as a constitutional lawyer, Hale has, perhaps, never been equalled. His young rival, the Lord Keeper North, "revered him for his great learning in the history, law, and records of the English constitution."† Comparing him with Sir Edward Coke, he transcended even that great luminary of the law in the accuracy and extent of his antiquarian knowledge, in his intimate acquaintance with the records, and in the orderly arrangement of the vast stores of learning which he had acquired. The respect paid to his legal opinions even in his own day was such, that when sitting as

* Discourse on the Study of the Laws, p. 32.

† Life of Lord Guilford, p. 118.

the puisne baron of the exchequer, and delivering his opinion last, at variance with that of his brothers, the latter, struck with the force of reasoning displayed in Hale's arguments, have been known to retract the opinion they had expressed. His published professional works are worthy of the high reputation which he enjoyed while living, and will for ever remain as monuments of his diligence and profound learning. To his great work on the Pleas of the Crown, reference is made as to the records of the law themselves. His admirable *Analysis of the civil part of our law* supplied Sir William Blackstone with the idea of his Commentaries, which have been termed "A superstructure raised on the foundation of Lord Hale's previous digest and distribution of the subject."* Many of the invaluable treatises and collections compiled by the industry and learning of Sir Matthew Hale still remain unpublished. At the close of the last century, the excellent treatise, *De jure maris, de portibus maris, and concerning the custom of goods*, a work full of profound learning, and most important in a constitutional point of view, was published by Mr. Hargrave in the first volume of his Law Tracts. That gentleman was also fortunate enough to obtain another short tract entitled, *Considerations touching the amendment of the law*, which he has in the same manner given to the public. At the present moment, when the amendment of the law has not only engaged the attention of the legislature, but has become a subject of no inconsiderable interest with the people at large, it will not be unprofitable to state what were the opinions of Sir Matthew Hale as to the possibility of effectuating so important an object. After some observations on the evils arising from "over-hastiness and forwardness to alterations in the laws," he

* Preface to Hargrave's Law Tracts, xii.

proceeds to remark upon "the over-tenacious holding of laws, notwithstanding apparent necessity for and safety in the change." The principles which Hale here lays down, though most obvious and simple, are yet most admirable, and well deserve the attention of those legislators who can see nothing in our institutions requiring reform. "We must remember that laws were not made for their own sakes, but for the sake of those who were to be guided by them; and though it is true that they are and ought to be sacred, yet if they be or are become unuseful for their end, they must either be amended, if it may be, or new laws be substituted, and the old repealed, so it be done regularly, deliberately, and so far forth only as the exigence or convenience justly demands it; and in this respect the saying is true, *Salus populi suprema lex esto.*" * * * "He that thinks a state can be exactly steered by the same laws in every kind as it was two or three hundred years ago, may as well imagine that the clothes that fitted him when a child should serve him when he was grown a man. The matter changeth, the custom, the contracts, the commerce, the dispositions, educations, and tempers of men and societies, change in a long tract of time, and so must their laws in some measure be changed, or they will not be useful for their state and condition; and besides all this, time is the wisest thing under heaven. These very laws, which at first seemed the wisest constitution under heaven, have some flaws and defects discovered in them by time. As manufactures, merchantile arts, architecture, and building, and philosophy itself, secure new advantages and discoveries by time and experience, so much more do laws which concern the manners and customs of men."

The multiplication and growth of the laws are urged by Hale as inducing a necessity for their revi-

sion and reduction :—“ By length of time and continuance, laws are so multiplied and grown to that excessive variety, that there is a necessity of a reduction of them, or otherwise it is not manageable. * * * And the reason is, because this age, for the purpose, received from the last a body of laws, and they add more, and transmit the whole to the next age ; and they add to what they had received, and transmit the whole stock to the next age. Thus, as the rolling of a snow-ball, it increaseth in bulk in every age till it becomes utterly unmanageable. And hence it is that, even in the laws of England, we have so many varieties of forms of conveyances, feoffments, fines, release, confirmation, grant, attornment, common recovery deeds enrolled, &c., because the use coming in at several times, every age did retain somewhat of what was past, and added somewhat of its own, and so carried over the whole product to the quotient. And this produceth mistakes : a man, perchance, useth one sort of conveyance where he should have used another. It breeds uncertainty and contradiction of opinion, and that begets suits and expense. It must necessarily cause ignorance in the professors and profession itself, because the volumes of the law are not easily to be mastered.” The mode in which Sir Matthew Hale proposed to accomplish the desired reform in our juridical system is pretty fully explained by him :—that the king, on the address of both houses of parliament, should direct the judges and other fit persons to prepare proper bills to effectuate the object :—that these bills should be brought into the house of commons :—that, after having been twice read and committed, the judges should be called before the committee to explain the reasons and grounds of the proposed alterations ; and that those learned persons should again attend the house of lords

for the same purpose. "Bills thus prepared and hammered," adds Sir Matthew Hale, "would have fewer flaws, and necessity of supplemental or explanatory laws, than hath of late times happened." It is to be much regretted that the tract from which these extracts have been made is left imperfect by the author, and the particular alterations which he probably intended to recommend are consequently unknown. A few pages only are devoted to these subjects, from which, however, some valuable suggestions are to be gathered. The observations on the propriety of rendering the county court a cheap and efficient tribunal are especially worthy of notice. In the year 1796, Mr. Hargrave also published the excellent treatise of Hale *On the Jurisdiction of the Lords' House of Parliament*, and in the preface expressed a hope that he should be enabled to present to the public a complete edition of Lord Hale's works; a design which, unfortunately, has never been completed. [Note 36.]

The zeal with which Sir Matthew Hale availed himself of every opportunity to increase the stores of his professional knowledge is evinced by the rare and curious collection of MSS., relative to the law, which he accumulated, at great expense, in his lifetime, and which on his death he bequeathed to the library of Lincoln's Inn. The purchase and transcription of these MSS. are said to have cost him upward of £1500; a very large sum of money to be expended in those days by one who owed his fortune to his professional exertions.

As a scholar, Sir Matthew Hale distinguished himself by the composition of various works, some of which were published in his lifetime, and others after his decease. His chief study was theology, to which he devoted the principal leisure hours of his active and laborious life. His great work, *The*

primitive Origination of Mankind considered and examined according to the Light of Nature, has been variously judged. His *Contemplations moral and divine* excited the admiration of Wilkins and of Tillotson. [Note 37.] He was the author of two or three scientific tracts, which must be judged with a reference to the then state of physical knowledge. His classical attainments were not considerable. His knowledge of Greek appears to have deserted him by disuse, and his translation of the *Life of Atticus* does not afford any favourable specimen of his critical knowledge of the Latin.* His English style was powerful and copious, sometimes to a fault. His poetical compositions, in which he occasionally indulged, on religious subjects, possess very little merit. His style of speaking was slow and sometimes embarrassed, but occasionally he rose into eloquence. "His stop," says the Honourable Roger North, "by the produce always paid for the delay, and on some occasions he would utter sentences heroic."†

In private life the character of Hale was calculated to attract the love and reverence of his friends. Of a modest and retiring disposition, he appears to have shunned society, and thus fell under the unjust imputation of admitting none but flatterers to his presence. In his family he was not happy. His sons disgraced themselves by their profligate lives, and in the decline of life he himself married one of his own servants.‡ To his inferiors he was always liberal and considerate, and extended his kindness even to the animals that had faithfully served him. His charities were most extensive. In his friendships he was very fortunate, enjoying the conversation and good opinion of Selden and of Vaughan, of Ward, Barrow, Tillotson, Wilkins, and Stillingfleet, and, among the dissenters, of the celebrated Baxter.

* *Life of Lord Guilford*, vol. i. p. 123.

† *Id.* p. 120.

‡ *Id.* p. 124.

LORD KEEPER GUILFORD.

1640—1685.

THERE does not, perhaps, exist in English literature a more singular and characteristic piece of biography than the life of the Lord Keeper Guilford, by his younger brother, the Honourable Roger North. The ardent affection of the author for his distinguished relative, his intimate acquaintance with the transactions which he records, his stores of anecdote relating to his contemporaries, and the indescribable *naïveté* of his style, confer a peculiarly interesting character upon his book. To abridge such a narrative, to despoil the picture of the author's peculiar colouring, and to relate the history in other language, must be to destroy nearly all the interest which attaches to the original. In the following memoir, therefore, an attempt is made to preserve, where it is possible, the language of the biographer.

Francis North, afterward Baron Guilford and Lord Keeper of the Great Seal, was the second son of Dudley Lord North, Baron of Kertling, in Cambridgeshire, and Knight of the Bath. He received his earliest education under a schoolmaster of the name of Wallis, at Isleworth, a rigid presbyterian, whose wife, a zealous independent, "used to instruct her babes in the gift of praying by the spirit." "All the scholars," says the biographer, "were made to kneel by a bedside and pray; but this petit spark was too small for that posture, and was set upon the bed to kneel with his face to a pillow; and in this exercise of spiritual prayer they had their directions from her. I have heard his lordship say, that all he could remember of his performance was praying for the distressed brethren in Ireland." After passing

some years at another school of the same kind, young North was removed to Bury school, then under the superintendence of Dr. Stevens, "a cavalier master." From Bury, his next step was to the university, where he became a Fellow Commoner of St. John's College, Cambridge, on the 8th June, 1653. During his residence there, he applied himself principally to mathematics and natural philosophy, in which he made considerable progress. Being destined for the bar, he was, on the 27th November, 1665, admitted a student of the Middle Temple; and although his retiring disposition rendered him at first averse to the profession, he commenced his studies with much zeal and earnestness. "He used constantly the commons in the hall, at noon and at night, and fell into the way of putting cases, (as they call it,) which much improved him, and he was very good at it, being of a ready apprehension, a nice distinguisher, and prompt speaker. He used to say, that no man could be a good lawyer that was not a good put-case." He common-placed largely, and studied with great diligence the year-books and the elder writers of the law. His appearance and character at this period of his life are thus described by his brother:

"He was of low stature, but had an amiable ingenuous aspect, and his conversation was answerable, being ever agreeable to his company. His hair grew to a considerable length, but was hard and stiff, and did not fall as the rest of the family, which made it bush somewhat, and not without a mixture of red and gray. As to his humour, he was free from vanity himself, and hated it in others. His youthful habits were never gay nor topping the mode, like other inns of court gentlemen, but always plain and clean, and showed somewhat of firmness or solidity beyond his age. His desire was rather not to be seen at all,

than to be marked by his dress. In these things to the extreme was his aim ; that is, not to be censured for a careless sloven, rather than to be commended for being well dressed. But as to his appearing in public, the composition of his temper was extraordinary, for he had wit, learning, and elocution, and knew it, and was not sensible of any notable failings wherewith to accuse himself, and yet was modest even to a weakness. I believe, a more shame-faced creature than he was never came into the world ; he could scarce bear the being seen in any public places. I have heard him say, that when he was a student, and ate in the Temple hall, if he saw any company there, he could not walk in till the other company came, behind whom, as he entered, he might be shaded from the view of the rest. And he used to stand dodging at the screen till such opportunity arrived, for it was death to him to walk up alone in open view.

“ His loose entertainments in this stage were, as usual with gentlemen cadets of noble families in the country, sporting on horseback, for which there was opportunity enough at his grandfather’s house, where was a very large and well-stocked deer-park, and at least twice a week in the season there was killing of deer. The method then was for the keeper with a large cross-bow and arrow to wound the deer, and two or three disciplined hounds pursued till he dropped. There was most of the country sports used there for diverting a large family, as setting, coursing, bowling, and he was in it all ; and within doors, backgammon and cards, with his fraternity and others, wherein his part did not fail him, for he was an expert gamester. He used to please himself with raillery, as he found any that by minority of age or majority of folly and self-conceit were exposed to be so practised upon. I could give instances enough

of this sort, and not unpleasant, if such trifles were to be indulged in a design such as mine is. His most solemn entertainment was music, in which he was not only master but doctor. This for the country, where, to make good his exhibition, he was contented (though, in truth, forced) to pass the greater part of his time. But in town he had his select of friends and acquaintance, and with them he passed his time merrily and profitably, for he was as brisk at every diversion as the best. Even after his purse flowed sufficiently, a petit supper and a bottle always pleased him. But he fell into no course of excess or vice, and whenever he was a little overtaken, it was a warning to take better care afterward ; and against women his modesty was an effectual guard, though he was as much inclined as any man, which made him desirous to marry."

On the 28th of June, 1661, Mr. North was called to the bar, and applied himself diligently to practice. His income at this period consisted only of £60, allowed by his father, and afterward reduced to £50, and £20 from his grandfather. He attended the courts with assiduity, and being much noticed and encouraged by the attorney-general, Sir Geoffrey Palmer, [Note 38.,] he soon began to find himself engaged in practice. He was employed by Palmer to search the authorities for him, and as he sometimes appeared for him when the attorney was prevented by illness, he was addressed by Jones (afterward Sir William Jones) by the title of Mr. Deputy-Attorney.

The first opportunity which Mr. North enjoyed of distinguishing himself in public was in arguing the writ of error, brought on the conviction of Hollis and the other five members, in the reign of Charles I. His argument on this occasion at the bar of the lords, though unsuccessful, was so highly regarded by the court, that, notwithstanding his youth, it was

resolved to confer upon him the rank of king's counsel. Jealous of the distinction thus conferred upon so young a man, the benchers of the Middle Temple refused to call him to the bench of the society, in consequence of which Mr. North after some delay thought fit to complain to the judges, who, upon the appearance of some of the benches in court, administered a severe rebuke to them, upon which he was elected a bencher on the 5th of June, 1668.

The circuit selected by Mr. North was the Norfolk ; and, although at first he did not receive much encouragement, "his resolution was to persevere, knowing success in circuit business to be a cardinal ingredient in a lawyer's good fortune." He displayed that discretion by which he was distinguished, in being "exceeding careful to keep fair with the cocks of the circuit, and particularly with Sergeant Earl, who had almost a monopoly."—"If he was concerned as counsel, he stood in great awe of the practisers ; for they, having the conduct of the cause, take it ill if a young man blurts out anything, though possibly to the purpose, because it seems to top them ; and sometimes, if it do not take with the court, throw up, saying, *the cause was given away* ; which almost blasts a young man. Therefore, when he thought he had a significant point to offer, he first acquainted the foreman with it, which was commonly well taken ; and he in return would say, *move it yourself*, and then he seconded it." Some appointments which he received shortly after he was called to the bar contributed to extend his reputation. He was put into the commission for draining the fens ; constituted judge of Ely ; and made one of the king's counsel before the justices in eyre. His practice now rapidly increased, and he became one of the most rising men in Westminster Hall. His mode of life at this period is thus sketched by his biographer ;

“His lordship’s course of life, while he was in great business, was most philosophical, till he was solicitor-general and married, and then he kept house, and at meals scarce ever failed his family; but before, he used the commons in the hall at dinner personally, and at night in his chamber. And when he was out of commons, the cook usually provided his meals; but at night he desired the company of some known and ingenious friends, to join in a costelet and a salad at Chattelin’s, where a bottle of wine sufficed, and the company dressed their own feast, that consisted in friendly and agreeable conversation. But in terms, and while business was stirring, he kept his chamber, because (in order to next day’s work) the attorneys and agents came in at all hours; and then he desired the company of a friend or two, that, in the intervals of taking instructions, he might come out and solace with them a little, and return when he was summoned. And the repast among us all was only his commons and a single bottle; but what is that to the feast I mentioned, which was never wanting? When his practice was but little, and for the most part when he was a student, he made it a rule not to leave his chamber before eight at night; and if he had no appointed company, he hath often taken me to walk about in the gardens with him till bed-time; for he never loved at such times to be alone, but having any company he could discharge his thoughts by discourse. After he was of the king’s counsel he kept a coach, and at leisure times used to air himself in that, but with a friend to receive his discourse and give handles for more. But while I was with him, which was first while Sir Geoffrey Palmer was but just alive, I cannot say I ever knew him to have been twice at any tavern.”

On the death of Sir Geoffrey Palmer, the attorney-general, and the promotion of the solicitor-

general, considerable interest was made by Mr. North's friends to procure for him the vacant office. On the other hand, the Duke of Buckingham solicited the place for Jones (afterward the attorney-general); but the king "could not be brought to dash cold water in Mr. North's face" by the appointment of Jones, and the office was conferred upon Sir Edward Turner. A few months afterward, Sir Edward being made chief baron, Mr. North was appointed to succeed him as solicitor-general; and, according to custom, received the honour of knighthood. In his new capacity Sir Francis North was frequently obliged to appear in the court of chancery, and ultimately he relinquished his practice in the king's bench, and confined himself to the former court.

His success in his profession, and the consequent increase of his fortune, now led the thoughts of Sir Francis to the subject of matrimony. "After he was called to the bar," says his brother, "he applied himself closely to the attendance and operations of the law, and wanted refreshment such as was reasonable to be enjoyed at vacant times; and he was weary of being at the loose hand as to company, which he could not have at all times to his mind. He was no clubster, listed among good fellows; and often passed his evenings in walking, or solitary, (if it may be so termed when he had only me with him,) rather than join in any promiscuous society, or of such as were not either in his friendship or distinguished by some notable talents that recommended them. And he thought it would be an ease to his mind to know continually, after his business done, what was to become of him; and that he thought best provided for by a family and housekeeping, which is never well settled without a mistress as well as a master of a family. These considerations inclined him to look out for a suitable match. And,

To say truth, his constitution required it as much as any man's whatsoever; but being excessive modest, and by resolution virtuous, he was solicitous and ardent in the pursuit of it, and not a little encouraged by a manifest feeling he had of success in his profession, which dismissed all fears of the lean wolf. And not being insensible of a fair character in general, which, together with some quality and happy relation that fell to his share, he fancied he might pretend to as good a fortune in a match, as many others had found who had less reason to expect it; but without some advancement in that way he was not disposed to engage himself.

“That which sat hardest upon his spirit was, how he should give a fair answer to the question, ‘What jointure and settlement?’ He used to own but one rood of ground in the world that yielded him any profit, which was Westminster Hall; a meagre particular, unless he might have added, as Finch did, his bar-gown £20,000. There came to him a recommendation of a lady who was an only daughter of an old usurer of Gray's Inn, supposed to be a good fortune in present, for her father was rich, but after his death to become worth nobody knew what. His lordship got a sight of the lady, and did not dislike her: thereupon he made the old man a visit, and a proposal of himself to marry his daughter. There appeared no symptoms of discouragement, but only the old gentleman asked him what estate his father intended to settle on him for present maintenance, jointure, and provision for children. This was an inauspicious question, for it was plain that the family had not estate enough for a lordship, and none could be to spare for him. Therefore, he said to his worship only ‘That when he would be pleased to declare what portion he intended to give his daughter, he would write to his father, and make him

acquainted with the answer.' And so they parted, and his lordship was glad of the escape, and resolved to give that affair a final discharge, and never to come near the terrible old fellow any more. His lordship had at that time a stout heart, and could not digest the being so slighted, as if in his present case a profitable profession and future hopes were of no avail. If he had had a real estate to settle, he should not have stooped so low as to match with his daughter, and thenceforward despised his alliance.

“His lordship’s next amour was, in all respects, better grounded; but, against all sense, reason, and obligation, proved unsuccessful. When Mr. Edward Palmer, his lordship’s most intimate and dear friend, died, he left a flourishing widow, and very rich. The attorney-general and all his family had projected a match of their cousin North with this lady, who were no strangers to each other; nor were there wanting sufficient advices, or rather importunities of the whole family, for her to accept him; against which she did not seem to reluct, but held herself very reserved. In the meantime his lordship was excited to make his application, which he had never done, or at least not persisted, so long as he did, but out of respect and compliance with the sense of that worthy family, which continually encouraged him to proceed. Never was lady more closely besieged with wooers. She had no less than five younger brothers sat down before her at one time; and she held them in hand, as they say, giving no definitive answer to any of them, till she cut the thread; and, after a clancular proceeding and match with a jolly knight of a good estate, she dropped them all at once, and so did herself and them justice. There were many comical passages in this wooing, which his lordship without much pleasantry used to remember, and, however fit for a stage, would not muster well in a historical relation; for which

reason, as his lordship was dropped, I drop them. The unhappiness was, that he could never find out her resolution as to him ; for she stood in some awe of Sir Geoffrey Palmer's family, and would not break with them till she had provided for herself another interest ; and his lordship would not slight their excessive kindness to him by deserting his post at which they had placed him ; so, between the one and the other, he was held at the long saw for above a month, doing his duty as well as he might, and that was but clumsily, for he neither dressed nor danced ; when his rivals were adroit at both, and the lady used to shuffle her favours among them affectedly, and on purpose to mortify his lordship, and at the same time be as civil to him, with like purpose to mortify them : and his lordship was not so mystified by his amour as not to discern these arts ; and nothing but the respects I hinted could have held him in harness so long. For it was very grievous to him, that had his thoughts upon his clients' concerns, which came in thick upon him, to be held in a course of bo-peep play with a crafty widow. And I have heard him often say, that he never was in all his life more rejoiced than when he was told that madam was married, whereby he was escaped from a miserable confinement. And the fastidium upon this occasion contracted, and his increase of business, which gave him little time to think of anything else, diverted his mind from undertaking any more of such projects, and so he went on his way.

“ Another proposition came to his lordship by a city broker from Sir John Lawrence, who had many daughters, and those reputed beauties, and the fortune was to be £6000. His lordship went and dined with the alderman, and liked the lady, who (as the way is) was dressed out for a muster. And coming to treat, the portion shrank to £5000 ; and upon that his lord-

ship parted, and was not gone far, before Mr. Broker (following) came to him, and said, Sir John would give £500 more at the birth of the first child ; but that would not do, for his lordship hated such screwing. Not long after this despatch, his lordship was made the king's solicitor-general, and then the broker came again with news, that Sir John would give £10,000. No ! his lordship said, after such usage he would not proceed if he might have £20,000. So ended that affair, and his lordship's mind was once more settled in tranquillity.

“ It is said that marriages are made in heaven, and if frequent and unforeseen accidents (often to be observed productive of them) are any argument, the proverb hath countenance ; for so it happened in his lordship's case, for out of a contingent interview, a proposition sprang pregnant with all advantages of honour, person, and fortune, more than which was not to be desired or expected. And it was for a match with the Lady Frances Pope, the middle daughter of three co-heirs of Thomas, Earl of Down, who lived at Wroxton, in Oxfordshire. The eldest was married to Mr. Soames, of Thurlow, in Suffolk, within four miles of Catledge, the seat of his lordship's father. And, as the use is, the grave Countess of Down, with her two younger daughters, attended the new-married couple to their habitation, and made some stay there ; during which the visits of joy came in, and among the rest the family from Catledge made their appearance ; and the countess and her daughters in due time made their return, which happened to be at a time when his lordship was at Catledge. His mother laid her eyes upon the eldest unmarried daughter, and when they were gone, turned about and said, ‘ Upon my life this lady would make a good wife for my son Frank.’ And, in short, at the next visit, with his lordship's fair consent, she moved

it to the countess, who consented that his lordship might make his advances. His next business was to muster what sum of money he could, in order to make an honourable proposition, and with £600 borrowed of a friend, he could compass but £6000 in all to join to her fortune, which was estimated at £14,000 for making the jointure and settlement intended to be £1000 *per annum*. After this he ventured down with a decent equipage and attendance, and in less than a fortnight fixed his point with the lady, and appointed another time to come and finish what was so auspiciously begun. And then his lordship went with full attendance and some friends, and after the necessary meetings were sealed, the lovers were happily married in Wroxton church."

While Sir Francis North held the office of solicitor-general, he was returned to parliament as member for Lynn; but he had neither the inclination nor the leisure to devote himself to parliamentary business. On the promotion of Sir Heneage Finch to the woolsack, Sir Francis succeeded him as attorney-general, and his practice, which had before been very considerable, now received a sensible increase.

"His business increased, even while he was solicitor, to be so much as would have overwhelmed one less dexterous; but when he was made attorney-general, though his gains by his office were great, they were much greater by his practice, for that flowed upon him like an *orage*, enough to upset one that had not extraordinary readiness in business. His skull-caps, which he wore when he had leisure to observe his constitution, as I touched before, were now destined to lie in a drawer to receive the money that came in by fees: one had the gold, another the crowns and half-crowns, and another the smaller money. When these vessels were full, they were committed to his friend, (the Honourable Robert

North,) who was constantly near him, to tell out the cash and put it into bags according to the contents, and so they went to his treasurer's, Blanchard and Child, goldsmiths, 'Temple-bar.'

Even at this busy period of his life, Sir Francis North did not neglect his more liberal studies, and acquired a general knowledge of the modern languages, French, Italian, and Spanish, and even made some progress in the study of the Dutch. In the pursuit of his professional knowledge he was as diligent as ever, noting down in "his solemn commonplace book" every matter of importance, and making a copious index of any valuable treatise in MS. which fell in his way. To preserve his knowledge of real property law, he was accustomed every Christmas to peruse Littleton's Tenures.

On the death of Sir John Vaughan, the chief justice of the common pleas, Sir Francis North was promoted to the vacant dignity. The leisure and ease which this change procured him compensated for the pecuniary loss which he sustained by it, his profits as attorney-general being about £7000 per annum, while the office of chief justice produced only £4000. One of the first acts of the new chief justice was to introduce the clause of *ac etiam* into the process of the common pleas, in accordance with the alteration lately made in the king's bench, by which the practice of the former court was considerably increased. Upon another matter of practice he had the misfortune to offend the bar of his court; an incident which is thus related by his biographer:

"There was an incident that happened not long after his lordship came into the place of chief in that court, which, though in itself and in the end of it ridiculous, yet being an affront to the court, and in particular to the lord chief justice, and by the whole bar of sergeants, all in a lump together, ought to be

related, as I shall do, really as it was acted by them. It hath been the usage of the king's bench, at the side bar below in the hall, and of the common pleas, in the chamber within the treasury, to hear attorneys and young counsel that came to move there about matters of form and practice. His lordship had a younger brother, (Honourable Roger North,) who was of the profession of the law ; he was newly called to the bar, and had little to do in the king's bench ; but the attorneys of the common pleas often retained him to move for them in the treasury such matters as were proper there, and what they might have moved themselves. But, however agreeable this kind of practice was to a novitiate, it was not worthy the observation it had, for once or twice a week was the utmost calculate of these motions. But the sergeants thought that method was or might become prejudicial to them, who had a monopoly of the bar, and would have no water go by their mill, and supposed it was high time to put a stop to such beginnings, for fear it might grow worse. But the doubt was, how they should signify their resentment so as to be effectually remedied. At length they agreed for one day to make no motions at all, and opportunity would fall for showing the reason how the court came to have no business. When the court (on this dumb day, as it was called) was sat, the chief justice gave the usual signal to the eldest serjeant to move. He bowed, and had nothing to move ; so the next, and the next from end to end of the bar. The chief, seeing this, said, 'brothers, I think we must rise, here is no business.' Then an attorney steps forward, and called to a serjeant to make a motion, and after that turned to the court and said, that he had given the serjeant his fee and instructions over night to move for him, and desired he might do so. The chief looked about, and asked what was the matter ? An attorney that stood by, very modestly said, that

he feared the sergeants took it ill that motions were made in the treasury. 'Then the chief scented the whole matter : and, 'brothers,' said he, " I think a very great affront is offered to us, which we ought for the dignity of the court to resent. But that we may do nothing too suddenly, but take consideration at full leisure and maturely, let us now rise, and to-morrow morning give order as becomes us. And do you, attorneys, come all here to-morrow, and care shall be taken for your despatch ; and rather than fail, we will hear you or your clients, or the barristers at law, or any person that thinks fit to appear in business, that the law may have its course ; and so the court rose. This was like thunder to the sergeants, and they fell to quarrelling one with another about being the cause of all this great evil they had brought upon themselves ; for none of them imagined it would have had such a turn as this was, that shook what was the palladium of the coif, the sole practice there. In the afternoon they attended the chief and the other judges of the court, and in great humility owned their fault, and begged pardon, and that no farther notice might be taken of it, and they would be careful not to give the like offence for the future. The chief told them that the affront was in public and in the face of the court, and they must make their recognitions there next morning, and in such a manner as the greatness of their offence demanded, and then they should hear what the court would say to them. Accordingly they did ; and the chief first, and then the rest in order, gave them a formal chiding with acrimony enough ; all which, with dejected countenances, they were bound to hear. When this discipline was over, the chief pointed to one to move, and which he did (as they said) more like one crying than speaking ; and so ended the comedy as it was acted in Westminster Hall, called the Dumb Day."

The conduct of Sir Francis North while upon the bench was in many points worthy of great commendation. Like Sir Matthew Hale, he applied himself to the reformation of the abuses which existed in the law ; his mode being to note down the point which appeared to require amendment ; and afterward, when at leisure, to reduce his observations into such a form that an act of parliament might be founded on them. It is supposed by his biographer, that the first idea of the statute of frauds proceeded from him ; and he also asserts, that several other alterations, which afterward passed into laws, arose from his suggestions. [Note 39.] Another proposal of the chief justice was a general register for lands ; a scheme upon which "he worked sincerely." He had proceeded so far in these proposed amendments as to prepare several draughts of bills, which, after his death, were found among his papers. In presiding at the trial of causes the chief justice exerted himself to confine the counsel to the point in question, and to cut down that redundancy of speech, which, he used to observe, "disturbed the order of his thoughts." "He was," says his biographer, "very good at way-laying the craft of counsel ; for he, ast hey say, had been in the oven himself, and knew where to look for the pasty." Upon one difficult occasion his conduct on the bench was entitled to the highest commendation. "At Taunton Dean," says Roger North, "he was forced to try an old man for a wizard ; and for the curiosity of observing the state of a male witch or wizard, I attended in the court, and sat near where the poor man stood. The evidence against him was, the having bewitched a girl of about thirteen years old : for she had strange and unaccountable fits, and used to cry out upon him and spit out of her mouth straight pins ; and whenever the man was brought near her, she fell in her fits, and spit forth straight

pins. His lordship wondered at the straight pins, which could not be so well couched in the mouth as crooked ones; for such only used to be spit out by people bewitched. He examined the witnesses very tenderly and carefully, and so as none could collect what his opinion was; for he was fearful of the jury-men's precipitancy, if he gave them any offence. When the poor man was told he must answer for himself, he entered upon a defence as orderly and well expressed as I ever heard spoke by any man, counsel or other; and if the attorney-general had been his advocate, I am sure he could not have done it more sensibly. The sum of it was malice, threatening, and circumstances of imposture in the girl; to which matters he called his witnesses, and they were heard. After this was done, the judge was not satisfied to direct the jury before the imposture was fully declared; but studied and beat the bush awhile, asking sometimes one and then another question, as he thought proper. At length he turned to the justice of peace that committed the man and took the first examinations. 'And, sir,' said he, 'pray will you ingenuously declare your thoughts, if you have any, touching these straight pins which the girl spit; for you saw her in her fit?'—'Then, my lord,' said he, 'I did not know that I might concern myself in this evidence, having taken the examination and committed the man. But since your lordship demands it, I must needs say, I think the girl, doubling herself in her fit as being convulsed, bent her head down close to her stomacher, and with her mouth took pins out of the edge of that, and then righting herself a little, spit them into some bystander's hands.' This cast an universal satisfaction upon the minds of the whole audience, and the man was acquitted. As the judge went down stairs out of the court, a hideous old woman cried, 'God bless your lordship!'—'What's

the matter, good woman?" said the judge. 'My lord,' said she, 'forty years ago, they would have hanged me for a witch, and they could not, and now they would have hanged my poor son!'"

On the trial of Colledge* for high treason, the conduct of North, who presided as one of the judges, has been the subject of severe and just observation. Certain papers belonging to the prisoner, and containing the heads of his defence, and suggestions relative to the proceedings, furnished to him by his legal advisers, had been forcibly taken from him, previously to his coming into court. He applied with great earnestness for their restoration; but the court, having pursued them, denied the request, on the frivolous and ridiculous ground that they contained matter scandalous to the government. Colledge, therefore, was only permitted to have the use of such portions of the documents as the judges were pleased to consider unexceptionable. His assertions, that without the assistance of his instructions he should not be enabled to conduct his defence, were met by a pertinent answer from Sir Francis North—that the judges were his counsel. A maxim which is, indeed, admirably illustrated by the trial in question.

Upon the experiment, made under the auspices of Sir William Temple, of a Whig administration, Sir Francis North was constituted a member of the privy council. A government formed so entirely in opposition to the king's dearest prejudices had little chance of stability; nor was it probable that the chief justice would act cordially with Shaftesbury, and Essex, and Russell. But the time was now approaching when he was to assume a still higher station.

The health of the Lord Keeper Finch having given way, the business of the cabinet which usually

* State Trials, vol. viii. p. 549.

came before him was for the most part performed by Sir Francis North, who thus, in case of Finch's death, seemed evidently pointed out as his successor. When that event took place, he received an intimation, as his biographer supposes, from Lord Rochester, the lord treasurer, that the seals were within his grasp. The object of this hint is supposed to have been to induce the chief justice to prefer a petition for the vacant woolsack, that so the seals might be offered to him with a better grace, without the addition of a pension. But Sir Francis was not easily misled. He clearly foresaw that the office must be tendered to him, and he fully resolved not to accept it without such a pension as should enable him to support the dignity in such a manner as he deemed suitable. Rochester and he now endeavoured to outwit one another; but the chief justice was not "a chicken that would peck at shadows;" and ultimately the king placed the seal in his hands, with this warning sentence:—"Here, my lord, take it; you will find it heavy!" To this appointment was added a pension of £2000 a year. It is curious to observe what were the feelings of Sir Francis North after receiving the highest reward which his profession could confer.

"The evening that we went upon this errand to Whitehall," says Roger North, "some of us stayed in expectation of his coming home, which was not till near ten; little doubting the change that was to happen. At last he came with more splutter than ordinary, divers persons (for honour) waiting, and others attending to wish him joy, and a rabble of officers that belonged to the seal completing the crowd which filled his little house. His lordship, by despatching these encumbrances, got himself clear as fast as he could, and then I alone stayed with him. He took a turn or two in his dining-

room and said nothing, by which I perceived his spirits were very much roiled; therefore I kept silence also, expecting what would follow. There was no need of asking what news when the purse with the great seal lay upon the table. At last his lordship's discourses and actions discovered that he was in a very great passion, such as may be termed agony, of which I never saw in him any like appearance since I first knew him. He had kept it in long, and after he was free it broke out with greater force, and, accordingly, he made use of me to ease his mind upon. That which so much troubled him, was the being thought so weak as to take ill usage from those about the king, (meaning the Earl of Rochester,) with whom he had lived well, and ought to have been better understood. And instead of common friendship, to be haggled withal about a pension, as at the purchase of a horse or an ox, and after he had declared positively not to accept without a pension, as if he were so frivolous to insist and desist all in a moment, and, as it were, to be wheedled and charmed by their insignificant tropes; and, what was worse than all, as he more than once repeated, 'to think me worthy of so great a trust, and withal so little and mean as to endure such usage as was disobliging, inconsistent, and insufferable. What have I done,' said he, 'that may give them cause to think me of so poor a spirit as to be thus trifled with?' And so on with much more of like animosity, which I cannot undertake to remember. And, after these exhalations, I could perceive that by degrees his mind became more composed."

Upon taking his seat in the court of chancery, the first object of the lord keeper was to reform, so far as lay in his own power, the abuses of the court. "The greatest pain he endured," says his biographer, "moved from a sense he had of the torment

the suitors underwent by the excessive charges and delays of the court ; for the easing of whom he was always in thought more or less, to contrive ways and means of expedition and retrenchment of charges." The variety of opposing interests rendered this a difficult task ; but the lord keeper proposed to accomplish it gradually, without alarming the officers of the court by the introductions of a sudden and violent reform. " As occasion proffered, he declared his mind, and retrenched many superfluities, or rather nuisances, in the court." One of his first measures was to put an end to the innumerable motions for speeding or delaying the hearing of causes. [Note 40.] His next attempt was to reform the practice with regard to the masters' reports. " His lordship also," says Roger North, " set himself to stop the superfetation of orders : and they were a subject of his daily reprehensions ; for the causes often came to a hearing with a file of orders in the solicitor's bundle as big as the common prayer-book, for commissions, injunctions, publications, speedings, delayings, and other interlocutories, all dear ware to the client in every respect. But in a few terms his lordship reduced the quantities, for he was strict to the observance of his rule ; and for the most part refused to make orders *nisi*, &c., as commonly was prayed, when notice was not given of the motion." Much delay was also prevented by refusing rehearings and re-references except upon the most substantial cause. Lastly, the state of the register's office engaged his lordship's attention ; but he found it very difficult " to break the neck of those wicked delays used there." It is not improbable, that if the lord keeper had held the seals a few years longer, he would have published a book of orders ; which, as his biographer observes, " would have gone a great way toward purging out the peccant humours

of the court." During his administration in the court of chancery, the lord keeper was not altogether free from suspicion of that corruption which was unfortunately not very rare at that period ;* but there appears to be no sufficient foundation for such imputations.

At the period when the lord keeper ascended the woolsack, he found an administration with whose views, for the most part, he concurred. But on the accession of Sunderland and Godolphin, and more especially of the Lord Chief Justice Jefferies, to the cabinet, the position of the lord keeper became a very painful one. Being himself a resolute protestant, he ran counter to the designs of the other ministers ; who, better acquainted than himself with the secret wishes of the king, were desirous of pushing the prerogative to its greatest extent, in defence, of the persecuted papists. Accordingly, on a motion made by Jefferies to grant a general pardon to the imprisoned recusants, the lord keeper was the only member of the cabinet who opposed the design. "That night," says his biographer, "his lordship came home full of melancholy ; and it was some time before any person near him knew the occasion of it. But he would sometimes break out in exclamations, as—'What can be the meaning ! Are they all stark mad ?' and the like." The policy observed by the lord keeper at court was that of the old English Tory ; and he looked with great jealousy upon those intemperate advisers who would have persuaded the king to resort to measures of violence.

His mode of life at this period is thus described by his brother :—"His lordship's method of living, with respect to his great employment, was very commendable ; for all his time was devoted to the business incumbent on him. He put but very little of it to his own use ; and what passed in easy conver-

* See the Lives of the Chancellors, vol. i. p. 178.

sation, which was the chief of his pleasures, had still a regard to his employ, by inquiring, canvassing, and debating, with those of his society, such points as concerned the republic. He had no kind of vice or immorality within his walls : and of what sort his remissions were (for some are necessary to life) I shall give a fuller account afterward. But it is decent here to name the chief, which was a solitary, or rather speculative, use of music, of which he commonly took a relish at his going to bed ; for which end he had a harpsichord at his bed-chamber door, which a friend touched to his voice. But he cared not for a set of masters to consort it with him. And, unless it were once under Purcell's conduct, I never knew him use such ; for there was somewhat stiff in that way that was not easy. The mornings were for the most part devoted to the justice-seat of the chancery, either in the court at Westminster, or in the cause-room at home, during the usual periods, and not seldom in attendances upon petitions, and despatching the perpetual emergencies of the seal. His house was kept in state and plenty, though not so polite as the court-mode was. The nobility and chief gentry coming to London were frequent at his table : and after a solemn service of tea in a withdrawing-room, the company usually left him ; and then the cause room claimed him, and held him in pain with causes and exceptions often till late. He had little time to himself, for he had this infirmity, that he could not bear to make any one wait ; but if his servant told him of any person, great or small, that waited without, he could not apply to think of or do anything till he had despatched him. The interval between the business of the day and going to bed was his chief refreshment, for then his most familiar friends came to him, and the time passed merrily enough : and then it was that the court-spies found

access to plumb his most free sentiments, but with small profit, for he had the same face and profession in public as he had in private ; they could discover only that he was an honest man : but more of this elsewhere. His attendances at Whitehall were chiefly at solemn times, as on Sunday morning to wait on the king to chapel. That was usually a grand assembly of the court, and the great men had opportunity to speak in discourse to the king as he gave them occasion, of which his majesty was no niggard ; and very excellent things said there on the one side and on the other were a high regale to such as had the advantage to stand within hearing. On the week-days, those called council-days always, and sometimes committees of council, required his lordship's attendance ; and Thursday was always public ; others for private business upon summons."

On the death of Charles II, the prospects of the lord keeper suffered a material change. "With the death of this good master and sovereign all his lordship's hopes and joys perished ; and the rest of his life, which lasted not long after, was but a slow dying." Although on the accession of James there was no appearance of displacing him, yet it was obvious to an accurate observer, that he could not, for any long space of time, be allowed to retain both the seals and the principles which he had hitherto professed. His unfitness for the part which it was expected he should act soon became apparent. On the question as to the levying of the tonnage and poundage, which had only been granted to the crown during the life of Charles II., the Lord Chief Justice Jefferies advised the king to issue a proclamation, commanding the collection and payment of the tax as before. To this proposition, so clearly illegal, the lord keeper would not consent, but proposed a course which, though not strictly constitutional, yet

bore some semblance of a regard for the laws. He advised that the proclamation should require the duties to be collected and paid into the exchequer, there to await the disposal of parliament. "But it seems," says Roger North, "that this was too low and trimming for the state of the court at that time, and a positive proclamation issued." Upon another occasion the lord keeper rendered himself still more obnoxious to the court. At the elections for the new parliament he employed not only his private interest, but that which his office gave him in procuring the nomination of persons ill calculated to forward the views of the sovereign. "His lordship's design was to have the parliament truly church of England protestants, and loyal to the crown; which character he thought aptest to establish the religion and laws of the kingdom, and to resist all attempts of altering any of our fundamentals in church and state." The displeasure of the court at this line of conduct was manifested on the opening of parliament, when the lord keeper, contrary to usual custom, was not permitted to prepare the king's speech, nor was he even consulted on that which was delivered. The feelings of a king are speedily communicated to his courtiers, and the lord keeper soon found himself in general discredit. His decrees were questioned, or, as his biographer expresses it, "most brutishly and effrontuously arranged:" while at court and at council "nothing squared with his schemes;" and he was, "by Sunderland, Jefferies, and their complices, little less than derided." Declining thus in favour at court, disturbed with the measures which he there beheld in contemplation, harassed with the thankless toils of office, the lord keeper, dispirited and depressed, was unable to contend with the adverse circumstances by which he was surrounded. He was attacked by a severe illness, which yielded at last,

in some degree, to medicine, and he resumed his duties for a short time. But the fever from which he was suffering appears never to have been thoroughly subdued; and the following is the melancholy picture given by his brother of his state at this period:—"His feverish disease growing upon him, his spirits, and all that should buoy a man up under oppression, not only failed, but other things of a malign complexion succeeded to bring him lower: which may be fully understood by this circumstance. He took a fancy that he looked out of countenance, as he termed it; that is, as one ashamed, or as if he had done ill, and not with that face of authority as he used to bear; and for that reason, when he went into Westminster Hall, in the summer term, he used to take nosegays of flowers to hold before his face, that people might not discern his dejection; and once in private having told me this fancy, he asked me if I did not perceive it. I answered him, not in the least, nor did I believe any one else did observe any such thing; but that he was not well in health as he used to be was plain enough. His lordship in this state took a resolution to quit the great seal, and went to my Lord Rochester to intercede with his majesty to accept it, which had been no hard matter to obtain. But that noble lord had no mind to part with such a screen, and at that time (as he told me himself) he diverted him. But his lordship persisted, as will be made appear afterward, by a letter. Whereupon the Lord Rochester obtained of the king, that his lordship might retire with the seal into the country; and that the officers with their concerns should attend him there, in hopes that by the use of the waters and fresh air he might recover his health against next winter, when it was hoped he would return perfectly recovered. This was indeed a royal condescension and singular favour to him."

The hopes of a recovery were vain. The lord keeper retired to Wroxton, in Oxfordshire, where he lingered some time, suffering much in body and temper from the effects of his disease. The closing scene of his life is thus described by his brother :

“ It was the opinion of the people about him, and the doctor’s desire, (who was the most afflicted man in the world,) that Dr. Radcliffe, then in the neighbourhood, should be called in, which was done ; not that his friends expected any benefit, but to satisfy some of the living, who would not be convinced. The doctor came, and by his lordship’s bed-side he asked him I am sure no less than fifty questions, which were a fatigue and trouble to him, and all that were in the room. The doctor had his fee, but not the ingenuity to say what he knew, viz., that there were no hopes ; but talked of the lungs being touched or not, which signified nothing. His lordship afterward showed much discontent that he was not well attended ; and if Sir Dudley North or I was absent, he called it slighting him ; and we were, indeed, glad sometimes to escape for half an hour to breathe. This confirmed the approach of death, of which the not caring to be left alone is a constant symptom. He began to agonise and be convulsed ; and by virtue of the doctor’s cordials lived longer than was for his good. After some striving, he would lie down, and then get up again. He advised us not to mourn for him ; yet commended an old maid-servant for her good will, that said, ‘ As long as there is life there is hope.’ At length, having strove a little to rise, he said, ‘ It would not do ;’ and then with patience and resignation lay down for good and all, and expired [5th] September, 1685.”

On the following day the executors carried the great seal to the king at Windsor, who observed that “ he had heard his lordship was much mended ;”

and asking whether there was not a purse to contain the seal, dismissed them without farther remark.

The following is the character of the lord keeper given by his brother and biographer, upon which it will be necessary to make a few comments :

“He was descended of a noble family, virtuously educated ; an early student in the law, signalised in his first performances, preferred for his abilities ; passed gradually from the meanest initiation of practice through every degree of business and preferment in the law : court-keeper, practiser in the king’s bench, chief in his circuit, king’s counsel, solicitor-general, attorney-general, chief justice of the common pleas, lord keeper of the great seal, and created a baron ; and in all this walk trod upon no man’s heels, for he entered only by vacancies, and never by ungrateful removes, and was helpful and a friend to those whom he succeeded, especially the Lord Nottingham, who almost owned him for his successor. While he was chief justice he was taken into the privy council, and then into the cabinet. He travelled most parts of the kingdom as judge in the several circuits ; and gained the friendship, I had almost (and I might have) said the love, of the chief gentry of England, who afterward stood by him against divers attempts to remove or dishonour him. And notwithstanding his continual employments in church and state, many thought his room, or rather his places, worth crowding for : and however in nice matters it is more than human not sometimes to err, yet he stood against all as a rock immoveable ; and nothing was ever found, even by the most discerning of a popular faction, that would or (in truth) could impeach his fame, probity, or honour. He served the crown steadily and according to law ; and ever gave cogent reasons in public for what he did. No impression of fear, flattery, or interest, did ever

taint or divert his justice. In his person he was modest to extremity; and yet in doing his duty enough assured. He was a declared enemy to pomp and vain glory. He was not an orator as commonly understood, that is a flourisher, but all his speech was fluent, easy, and familiar; and he never used a word for ornament, but for intelligence merely: and those who heard him speak, though in ordinary conversation, had scarce room left to ask any explication or enlargement. He was a lawyer (modestly speaking) not inferior to any of his time; and knowing in records and histories, not only of England, but in general. He was master of the European languages, as French, Italian, and Spanish, and had entered into those of High and Low Germany. He was adept in natural philosophy and mechanics, and no stranger to the mathematics. A musician in perfection, both practical and speculative, being a performer, composer, and (in print) a philosopher, as to the most recondite secrets of that art. He was covetous of nothing more than the society of the virtuosos of his time, as Lely, Moreland, May, Moor, Flamstead, and others of that tribe, who all courted him, and embraced his conversation, and many owned to profit by his encouragement and protection. He was civil and affable to all; and conversed, even with his enemies, without offence, and hated to be waited upon when he might give despatch. His course of life was unexceptionable; no manner of vice encouraged, nor by him known within his walls. His diet plain, and meals hospitable and profitable. His most intense study was to amend whatever he found amiss and amendable, where his employment gave him means and a latitude to do it. His zeal was to do all the good he could to his country; and that he thought best done by supporting the church and crown of England in all due and legal preroga-

tives, and thereunto he adhered during all his life, and no motive whatsoever made him swerve. Whatever he did in public was legal and effectual, without any affected lustre or handles to fame, if he could avoid them. No wonder he is so soon forgot. He never had, nor asked for profit, any boons of his majesty ; and at the end left but a moderate estate to his children, which one would think should have been by common profits much more ; but thereby he demonstrated that corruption had no share in what he left. In short, he had a virtuous disposition, orderly and regular course of life, void of all pride and affectation ; the utmost regard for truth and right ; a vast extent of skill in the law and national constitution, and knowledge of men and the world ; the love and esteem of the best ; impartiality in his justice, and dexterity in the forms and administration of it ; sense of his duty, public and private, with industry and affection duly to perform it ; he was patient in hearing, modest in determining, compassionate in severities, orthodox and exemplary in the established church, and averse to all its enemies ; for all which he had a visible temporal reward : and that is, dying as he lived, without stain or diminution of his honour, authority, or greatness, in the height of which he left the world. This character, which I have here given, is not out of opinion, rumour, or any means of fame whatever ; but the result of my own personal knowledge and proof, and at the hour of death I can veritably swear to every article of it."

In attempting to form a more just and accurate opinion of the lord keeper's character than is to be derived from the foregoing partial sketch, it is proper to regard him in connexion with the times in which he lived, and with the state of feeling and scale of principle which then prevailed. If in his

public character Lord Guilford never rose above the prejudices and feelings of the age, he did not, like many of his contemporaries, sink without shame into those corrupt practices with which the higher ranks of society were infected. He was unstained by that loose prostitution in politics, and by that abandoned corruption which darkened the characters of Sunderland and Jefferies. Honest in his opinions, and in the expression of them, he refused upon more than one occasion to sacrifice them to his interests. But his character was altogether destitute of elevation. Possessing none of the elements of greatness, seldom in mind and never in feeling did he rise above mediocrity. He was thus led into meannesses, and sometimes into compliances, which men of loftier principles would have despised. Though not altogether free from the imputation of corruption in his judicial station, the accusation rests upon no substantial foundation, and his general character renders the justice of it improbable. Perhaps the most valuable quality which the lord keeper possessed was that discretion which in all the transactions of life is so sure a guide, and which enables a man of moderate powers to accomplish what the highest genius and talent, if misdirected, must fail to attain. As a lawyer, the name of the Lord Keeper Guilford has always maintained a respectable station; but it does not occupy the foremost rank. To his efforts to effect a reform both in the common pleas and in the court of chancery, the greatest credit is due. In private life, his character was certainly excellent. Under all the toils of office, and amid the distractions of political life, he sedulously maintained that affectionate intercourse with his own family, the loss of which is ill supplied by all that the most successful ambition can offer. The fervent attachment, the regard, approaching to reverence, which were felt

for him by his brothers, and which are so quaintly but beautifully expressed by his biographer, bear a striking testimony to the worth and goodness of his heart.

Some anecdotes of the lord keeper have been preserved by his brother, which are transcribed not only on account of the amusement they cannot fail to afford, but also as showing that he wanted that strength of character which prevents others from even attempting to render the possessor of it ridiculous.

Lord Sunderland, whose designs were generally opposed by the lord keeper, exerted all his wit to render him ridiculous. "All the artillery of foul mouths," says Roger North, "were pointed at him; and the Earl of Sunderland marched at the head of them, who commonly gave out the signal. His lordship's virtuous course of life was a vile obstacle, and slanders on that head would not stick. But I shall show some snares laid to catch him: in the meantime, vilifications plenty; those were at their tongues' end. That he was neither courtier nor lawyer: which his lordship hearing, he smiled, saying, 'that they might well make him a whoremaster, when they had dislawyered him.' And to show their intent of fixing some scandal and contempt on him, I shall allege a ridiculous instance or two. His lordship's brother-in-law, more than once named in these papers, came to him seriously with advice; which was that he should keep a whore, and that if he did not, he would lose all his interest at court, for he understood from very great men (the Earl of Sunderland and his gamesters, I suppose) that he was ill looked upon for not doing so, because he seemed continually to reprehend them for practising the like, as almost every one did, and, if his lordship pleased, he would help him to one. His lordship was in his mind full of

scorn at this proffer, which the messenger did not penetrate ; and it was enough to decline the counsel, and not accept of his assistance. And with his nearest friends he made wonderful merry with this state policy, especially the procuring part, and said, ‘ that if he were to entertain a madam, it should be one of his own choosing, and not one of their state trumpery.’ But his lordship had deeper reflections ; that, besides the sullying his character, if he had such a snake in his bed, they would find a way to come, by her, into his most retired intentions : for the courtiers knew the use that, in politics, might be made of the fair ladies, whom they could charm better than his lordship ; and no spy like a female.

“ To show that his lordship’s court enemies, the Earl of Sunderland in particular, were hard put to it to find or invent something to report tending to the diminution of his character, I shall give an account of the most impudent buffoon-lie raised upon him, and with brazen affirmations of truth to it, dispersed from the court one morning, that ever came into fools’ heads ; and Satan himself would not have owned it for his legitimate issue. It fell out thus : A merchant of Sir Dudley North’s acquaintance had brought over an enormous rhinoceros, to be sold to showmen for profit. It is a noble beast, wonderfully armed by nature for offence, but more for defence, being covered with impenetrable shields, which no weapon could make any impression upon ; and a rarity so great that few men in our country have in their whole lives opportunity to see so singular an animal. This merchant told Sir Dudley North, that if he with a friend or two had a mind to see it, they might take the opportunity at his house, before it was sold. Hereupon Sir Dudley North proposed to his brother, the lord keeper, to go with him upon this expedition, which he did, and came away exceedingly satisfied

with the curiosity he had seen. But whether he was dogged, to find out where he and his brother housed in the city, or flying fame carried an account of the voyage to court, I know not ; but it is certain that the very next morning a bruit went from thence all over the town, and (as factious reports used to run) in a very short time, viz., that his lordship rode upon the rhinoceros ; than which a more infantine exploit could not have been fastened upon him. And most people were struck with amazement at it, and divers ran here and there to find out whether it was true or no ; and soon after dinner some lords and others came to his lordship to know the truth from himself, for the setters of the lie affirmed it positively, as of their own knowledge. That did not give his lordship much disturbance, for he expected no better from his adversaries. But that his friends, intelligent persons, who must know him to be far from guilty of any childish levity, should believe it, was what roiled him extremely ; and much more when they had the face to come to him to know if it were true. I never saw him in such a rage, and to lay about him with affronts (which he keenly bestowed upon the minor courtiers that came on that errand) as then ; for he sent them away with fleas in their ear. And he was seriously angry with his own brother, Sir Dudley North, because he did not contradict the lie in sudden and direct terms, but laughed, as taking the question put to him for a banter, till by iterations he was brought to it. For some lords came, and because they seemed to attribute somewhat to the avowed positiveness of the reporters, he rather chose to send for his brother to attest, than to confirm his bare denial. And so it passed ; and the noble earl, with Jefferies and others of that crew, made merry, and never blushed at the lie of their own making, but valued themselves upon it as a very good jest."

LORD JEFFERIES.

1648—1689.

GEORGE JEFFERIES, afterward successively recorder of London, attorney-general, chief justice of the king's bench, and lord high chancellor of England, was born at Acton, near Wrexham, in the county of Denbigh, about the year 1648. [Note 41.] He was the sixth son of John Jefferies, Esq., of that place, by Margaret, daughter of Sir Thomas Ireland, Knight, of Bewsey, in the county of Lancaster. His father was a gentleman of small estate; but his paternal grandfather had filled the office of a Welsh judge. Young Jefferies received his education successively at the free-school of Shrewsbury, at Saint Paul's free-school, and at Westminster school, under the celebrated Dr. Busby. Of the progress which he made in his studies, or of the motives which induced him to pursue the profession of the law, little is known. In consequence of the narrowness of his father's fortune, he was deprived of the benefit of an university education, and became at an early age a member of the Inner Temple, where, in a mean and obscure apartment, he for some time applied himself with diligence to his professional studies.* At this period he derived his principal support from his grandmother, who supplied him with an annuity of forty pounds, to which ten pounds were added by his father.

It has been asserted that Jefferies was never regularly called to the bar;† and it appears that while yet a student, and only eighteen years of age, he assumed the gown of a barrister, and attended the Kingston assizes, during the prevalence of the plague

* Lives of the Chancellors, vol. i. p. 179.

† Id.

in London ; an irregularity which was probably overlooked in that season of calamity. In endeavouring to force himself into practice, Jefferies looked principally to the city, attending with diligence at Guildhall and Hicks's Hall. In compliance also with the temper of the citizens, he not only professed the political principles at that time favoured by them, but attempted to ingratiate himself with them by adopting all their convivial habits.* Nor did he neglect other artifices, equally mean, to promote his interests. We are told by Roger North† that, "after he was called to the bar, he used to sit in coffee-houses, and order his man to come and tell him that company attended him at his chamber ; at which he would huff and say, 'let them stay a little, I will come presently,' and thus made a show of business."

These arts appear to have been successful, for he rose at a very early age into practice ; and although he possessed no resources from his father, he was married, while yet in his minority, to Sarah, the daughter of Thomas Neesham, A. M. Such were his reputation and influence in the city, even at this early age, that upon the 17th of March, 1670, on the resignation of Sir Richard Browne, he was appointed common sergeant. This office he enjoyed for several years, till, finding that the seat of recorder was likely to become vacant, he did not hesitate to sacrifice his political principles to his hopes of advancement, and having contracted such an acquaintance with Chifinch, the king's favourite page, as, to use the words of Roger North, "is apt to grow up between immane drinkers,"‡ he obtained, through the influence of the court, the vacant appointment, and on the 22d of October, 1678, was elected recorder of London.

Being thus introduced to the court party, he was

* Life of Lord Keeper Guilford, vol. ii. p. 5.

† Id. p. 4.

‡ Id. p. 8.

made solicitor to the Duke of York, and received various appointments in rapid succession. On the 17th of February, 1680, he was called to the degree of serjeant at law, and about the same time was made a Welsh judge. On the 13th of April, in the same year, he succeeded Sir Job Charlton as chief justice of Chester, on the 12th of May was made king's serjeant, and on the 17th of November, 1681, was created a baronet. The degree of influence which Jefferies possessed at court was displayed in his appointment to the chief justiceship of Chester, Sir Job Charlton, a venerable and learned man, was in possession of the office ; but as the recorder was resolved to appropriate it to himself, Sir Job was told that it was necessary that he should accept the seat of a puisne judge in the common pleas. " Sir Job," says Roger North, " laid this heavily upon his heart, and desired only that he might speak to the king, and receive his pleasure from his own mouth ; but was diverted, as a thing determined. But once he went to Whitehall, and placed himself where the king, returning from his walk in Saint James's Park, must pass, and there he set him down like hermit poor. When the king came in and saw him at a distance, sitting where he was to pass, he concluded that he intended to speak to him, which he could not by any means bear ; he therefore turned short off, and went another way. Sir Job, seeing that, pitied his poor master, and never thought of troubling him more, but buckled to his business in the common pleas."*

While filling the office of recorder, it became the duty of Sir George Jefferies, as counsel for the crown, to prosecute many persons accused of a participation in the popish plot. At first he did not exhibit that violence and rancour against the prisoners which afterward distinguished him. He was

* *Life of Lord Guilford*, vol. ii. p. 12.

probably aware that the court would gladly, had it been possible, have discountenanced the prosecutions; but at length, when the popular feeling had risen to such a pitch, that common sense and justice were forgotten in the excitement, Jefferies readily adapted his conduct to the prevailing sentiment, and urged the conviction of the unfortunate prisoners with brutal vehemence. It is difficult to discover whether Jefferies himself felt convinced of the guilt of the accused. His attachment to the church of England, which assumed almost the semblance of a principle, might induce him to credit the reality of the plot; but even the most thorough conviction of its truth could not have excused the violence and injustice which he exhibited toward the accused. Nor was it in these trials alone that he manifested his disregard for the principles of truth and justice. The prosecutions for libels, which were at this time instituted by the court, afforded him an opportunity of promulgating certain unconstitutional doctrines which were doubtless intended to procure favour from the government, and which probably led the way to his subsequent promotion.

At length the violence and intemperance of the recorder drew down upon him the reprehension of the party whose principles he had deserted. After the dissolution of the Oxford parliament in 1679, the country party petitioned for the calling of a parliament in terms offensive to the court; and in opposition to these petitions the prerogative party addressed the crown, expressing their *abhorrence* of the tumultuous proceedings of the petitioners. In encouraging these *abhorrers*, as they were termed, Jefferies rendered himself eminently conspicuous; and on the meeting of the new parliament, in 1680, he fell, with the rest of those who had opposed the petition for its assembling, under the censure of the

commons. Accordingly, on the 13th of November, 1680, it was resolved, "That Sir George Jefferies, recorder of the city of London, by traducing and obstructing petitioning for the sitting of this parliament, hath destroyed the right of the subject." And it was ordered that an humble address should be presented to his majesty to remove Sir George Jefferies from all public offices. To this address his majesty replied that he would consider of it. Jefferies himself trembled at the prospect of popular indignation. Being brought to the bar of the house, he received a reprimand on his knees; and such was the effect of this discipline upon his spirits, that he immediately resolved to resign his office of recorder, which drew from the king the observation that "he was not parliament proof."* On the 2d of December the office was accordingly surrendered, and was immediately afterward filled by George Treby, of the Middle Temple.

Of the character acquired by Jefferies while chief justice of Chester, some idea may be formed from the speech of Mr. Booth, afterward Earl of Warrington, in which he denounces the profligate conduct of Jefferies in very severe terms. "The county for which I serve is Cheshire, which is a county palatine, and we have two judges peculiarly assigned to us by his majesty; our puisne judge I have nothing to say against him, for he is a very honest man, for aught I know; but I cannot be silent as to our chief judge, and I will name him, because what I have to say will appear more probable. His name is Sir George Jefferies, who, I must say, behaved himself more like a jack-pudding than with that gravity which becomes a judge; he was mighty witty upon the prisoners at the bar; he was very full of his jokes upon people that came to give evidence, not

* North's Examen, p. 550.

suffering them to declare what they had to say in their own way and method, but would interrupt them because they behaved themselves with more gravity than he ; and in truth the people were strangely perplexed when they were to give in their evidence ; but I do not insist upon this, nor upon the late hours he kept up and down the city ; it is said he was every night drinking till two o'clock, or beyond that time, and that he went to his chamber drunk ; but this I have only by common fame, for I was not in his company—I bless God I am not a man of his principles or behaviour—but in the morning he appeared with the symptoms of a man that over-night had taken a large cup. But that which I have to say is the complaint of every man, especially of them that had any lawsuits. Our chief justice has a very arbitrary power in appointing the assize when he pleases, and this man has strained it to the highest point ; for whereas we were accustomed to have two assizes, the first about April or May, the latter about September, it was this year, as I remember, the middle of August before we had any assize ; and then he despatched business so well, that he left half the causes untried, and, to help the matter, has resolved that we shall have no more assizes this year.”*

Jefferies was too firmly seated in the favour of the court to suffer from these attacks, and continued to deserve the good opinion of his patrons by the zeal with which he conducted the many important matters intrusted to his hands. On the trials of Fitzharrist and of Plunket† he displayed great acrimony and violence ; but the full tide of his insolent vituperation burst forth in the case of Colledge, the “protestant joiner.”‡ He was also counsel for the crown in the prosecution of Pilkington and others for a riot,

* Chandler's Debates.

† State Trials, vol. viii. p. 223.

‡ Id. p. 447.

§ Id. p. 549.

arising out of the attempt made by the court to secure the election of one of the sheriffs of London;* in the celebrated case of the quo warranto against the city of London,† and, lastly, in the prosecutions which followed the discovery of the Rye-house Plot. The good service which he did to government on these occasions, and especially on the trial of Lord Russell, in which he boldly endeavoured to pervert the rules of evidence, in order to procure a conviction, entitled him to some substantial mark of royal gratitude; and on the death of Sir Edmund Saunders, [Note 42.,] the chief justice of the king's bench, he was, on the 29th of September, 1683, appointed to the vacant office, and was soon afterward sworn in as a member of the privy council. It was not until the 15th of May, 1685, that he was raised to the peerage, under the title of Baron Jefferies of Wem.

The temper which distinguished Jefferies, when counsel on the prosecution of Lord Russell, was again exhibited by him when he sate as judge on the trial of Algernon Sidney. The same desire to convict, the same eagerness to pervert the law, the same fierce animosity toward the prisoner, were again visible. The conclusion of this trial exhibited a singularly impressive scene. Jefferies had no sooner pronounced sentence than the prisoner exclaimed, "Then, O God! O God! I beseech thee to sanctify these sufferings unto me, and impute not my blood to the country, nor the city through which I am to be drawn; let no inquisition be made for it; but if any, and the shedding of blood that is innocent must be avenged, let the weight of it fall only upon those that maliciously prosecute me for righteousness' sake."—"I pray God work in you," said Jefferies, "a temper fit to go unto the other world, for I see

* State Trials, vol. ix. p. 187.

† Id. vol. viii. p. 1039.

you are not fit for this.”—“My lord,” replied Sidney, “feel my pulse, (holding out his hand,) and see if I am disordered: I bless God I was never in better temper than I am now.”* The feelings with which Jefferies presided at this trial may easily be divined when we hear the language with which he not long afterward insulted the memory of Russell and of Sidney. In his summing up on the trial of Sir S. Barnardiston, for a misdemeanour, he said, “Then here is, as I said, the sainting of two horrid conspirators; here is the Lord Russell sainted, that blessed martyr; my Lord Russell, that good man, that excellent protestant: he is lamented, and what an extraordinary man he was, who was fairly tried and justly convicted, and attainted for having a hand in this horrid conspiracy against the life of the king, and his dearest brother, his royal highness, and for the subversion of government. And here is Mr. Sidney sainted! What an extraordinary man he was! Yes, surely, he was a very good man, because you may some of you remember, or have read the history of those times, and know what share Mr. Sidney had in that black and horrid villany, that cursed treason and murder—the murder, I mean, of King Charles I., of blessed memory; a shame to religion itself, a perpetual reproach to the island we live in, to think that a prince should be brought, by pretended methods of law and justice, to such an end at his own palace. And it is a shame to think that such bloody miscreants should be sainted and lamented, who had any hand in that horrid murder and treason, and who, to their dying moments, when they were upon the brink of eternity, and just stepping into another world, could confidently bless God for their being engaged in that good cause, as they call it, which was the rebellion which brought that bless

* State Trials, vol. ix. p. 902.

ed martyr to his death. It is high time for all mankind, that have any Christianity or sense of heaven or hell, to bestir themselves, to rid the nation of such caterpillars, such monsters of villany as these are.”*

The hatred with which Jefferies regarded the presbyterian party found a free vent on the trial of the celebrated Richard Baxter, for publishing what was termed a seditious libel. The language which, during this trial, Jefferies applied both to the counsel and to the defendant, was more gross, vulgar, and indecent, than had ever before been heard in a court of justice. Interrupting Mr. Wallop, the counsel for Mr. Baxter, he said, “Mr. Wallop, I observe you are in all these dirty causes; and were it not for you gentlemen of the long robe, who should have more wit and honesty than to support and hold up these factious knaves by the chin, we should not be at the pass we are at.”—“My lord,” said Mr. Wallop, “I humbly conceive that the passages accused are natural deductions from the text.”—“You humbly conceive!” cried Jefferies, “and I humbly conceive.—Swear him—swear him!” Soon afterward he added, “Sometimes you humbly conceive, and sometimes you are very positive; you talk of your skill in church history, and of your understanding Latin and English: I think I understand something of them too, as well as you, but in short must tell you that, if you do not understand your duty better, I shall teach it you.” Upon this Mr. Wallop sat down. On Baxter endeavouring to address the court, Jefferies stopped him. “Richard! Richard! dost thou think we will hear thee poison the court? Richard, thou art an old fellow, an old knave, and thou hast written books enough to load a cart. Every one is as full of sedition, I might say treason, as an

* State Trials, vol. ix. p. 1353.

egg is full of meat. Hadst thou been whipped out of thy writing trade forty years ago it had been happy. Thou pretendest to be a preacher of the gospel of peace, and thou hast one foot in the grave. It is time for thee to begin to think what account thou intendest to give ; but leave thee to thyself, and I see thou wilt go on as thou hast begun ; but, by the grace of God, I'll look after thee ! I know thou hast a mighty party, and I see a great many of the brotherhood in corners, waiting to see what will become of their mighty don, and a doctor of the party (looking at Dr. Bates) at your elbow ; but, by the grace of Almighty God, I will crush you all."

When the chief justice had finished his summing up, Baxter said, " Does your lordship think that any jury will pretend to pass a verdict upon such a trial ?" — " I'll warrant you, Mr. Baxter," replied Jefferies ; " don't you trouble yourself about that." The jury immediately found a verdict of guilty.*

The rebellion of the Duke of Monmouth, in the autumn of 1685, quickly followed by the total rout and defeat of his army at Sedgmoor, opened a wide field for the display of those ferocious tastes by which Jefferies was distinguished. Monmouth had been highly popular in the west, through which, in the year 1680, he had made the triumphal progress celebrated by Dryden in his *Absalom and Achitophel* :—

The crowd, that still believe their kings oppress
With lifted hands their young Messiah bless :
Who now begins his progress to ordain,
With chariots, horsemen, and a numerous train.

Of the popular rejoicings to which this visit gave rise an account has been preserved by a contemporary writer.† " In August, 1680, the Duke of Monmouth went into the country to divert himself,

* State Trials, vol. xi. p. 500.

† Historical Account, &c., of James Duke of Monmouth.

visiting several gentlemen in the west of England, by whom he was received and entertained with a gallantry suitable to the greatness of his birth and the relation he stood in to his majesty, incredible numbers of people flocking from all the adjacent parts to see this great champion of the English nation, who had been so successful both against the Dutch, French, and Scots. He went first into Wiltshire, and was pleased to honour the worthy esquire Thynne with his company for some days. From thence he went to Mr. Speaks in Somersetshire, in which progress he was caressed with the joyful acclamations of the cuntrypeople, who came from all parts twenty miles about, the lanes and hedges being everywhere lined with men, women, and children, who, with incessant shouts, cried, 'God bless King Charles and the protestant duke!' In some towns and parishes which he passed through, they strewed the streets and highways where he was to pass with herbs and flowers." Five years afterward the duke again appeared, and was joined by great numbers of his former friends, who little foresaw that the festivities and rejoicings, with which they had hailed their deliverer, were so soon to be replaced by the terror and dismay which the scaffold, the axe, and the halter inspire.

The unfortunate men who had adhered to Monmouth had of course incurred the penalties of high treason. To punish these ignorant and devoted wretches, Jefferies was despatched to the west, not only with a commission of *oyer* and *terminer*, but with a military commission as general of the west; and the carnage that ensued was in strict accordance with the latter character. In the Life of James II., written by himself,* an attempt is made to exculpate the king from the guilt of these unheard-of cruelties.

* Vol. ii. p. 43.

“ His imprudent zeal,” observes the royal biographer, speaking of Jefferies, “ or, as some said, avarice, carrying him beyond the terms of moderation and mercy, which were always most agreeable to the king’s temper, he drew undeservedly a great obloquy upon his majesty’s clemency, not only in the number but the manner, too, of several executions.” The following letter, addressed by James II. to the Prince of Orange, and dated the 24th of September, 1685, seems to prove that the king was well acquainted with the course of these proceedings, during which it will be seen that he did not neglect to solace himself with the recreation of fox-hunting :—“ Since I came back from Winchester I received yours of the 21st from Loo, by Mr. Sidney, and having been a fox-hunting on Tuesday last, had not then time to let you know it. I was this day again at the same sport, the weather being now very proper for it, having ended stag-hunting the day I returned hither. As for news, there is little stirring, but that lord chief justice has almost done his campaign. He has already condemned several hundreds, some of which are already executed, some are to be, and the others sent to the plantations, which is all that I have now time to tell you, but that I shall always be as kind to you as you can desire.”* The singular story of Major Holmes is mentioned by the king as a proof of his own clemency and of the severity of Jefferies. “ This gentleman had been engaged with Monmouth, had lost a son and his arm in the battle, was taken prisoner, and brought up to town. The king being desirous to see him, he behaved himself in such a manner as gained an esteem from everybody. His carriage was free from dejection, yet full of respect. He owned his fault, but had recourse to his majesty’s

* Dalrymple’s Appendix, part ii. p. 165.

mercy; but told him that, considering his losses and his age, the favour he asked would be more advantageous for his majesty's reputation to grant than beneficial to him to receive. The king, who loved courage even in an enemy, could not refrain countenancing of him, discoursed freely with him, and no one was more frequently in the king's antechamber, till it was thought fit to send him down into the west, as one who could best inform the lord chief justice who were the most criminal, and who most deserved mercy, and that he might do some service before he received his pardon, which was deferred only for that reason till after his return. But instead of that, the first news the king heard of him was that he had been hanged with the rest. This his majesty was very much surprised at, and made him question the chief justice at his return; but he palliated that and his other severities with the pretence of necessary justice, which the king having made him judge of, knew not how to contradict, especially since he had the precaution not only to send four other judges as his assistants along with him, but Mr. Pollexfen likewise, in quality of his solicitor, who being a known favourer of the presbyterian party, he hoped would moderate the chief justice's heat, so that after all this care and foresight his majesty had reason to acquiesce to what had been done, though it was a great disservice to him at the bottom; but my lord chief justice making it pass for an excess of zeal, hindered not his majesty from conferring the title of a baron upon him as a reward for his former merit."*

The progress of Jefferies through the western counties might have been tracked by the blood which he so lavishly shed; and some anecdotes of his cruelties have been preserved, which strike the rea-

* Life of James II., vol. ii. p. 113.

der with indignant horror. When the sisters of one of the prisoners who had been convicted stopped his coach, to the wheels of which they clung, begging mercy for their brother, he ordered his coachman to cut their arms and hands with his whip.* And upon another occasion, when a lady interceded for the life of one of the prisoners, to whom she was betrothed, he answered her with a jest so cruel, so coarse, and so unmanly, that the very relation of it rouses the feelings almost like a present insult.† The avarice of Jefferies is alluded to by the king, and there is no doubt that, in many instances, persons who had been implicated in the rebellion purchased their lives from him with money. From Mr. Prideaux, a gentleman of Devonshire, he received so large a sum as £15,000 for not bringing him to trial.‡

One of the most barbarous of the many cruel executions which took place at this time was that of Mrs. Lisle, a gentlewoman of upward of seventy years of age, who had been, in fact, guilty of no offence whatever. She had harboured two men who had escaped from the rout at Sedgmoor; but it did not appear that she was acquainted with their participation in the rebellion. One of the witnesses for the prosecution was a person of the name of Dunne, a presbyterian, whom Jefferies suspecting to be an unwilling witness, attacked with a coarseness of language and violence of demeanour which appear almost to have deprived the man of his senses. A few passages will sufficiently illustrate the temper of the chief justice. "Why, thou vile wretch! dost thou think, because thou prevaricatest with the court here, that thou canst do so with God above, who knows thy thoughts? And it is infinite mercy that with those falsehoods of thine he does not strike

* Granger, vol. ii. p. 543.

† See Dalrymple and Ralph.

‡ Dalrymple's Mem. p. 140.

thee into hell! Jesus God! there is no sort of conversation or human society to be kept with such people as these are, who have no religion, but only in pretence." Soon afterward, addressing himself to the jury, he said, "I hope, gentlemen of the jury, you take notice of the strange and horrible carriage of this fellow, and withal you cannot but observe the spirit of that sort of people, what a villanous and devilish one it is. Good God! that ever the thing called religion (a word that people have so much abused) should ever wind up persons to such a height of impiety, that it should make them lose the belief that there is a God of truth in heaven! * * * A Turk is a saint to such a fellow as this; nay, a pagan would be ashamed to be thought to have no more truth in him." Colonel Penruddock having stated that Dunne, the witness, had asserted that he apprehended the persons who had taken refuge with Mrs. Lisle to be rebels, the following examination took place:

"*Jefferies*. What do you say to that, Dunne? It seems you told Barton that you apprehended them to be rebels.

"*Dunne*. I apprehended them for rebels, my lord!

"*Jefferies*. No, no! you did not apprehend them for rebels; but you hid them for rebels. But did you say to Barton that you took them for rebels?

"*Dunne*. I take them to be rebels!

"*Jefferies*. You blockhead! I ask you did you tell him so?

"*Dunne*. I tell Barton so!

"*Jefferies*. Ay, is not that a plain question?

"*Dunne*. I am quite cluttered out of my senses; I do not know what I say.

"*Jefferies*. But to tell the truth would rob thee of none of thy senses, if ever thou hadst any; but it should seem that neither thou nor thy mistress, the

prisoner, had any, for she knew nothing of it neither, though she had sent for them thither."

At length the case went to the jury, who manifested a desire to retire, "upon which the Lord Jefferies expressed a great deal of impatience, and said he wondered that in so plain a case they would go from the bar." Having retired, "he would have sent to them with an intimation, that if they did not come quickly, he would adjourn, and let them lie by it all night." The jury in about half an hour appeared, but it was only to express a doubt as to the sufficiency of the evidence. Jefferies told them that the fact they referred to had been proved. The foreman replied that they did not remember it. Jefferies repeated his assertion, and added, that "if there were no proof, the circumstances and management of the thing were as full proof as need be." Upon this the jury, after some deliberation, brought in a verdict of *guilty*. It is stated by many historians, that the jury, three several times, brought in a verdict of acquittal, which, by the threats of the chief justice, they were induced to retract; but this fact does not appear from the report in the State Trials.*

Mrs. Lisle was convicted on the 27th of August. "Look you, Mrs. Lisle," said Jefferies; "when I left his majesty, he was pleased to remit the time of all executions to me, that, wherever I found any obstinacy or impenitence, I might order the executions with what speed I thought best. Therefore, Mr. Sheriff, take notice, you are to prepare for the execution of this gentlewoman this afternoon; but withal I give you, the prisoner, this intimation: we that are the judges shall stay in town an hour or two; you shall have pen, ink, and paper brought you; and if, in the meantime, you employ that pen, ink, and paper, and this hour or two well, (you un-

* Vol. xi. p. 371.

derstand what I mean,) you may hear farther from us in a deferring the execution."

At the intercession of several divines, a respite was granted till the 2d of September, and in the meantime an application was made to the king, by Lady St. John and Lady Abergavenny, for mercy; and a petition was presented from the prisoner herself, praying for a commutation of the punishment, from burning to beheading. To the appeal for mercy, James replied, "that he would do nothing in it, having left all to the chief justice"—to the petition, "that he would not reprieve her one day; but, for altering the sentence, he would do it, if there were any precedents for it."* Here, at all events, was an opportunity afforded to the king of extending mercy, and as he chose to reject it, the grievous odium of this unjust and cruel punishment must rest with him; yet, with a meanness proportioned to the cruelty of the act itself, he endeavours in his own memoirs to affix the stigma wholly upon Jefferies.†

During his "western campaign," Jefferies discovered a gross abuse which had prevailed for some time at Bristol, but to which he put a very speedy termination. The affair is thus related by Roger North:—"There is one branch of that chief's expedition in the west, which is his visitation of the city of Bristol, that hath some singularities, of a nature so strange, that I think them worth my time to relate. There had been an usage among the aldermen and justices of the city (where all persons, even common shopkeepers, more or less, trade to the American plantations) to carry over criminals, who were pardoned with condition of transportation, and to sell them for money. This was found to be a good trade; but not being content to take such felons as were convict at their assizes and sessions,

* State Trials, vol. xi. p. 376. † Life of James II., vol. ii. p. 43.

which produced but a few, they found out a shorter way, which yielded a greater plenty of the commodity. And that was this: the mayor and justices, or some of them, usually met at their tolsey (a court-house by their exchequer) about noon, which was the meeting of the merchants, as at the exchange at London; and there they sat and did justice-business, that was brought before them. When small rogues and pilferers were taken and brought there, and, upon examination, put under the terror of being hanged, in order to which, mittimus were making, some of the diligent officers attending, instructed them to pray transportation, as the only way to save them; and for the most part they did so. Then, no more was done; but the next alderman in course took one and another, as their turns came; sometimes quarrelling whose the last was, and sent them over and sold them. This trade had been driven for many years, and no notice taken of it. Some of the wealthier aldermen, although they sat in the court and connived, as Sir Robert Cann, for instance, never had a man; but yet they were all involved in the guilt when the charge came over them. It appears not how this outrageous practice came to the knowledge of the lord chief justice; but when he had hold of the end he made thorough-stitch work with them; for he delighted in such fair opportunities to rant. He came to the city, and told some that he had brought a broom to sweep them. The city of Bristol is a proud body, and their head, the mayor, in the assize commission, is put before the judge of assize; though, perhaps, it was not so in this extraordinary commission of oyer and terminer. But for certain, when his lordship came upon the bench and examined this matter, he found all the aldermen and justices concerned in this kidnapping trade, more or less, and the mayor himself

as bad as any. He therefore turns to the mayor, accoutred with his scarlet and furs, and gave him all the ill names that scolding eloquence could supply; and so, with rating and staring, as his way was, never left till he made him quit the bench, and go down to the criminals' post at the bar; and there he pleaded for himself, as a common rogue or thief must have done: and when the mayor hesitated a little, or slackened his pace, he bawled at him, and, stamping, called for his guards; for he was general by commission. Thus the citizens saw their scarlet chief magistrate at the bar, to their infinite terror and amazement. He then took security of them to answer informations, and so left them to ponder their cases among themselves. At London Sir Robert Cann applied, by friends, to appease him, and to get from under the prosecution, and at last he granted it, saying, 'Go thy way; sin no more, lest a worse thing come unto thee.' The prosecutions depended till the revolution, which made an amnesty; and the fright only, which was no small one, was all the punishment these juridical kidnappers underwent. And the gains, acquired by so wicked a trade, rested peaceably in their pockets."*

Stained with the blood of the aged, the weak, and the defenceless, Jefferies returned to the capital to claim, from the hands of the master he had so faithfully and acceptably served, the reward due to his singular merits. That reward was immediately conferred upon him, and on the 28th of September he received the great seal, and was appointed lord high chancellor.

Having thus gained the summit of his ambition, Jefferies appears to have in some degree relaxed his activity in carrying into effect the wishes of the court. It is possible, too, that the heart, which no

* Life of Lord Guilford, vol. ii. p. 24.

sentiment of humanity could affect, was touched by some religious scruples. He had no bias whatever toward catholicism; and though, for his own advancement, he had ever been ready to forward the designs of the court, he felt no inclination to offend his conscience without some corresponding advantage. Nor is it improbable that he foresaw the dangers to which the king was exposing himself by thus attacking the dearest prejudices of his subjects. In consequence, probably, of some advice to this effect tendered to the king, the favour of Jefferies began to decline at court. This is asserted by Burnet, and we have some confirmatory evidence to the same effect in the lately published Ellis Correspondence. "I am very confident," says the letter-writer, "that matters are brewing to break the neck of our wide-mouthed, high-paced ——— &c., and as conjurers throw a dog or a cat to allay the devil with, so he may be thrown as a choosing morsel to the next parliament. Herbert has represented, since his return from the western circuit, the disservice done by the management of the former circuit, and the rapine; and I am creditably told it works to admiration; and his dear friend, the thin great man at Whitehall, quits him."* To regain his favour at court, Jefferies did not hesitate to abandon his church of England friends, and to suggest to the king the establishment of the celebrated ecclesiastical commission. It was obvious to James, that some measures had become necessary in order to depress the church of England party, who had manifested the strongest opposition to the designs contemplated by the court in favour of the catholics. By the advice of Jefferies, therefore, he resolved to re-establish the court of high commission, though, as the existence of that tribunal had been denounced by statute, it was necessary

* Vol. i. p. 104; and see id. p. 222.

to bestow a different title upon the new court. A commission was therefore issued, appointing the Archbishop of Canterbury, the Lord Chancellor Jefferies, Lord Rochester, Lord Sunderland, the Bishops of Durham and Rochester, and the lord chief justice to be commissioners for reforming all abuses of which the ecclesiastical law had cognizance. The proceedings under this commission against the Bishop of London, the University of Cambridge, and Magdalen College, Oxford, were in strict conformity with the character and object of the tribunal. The vice-president and fellows of Magdalen College were cited to appear before the commissioners at Whitehall, and having appeared, they tendered an answer to the charge of disobeying the king's commands. This answer was signed by only five of the delegates, Dr. Fairfax, the sixth, not consenting to it. He desired to state to the commissioners his reasons for this refusal, upon which Jefferies, imagining that he was about to tender his submission, exclaimed, "Ay, this looks like a man of sense, and a good subject; let us hear what he will say." Fairfax then argued that the matter was cognizable in Westminster Hall, and not before the commissioners. Jefferies replied that he was a doctor of divinity, and not of law. The doctor then demanded by what commission and authority they sate? The boldness of this question threw the chancellor into a most violent paroxysm of passion. "Pray what commission have you," said he, "to be so impudent in court? This man ought to be kept in a dark room. Why do you suffer him without a guardian? Pray let the officers seize him."*

The conspicuous part which Jefferies acted on this commission rendered him extremely odious to the nation at large; and his cruelties in the west

* Rennett, vol. iii. p. 504.

were almost forgotten in his severities toward the suffering members of the church of England. When, in consequence of the increase of the popular discontents, and of the rumours from Holland of the preparations on foot for the expedition to England, the king was advised to call a parliament in order to appease the people, Jefferies, well aware that on the first meeting of the commons he should probably be assailed as the great grievance of the nation, vehemently opposed, at the council-table, the proposition for calling a parliament.* That proposition, indeed, had been made too late; and Jefferies was saved from the vengeance of the people's representatives only that he might experience the fiercer passions of the people themselves.

The period now approached when Jefferies was to be dragged from the elevated station he had so long disgraced by his violence, his cruelty, and his want of principle. On the approach of the Prince of Orange, and the flight of the king from London, the people, terrified by the report of a popish massacre, rose tumultuously; and Jefferies, justly dreading their vengeance, attempted to make his escape. The following is a circumstantial narrative of this attempt:—"The chancellor, now without protection, having rendered himself obnoxious to most people, and being perfectly hated by the nation, on Monday, between three and four in the morning, withdrew, and having in disguise got down safe to Wapping, put himself on board a collier, which was pretended to be bound for Newcastle, but indeed was designed for Hamburg; but some persons having notice thereof, by means of the mate, they went to a justice for a warrant to apprehend him; but he thought fit to put them off, whereupon they applied themselves forthwith to the lords of the council, who

* Ellis Cor., vol. ii. p. 144.

granted them a warrant, and they went immediately to search the ship. But he, on Tuesday night, not thinking himself safe on board the collier in which he was to pass, lay in another ship hard by, so that those who came that day to search for him missed of him on board, but had information given them that he was hard by at a little peddling ale-house, where accordingly they found him, being the sign of the Red Cow, in Anchor and Hope Alley, near King Edward's Stairs, from whence they immediately hurried him in a coach, guarded with several blunderbusses, to the lord mayor's; where the crowd was so great, and the rabble so numerous, all crying out together, *Vengeance! Justice! Justice!* that the lord mayor was forced to come out into his balcony, with his hat in his hand, and to desire the people to go away and keep peace, and did promise them that he had already sent to the lords of the council about the matter, and that they should have justice done them, and that in the meantime their prisoner should be safely guarded. Whereupon the people withdrew, and soon after my lord, under a strong guard, was sent to the lords of the council, who committed him to the Tower, where he continued to the 18th of April, 1689, when he was freed by death from his earthly confinement. He had for some years before been subject to terrible fits of the stone, which, in all probability, now accelerated his death, though others gave out he abandoned himself to excessive drinking, thinking to support his sinking spirits by it, and that that helped forward to put a period to his life. He was buried privately in the Tower the Sunday night following, by an order his relations got from King William.*

Burnet adds to his account of the capture of Jefferies, that "the lord mayor was so struck with the

* Lives of the Chancellors, vol. i. p. 185.

terror of the rude populace, and with the disgrace of a man who had made all people tremble before him, that he fell into fits, of which he died soon after."

The deep and indignant feelings which cruelty and oppression excite, render it difficult to form a cool and impartial opinion of Jefferies. In all the essential qualities of mind which a judge ought to possess, he seems to have been totally deficient. Unprincipled, cruel, irascible, and impatient, he stained the pure fountains of justice with blood and with corruption. No sentiment of integrity, no feeling of mercy, ever found a place in his bosom. To these qualities he added a brutal levity of conduct, strangely unbecoming the judicial character. His acquirements as a lawyer were of a mean order; and it is not dealing too harshly with him to adopt the censure of Mr. Justice Foster, and to pronounce him "the very worst judge that ever disgraced Westminster Hall."

The ease with which those who are conversant with courts of justice learn to disregard the sufferings of others, and the faculty, which too often follows, of turning those sufferings into ridicule, are but modifications of those brutal qualities which in Jefferies appeared in their full perfection. It may perhaps tend, in some degree, to prevent the growth of those callous and inhuman feelings, to observe them in the odiousness of their complete development, and to remark the execration and abhorrence which they never fail to excite in every heart of common sensibility. It is a salutary lesson to see the memory of Jefferies descending to posterity darkened with the indignant reproaches of each succeeding age, and weighed down by an ever-increasing weight of infamy. To affix to his polluted name an additional stigma, to brand his dishonoured memory with a fresh mark of reprobation, is an office grateful to humanity.

In his personal character, Jefferies was remarkable for his laxity and disregard of the decencies of his station. Roger North has left a character of him, which, though perhaps highly coloured, is certainly, in its main representations, correct. "His friendship and conversation lay much among the good fellows and humorists, and his delights were accordingly drinking, laughing, singing, kissing, and all the extravagancies of the bottle. He had a set of banterers for the most part near him, as, in old times, great men kept fools to make them merry, and these fellows abusing one another and their betters, were a regale to him; and no friendship or dearness could be so great in private, which he could not use ill, and to an extravagant degree, in public. No one that had any expectations from him was safe from his public contempt and derision, which some of his minions at the bar bitterly felt. Those above, and that could hurt or benefit him, and none else, might depend on fair quarter at his hands. When he was in temper, and matters indifferent came before him, he became his seat of justice better than any other I ever saw in his place. He took a pleasure in mortifying fraudulent attorneys, and would deal forth his severities with a sort of majesty. He had extraordinary natural abilities, but little acquired, beyond what practice in affairs had supplied. He talked fluently and with spirit; and his weakness was, that he could not reprehend without scolding, and in such billingsgate language as should not come out of the mouth of any man. He called it *giving a lick with the rough side of his tongue*. It was ordinary to hear him say, *Go, you are a filthy, lousy, nitty rascal*, with much more of like elegance. Scarce a day passed that he did not chide some one or other of the bar, when he sate in the chancery, and it was commonly a lecture of a quarter of an hour long. And they used to say, *This is yours; my turn will*

be to-morrow. He seemed to lay nothing of his business to heart, nor care what he did, nor what he left undone, and spent in the chancery court what time he thought fit to spare. Many times on days of causes at his house, the company have waited five hours in a morning, and after eleven he hath come out inflamed, and staring like one distracted, and that visage he put on when he animadverted on such as he took offence at, which made him a terror to real offenders, whom also he terrified with his face and voice, as if the thunder of the day of judgment broke over their heads, and nothing ever made men tremble like his vocal inflictions. He loved to insult, and was bold without check, but that only was when his place was uppermost. To give an instance: A city attorney was petitioned against for some abuse, and affidavit was made that, when he was told of my lord chancellor, 'My lord chancellor!' said he, 'I made him!' meaning his being a means to bring him early into city business. When this affidavit was read, 'Well,' said the lord chancellor, 'then I will lay my maker by the heels,' and with that conceit one of his best old friends went to jail. One of these intemperances was fatal to him. There was a scrivener of Wapping brought to hearing for relief against a bummery bond: the contingency of losing all being shown, the bill was going to be dismissed; but one of the plaintiff's counsel said that he was a strange fellow, and sometimes went to church, sometimes to conventicles, and none could tell what to make of him, and it was thought he was a *trimmer*. At that the chancellor fired: 'A trimmer!' said he; 'I have heard much of that monster, but never saw one. Come forth, Mr. Trimmer! turn you round, and let us see your shape!' and at that rate talked so long, that the poor fellow was ready to drop under him; but at last the bill was dismissed with costs, and he went his way. In the

hall, one of his friends asked him how he came off. 'Came off!' said he; 'I am escaped from the terrors of that man's face, which I would scarcely undergo again to save my life; and I shall certainly have the frightful impression of it as long as I live.' Afterward, when the Prince of Orange came, and all was in confusion, this lord chancellor, being very obnoxious, disguised himself, in order to go beyond sea: he was in a seaman's garb, and drinking a pot in a cellar. This scrivener came into the cellar after some of his clients, and his eye caught that face, which made him start; and the chancellor, seeing himself eyed, feigned a cough, and turned to the wall with his pot in his hand; but Mr. Trimmer went out and gave notice that he was there, whereupon the mob flowed in, and he was in extreme hazard of his life; but the lord mayor saved him, and lost himself. For the chancellor being hurried, with such crowd and noise, before him, and appearing so dismally, not only disguised but disordered, and there having been an amity between them, as also a veneration on the lord mayor's part, he had not spirit to sustain the shock, but fell down in a swoon, and not many hours after died."*

Evelyn, who was acquainted with Jefferies, tells us, that being present at the wedding of Mrs. Castle, a city lady, he met there "Sir George Jefferies, newly made chief justice of England, who, with Mr. Justice Withings, danced with the bride, and was exceeding merry. These great men," adds Evelyn, "spent the rest of the afternoon, until eleven at night, in drinking healths, taking tobacco, and talking much beneath the gravity of judges, who had but a day or two before condemned Mr. Algernon Sidney."† Sir John Reresby ‡ also has left us an account of a dinner party at the house of Jefferies, while he was

* Life of Lord Guilford, vol. ii. p. 31. † Memoirs, vol. i. p. 530.

‡ Memoirs.

chancellor, at which the lord mayor and some other gentlemen were present. Jefferies, according to custom, drank deep at dinner; and in order, as he said, to divert the company, he called for Mountfort, one of his gentlemen, who had been a comedian, and who was an excellent mimic. Mountfort was then desired to plead before them, which he did, imitating all the great lawyers of the day, to the great diversion of the lord chancellor.

The person and character of Jefferies have been thus sketched by an anonymous writer:—"He was rather above the middle stature; his complexion fair; his face well enough, though mixed with an air a little malicious and unpleasant. He was a man of tolerable sense, and had, by long practice, acquired some tolerable knowledge of the law, though, as little as it was, more than he had occasion to make use of. He had a pretty large stock of ill nature and wit, in which lay his greatest excellence, though an unenvied one. But, in short, his *law* and his *tongue* were the two best accomplishments he was master of; by the help of which he sometimes put falsehoods, but more frequently truth, out of countenance.

"He spoke many pleasant things, but very few handsome ones, disgracing his wit by his intolerable railing and mean passions; and would frequently, even upon the bench itself, fall into such heats as were not only unworthy of a judge, but even of a private man. To do him justice, he had a great deal of baseness and cruelty in his nature, having a particular delight and relish in such things as give horror to the rest of mankind."*

On some rare occasions Jefferies did indeed display feelings approaching to kindness and gratitude. When chief justice of Chester, certain proceedings instituted against the celebrated Philip Henry, for

* Life and Character of Jefferys, p. 44.

attending a conventicle, were brought to his notice ; but in this instance, at least, he manifested no desire to persecute a man whose conscientious discharge of his duty had already subjected him to much suffering. "He did not," says the biographer of Mr. Henry, "in private conversation, seem to applaud what was done in this matter, as was expected ; whether out of a private pique against some that had been active in it, or for what other reason is not known ; but it was said, he pleasantly asked some of the gentlemen, by what new law they pressed carts, as they passed upon their occasions along the road, to carry away goods distrained for a conventicle ? It was also said that he spoke with some respect of Mr. Henry ; saying, he knew him and his character well, and that he was a great friend of his mother's, (Mrs. Jefferies of Acton, near Wrexham, a very pious, good woman,) and that sometimes, at his mother's request, Mr. Henry had examined him in his learning, when he was a schoolboy, and had commended his proficiency. And it was much wondered at by many, that of all the times Sir George Jefferies went that circuit, though it is well enough known what was his temper, and what the temper of that divine, yet he never sought any occasion against Mr. Henry, nor took the occasions that were offered, nor countenanced any trouble intended him, though he was the only non-conformist in Shropshire."*

Mr. Seward, in his collection, has preserved another anecdote favourable to the character of Jefferies. On his arrival at Taunton, previously to opening the commission for the trial of the persons concerned in Monmouth's rebellion, he was waited upon by the minister of the church of Saint Mary Magdalen, in that town, who, in a very mild manner, remonstrated with him on the barbarity of his proceecings. Jef-

* Life of Mr. Philip Henry, p. 150, ed. 1825.

feries listened to him with great calmness, and soon after his return to London, sent for the clergyman, and presented him to a stall in the cathedral of Bristol.*

LORD SOMERS.

1650—1716.

JOHN SOMERS was born, as it is supposed, in the year 1650, at White Ladies, an ancient mansion which had formerly been a monastery, in the city of Worcester. The family of Somers was respectable, and had long possessed an estate at Clifton, in the parish of Severnstoke, in Gloucestershire. Admiral Sir George Somers, who discovered the Bermudas or *Somers* Islands, was a branch of the same family. John Somers, the father of Lord Somers, was an attorney, and during the civil war espoused the cause of the parliament, and commanded a troop of horse under Cromwell. His zeal is said to have been such, that after in vain endeavouring to persuade the clergyman of Severnstoke to desist from haranguing in his pulpit in favour of the king, he fired a pistol over his head, the ball of which lodged in the sounding board. The mother of Lord Somers was Catherine Ceavern, a lady of a Shropshire family.

In his infancy Lord Somers was placed under the care of his aunt, Mrs. Mary Blurton, with whom he principally resided till his removal to the university. His earliest education was received at the college school. He was also for some time a pupil at a private school at Walsall, in Staffordshire. Of his character, at this time, some idea may be formed

* Seward's Anecdotes, vol. ii. p. 85.

from a narrative preserved among the MSS. of Dr. Birch: "The account of his behaviour at school I had many years ago from a school-fellow. I think Walsall, in Staffordshire, was the place where they learned their grammar together. I remember well his account of Johnny Somers being a weakly boy, wearing a black cap, and never so much as looking out when they were at play," &c.* Of the manner in which young Somers employed his time after the conclusion of his school education, and until he went to the university, which was not until he was twenty-four years of age, no account has been given. It has been supposed by some, that he was destined by his father to his own branch of the profession, and that this period was passed in his father's office. Whatever his destination at this time may have been, his hours must have been well employed in the acquisition of those accomplishments by which he was afterward distinguished. In the year 1672 he formed an acquaintance with the young Earl of Shrewsbury, who resided for some time at White Ladies. He had the good fortune also to attract the attention of the solicitor-general, Sir Francis Winnington; and it was probably owing to the encouragement which he received from these friends, that he formed the intention of devoting himself to the bar.

In the year 1675 Somers entered as a commoner of Trinity College, Oxford, being then in his twenty-fourth year. It does not appear that either at school or at the university, though distinguished by a quickness of parts, he exhibited any proof of those extraordinary talents which might have led to the prognostication of his future eminence. But his character, even at this early age, was such as to inspire no common respect. His father, we are told, was accustomed to visit London during the terms, and,

* Seward's Anecdotes, vol. ii. p. 114.

on his way, usually left his horse at the George Inn, at Acton, where he often mentioned "his hopeful son at the Temple." The landlord, one day, in reply to these panegyrics, said, "Why don't you let us see him, sir?" and accordingly Mr. Somers requested his son to accompany him as far as Acton, on his return home; but on his arrival at the George, taking the landlord aside, he said, "I have brought him, Cobbet; but you must not talk to him as you do to me: he will not suffer such fellows you in his company."*

On the 5th of May, 1676, Mr. Somers was called to the bar, though he continued to reside at the university for a considerable period afterward. During this time much of his attention must have been devoted to the study of constitutional history, of his accurate acquaintance with which he soon gave the world an opportunity of judging. His first literary performance is said to have been the report of an election case—*The memorable Case of Denzil Onslow, Esq., tried at the Assizes in Surrey, July the 20th, 1681, touching his Election at Haslemere, in Surrey, wherein is much good Matter and Direction touching the due ordering of Elections for Parliament.*† The next work in which Mr. Somers engaged was of greater importance, not only on account of the public interest with which the subject was regarded, but from the learning and research which it displayed. The nation was at this time distracted by the question respecting the exclusion of James, Duke of York, from the succession. On the one hand, the Whigs, and all those who dreaded the principles, both in politics and religion, which the duke was known to entertain, sought to exclude him from the throne; while, on the other, the king,

* Life of Lord Somers, p. 11.

† Printed in Somers's Tracts, vol. i. p. 374, ascribed by Lord Glenbervie to Lord Somers's Election Cases, vol. i. p. 341.

the lovers of prerogative, and the adherents of the church of Rome, resisted, with all their energy, a measure which not only recognised a power in the country superior to that of the crown, and at variance with every notion of absolute hereditary right, but which would deprive them of a sovereign suited, in all respects, to the accomplishment of their own peculiar views. While this subject was undergoing the warmest discussion, both within and without the walls of parliament, Mr. Somers resolved to do his part toward enlightening the public mind, by a full and clear exposition of the principles by which the succession to the crown had, from the earliest periods of our history, been governed. This tract he published under the title of *A brief History of the Succession, collected out of the Records and the most authentic Historians, written for the Satisfaction of the Earl of H.** A second edition appeared in 1688, and a third in 1714. The object of this treatise was to establish the authority of parliament to limit, restrain, or qualify the right to the succession; a proposition which no temperate inquirer into our constitutional history could have ventured to deny, and which has not only been repeatedly acted upon, but also fully recognised and confirmed by statute.† The exertions of the duke's party, and the artifices of the court, were successful in defeating the project of an exclusion, which at a later period was converted into the more degrading measure of an expulsion.

After this triumph, the friends of the prerogative assumed a higher tone; and upon the *breaking* of the Oxford parliament, a royal declaration was issued, framed by the Lord Chief Justice North,‡ in explanation of the causes which had led to the dissolution

* Somers's Tracts, vol. xvi. p. 167, 1st ed.

† 13 Eliz. c. 1. 6 Anne, c. 7. s. 1, 2.

‡ Life of Lord Guilford, vol. i. p. 381, ed. 1826.

of the last two parliaments. In this instrument, the conduct of those who had opposed the crown, and advocated the bill of exclusion, was arraigned in terms so strong, that it was thought necessary to address a vindication of their proceedings to the nation at large. This was accomplished by the publication of a tract entitled *A just and modest Vindication of the last two Parliaments*.* It does not appear with whom the idea of this publication originated; but it has been supposed that more than one pen was employed in its production. We are told by Burnet, that the tract was originally penned by Sidney, and that a new draught was made by Somers, which was corrected by Sir William Jones.† The fact mentioned by Lord Hardwicke,‡ that a copy of this work, “in the hand-writing of Lord Somers,” was among the MSS. which were destroyed in the fire at the chambers of the Honourable C. York, can hardly be considered as disproving Burnet’s account. Though the work was at the time generally attributed to Jones,§ yet there is sufficient internal evidence to prove that Somers mainly assisted in the composition of it. To vindicate the proceedings of the last two parliaments, by proving the nature and extent of the powers lodged by the constitution in the house of commons, was the design of this excellent tract; and if it should be thought, that the writer has argued in support of some privileges conferring too unlimited a power upon the commons, it must be remembered, that he wrote at a period when the representatives of the people could ill afford to relinquish any means of withstanding the arbitrary designs of the court. So broken were the spirits of the Opposition by the triumphs of the

* State Tracts of Charles II.

† Burnet’s Own Times.

‡ State Papers, vol. ii. p. 399.

§ Echard’s Hist. of the Revolution.

court, that this excellent publication produced very little effect. It was most creditable to Somers that, at a time when the hopes even of the brave and the good were thus depressed, he ventured to call the nation to a sense of its rights and its danger.

The active pen of Mr. Somers was, in the course of the same year, again resumed in defence of the political rights of his countrymen. The production which he now gave to the world was entitled *The Security of Englishmen's Lives; or the Trust, Power, and Duty of the Grand Juries of England explained according to the Fundamentals of the English Government, and the Declaration of the same made in Parliament by many Statutes, published for the Prevention of Popish Designs against the Lives of many Protestant Lords and Commoners, who stand firm to the Religion and ancient Government of England.* By many this tract was attributed to Lord Essex; by others to Sir William Jones; but Burnet rightly affirms that it was the production of Somers, "who writ the best papers that came out in that time." A copy of it in the hand-writing of Somers was destroyed with his other manuscripts.* The occasion of this tract was the celebrated attempt to procure the finding of a true bill, for high treason, against the Earl of Shaftesbury, at the Old Bailey; when, notwithstanding the strenuous efforts of the two chief justices, Pemberton and North, and the illegal examination of the witnesses before the grand jury in open court, the bill was ignored; a proceeding which irritated the partisans of the court almost to a degree of phrenzy.† The grand jury, it was affirmed, were perjured, and the most vehement abuse was showered upon them. In defence of their verdict, and in support of the institu-

* Hardwicke State Papers, vol. ii. p. 399.

† See the Ravings of Roger North in his *Examen*.

tion of grand juries in general, Mr. Somers composed this tract, which has received the applause of many inquirers into our constitutional literature.* In one instance, however, the author appears to have pushed his doctrine to a faulty excess, where he insists that grand juries are not to be guided by *probabilities* only, since in fact all evidence is reducible to a mere probability, as the testimony of an eye-witness must depend upon the probability of his speaking the truth; a probability into which it is frequently necessary to inquire.

But political studies alone did not occupy the active mind of Mr. Somers. He had devoted himself with much ardour to classical pursuits; and of the progress which he had made in these, and of his general attachment to literature, he afforded an instance in 1681, by the publication of a translation, into English, of the *Epistles of Dido to Æneas, and of Ariadne to Theseus, from Ovid*. It would be unreasonable to institute a comparison between the versions of Mr. Somers and those of Dryden and Pope; but it may be asserted, that in Mr. Somers's attempt there is considerable power of diction, and some ease of versification. The following lines have been cited as an impartial specimen of the poems:

“ With cruel haste to distant lands you fly,
 You know not whose they are, nor where they lie;
 On Carthage and its rising walls you frown,
 And shun a sceptre which is now your own.
 All you have gain'd you proudly do contemn,
 And fondly seek a fancied diadem;
 And should you reach at last this promised land,
 Who'll give its power into a stranger's hand?
 Another easy Dido do you seek,
 And new occasions new-made vows to break?
 When can you walls like ours of Carthage build,
 And see your streets with crowds of subjects fill'd?”

* See the Letter on Libels, General Warrants, &c., p. 31. Eunomus, vol. iii. p. 263, 2d ed.

But though all this succeeded to your mind,
 So true a wife no search could ever find.
 Scorch'd up with love's fine fire, my life does waste,
 Like incense on the flaming altar cast ;
 All day Æneas walks before my sight,
 In all my dreams I see him ev'ry night ;
 But see him still ungrateful as before,
 And such as, if I could, I should abhor.
 But the strong flame burns on against my will ;
 I call him false, but love the traitor still."

Soon after the publication of these poems, Mr. Somers again appeared before the public as the translator of the life of Alcibiades in the version of Plutarch by various hands ; and about the same time he is supposed to have produced the poem entitled *Dryden's Satire to his Muse*, in answer to the celebrated *Absalom and Achitophel* of that poet. With regard to the authorship of this poem, which is written with great vigour, and is certainly superior to the translations from Ovid, much doubt has, with reason, been expressed. [Note 43.]

In the year 1682, Somers left the university, after a residence of seven years. It appears that, although he took his bachelor's degree, he left before he had taken that of master of arts. On his removal to London, he immediately began to practice at the bar, and, as it would appear, with very eminent success, since during the reign of James II. his professional income is said to have amounted to £700 per annum ; a very considerable sum at that period.* In the year following the commencement of his practice, he was employed as one of the counsel in the celebrated case of Pilkington and Shute, the sheriffs of London, and others, who were indicted for a riot during the election of sheriffs.† In the arguments and other proceedings which took place in the course of this prosecution Mr. Somers appears to have taken little

* Life of Lord Somers, p. 15.

† Howell's State Trials, vol. ix. p. 187.

part; but his employment in a case of so much importance and notoriety must have contributed to his progress in his profession. The defendants were found guilty, and severely fined; but on the revolution the judgment was reversed in parliament.

Notwithstanding the occupation which his professional duties afforded him, Mr. Somers found leisure for the cultivation of general literature, and distinguished himself by the patronage which he extended to literary undertakings and to men of letters. By his advice, and under his encouragement, the first folio edition of Milton was printed;* and at a later period he had the honour of fostering the rising genius of Pope.

“The courtly Talbot, Somers, Sheffield read;
Ev’n mitred Rochester would nod his head.”

The reputation which Mr. Somers had acquired as a constitutional lawyer led to his being employed in one of the most important cases in the annals of our state trials. On the assumption of a dispensing power by James II., and the promulgation by him, for the second time, of a declaration of indulgence, the object of which was the illegal introduction of the catholics to power, the prelates of the church of England opposed the unconstitutional measure, and thus, in the words of Hurd, “atoned in some measure for former miscarriages.” The declaration was directed to be read on two several Sundays, during the time of divine service; but the performance of this duty was found so obnoxious to the clergy, that the Archbishop of Canterbury and six of the bishops humbly petitioned the king to be absolved from it. Inflamed by this refusal, and instigated by the evil advice of Jefferies, James summoned the petitioners before the council, where, instead of tendering a submission, the prelates professed that they had done nothing that they were not ready to justify. The

* See the Dedication to the 2d ed.

result was that an information was filed against them for publishing a seditious libel against the king and his government, and on the 15th of June, 1688, they were brought to trial in the court of king's bench. The counsel for the bishops were Sir Robert Sawyer, Mr. Finch, Mr. Pollexfen, Sir George Treby, Sergeant Pemberton, Sergeant Levinz, and Mr. Somers. It is said that, on finding the name of the latter in the list of their legal advisers, the bishops objected to him as a person whose youth and want of practice rendered him unfit for so arduous a contest; but on Pollexfen representing to them the great learning of Mr. Somers, and his accurate knowledge of the records, and intimating his own resolution not to appear himself, unless Mr. Somers should also be employed, he was at once associated in the defence. Of the services rendered by Mr. Somers on this occasion to his clients it is difficult to form a judgment; but that much of the deep constitutional learning displayed by the other counsel had been furnished by his researches is extremely probable. His own address was, agreeably to the modesty and discretion of his mind, distinguished by its brevity, its compression, and its close application to the case. It was, in fact, an admirable summary of all the arguments which could be adduced on behalf of his clients. The event of this great trial was most favourable to the liberties of the country, and the acquittal of the bishops contributed more than any other event to hasten the impending revolution.

Of the part acted by Mr. Somers, in forwarding that great political event, but little is known. It is probable, however, that he was consulted by those distinguished persons who were most active in soliciting the presence of the Prince of Orange, and it has indeed been said by one historian* that he was admitted into the most secret councils of the prince,

* Tindal.

and was one of those who concerted the measure of bringing him over to England. Upon the flight of James II., and the presentation of the address from the lords and the assembly of commons to the Prince of Orange, requesting him to summon a convention, letters were issued for that purpose in the prince's name, and Mr. Somers, who had never hitherto appeared in parliament, was returned by the city of Worcester to represent his fellow-citizens in the approaching convention. A more zealous and able deputy could not have been selected ; and in the long debates which took place with regard to the settlement of the nation, he acted a very conspicuous part.* The commons having voted that James had abdicated, and that the throne was thereby vacant, and the house of lords having proposed certain amendments in that resolution, a committee was appointed, of which Mr. Somers was one, to conduct a conference with the lords on the subject. The chief objection of the peers was to the word *abdicate*, in place of which they proposed to substitute the term *deserted*, and to omit altogether the clause respecting the vacancy of the throne. In justification of the resolution as originally worded, Mr. Somers spoke at considerable length and with much learning, and the lords ultimately consented to withdraw their amendments. It has been said, and frequently repeated, that these verbal contests little befited the dignity of the assembly in which they took place ; but it must be remembered that, where a whole nation is interested in a dispute, there may be numbers who are captivated by words as well as by reason.

Another vote having passed, " that the Prince and Princess of Orange should be declared king and queen," the convention applied themselves to the con-

* Hardwicke State Papers, vol. ii. p. 401. Appendix to Mr. Madock's Life.

sideration of the grievances under which the nation had suffered. A committee was accordingly appointed, of which Mr. Somers was a member, to bring in general heads of such things as were absolutely necessary to be considered, for the better securing our religion, liberty, and laws.* The report of the committee included a variety of matters, the principal part of which were afterward incorporated in the *Declaration of Rights*. The amendments were referred to a new committee, of which Mr. Somers was chairman, and being at length completed, the Declaration of Rights, by an order of both houses, was directed to be engrossed and to remain among the records, and also to be enrolled in chancery.

In surveying this portion of the life of Mr. Somers, it is impossible to regard it without the most lively sentiments of admiration and respect. From an obscure origin, he had risen, by the exertion of his own talents and diligence, not merely to a high rank in his own profession, but to a conspicuous station in public life. From a very early age the strenuous advocate of popular rights, he enjoyed the happiness of seeing the principles he so deeply loved and cherished, practically applied, on a scale magnificently extensive, to the settlement of the nation. It must indeed have been a most grateful reflection to him, that when the liberties of the country were almost overwhelmed, he had not hesitated to exert himself in their defence, and that the better spirit, which manifested itself at the revolution, might have been owing, in some degree, to his own exertions. To a mind truly ambitious, what reward can be proposed equal to reflections like these? To instruct and inform the intellect of a nation, to lead them to a knowledge of their rights, and to teach them how those rights may be claimed and exercised with

* Com. Journ. vol. x. p. 15.

temper, discretion, and success, is indeed a worthy and noble ambition.

Soon after the accession of William and Mary, Mr. Somers, having been appointed solicitor-general, received the honour of knighthood; and in the debates on the bill for recognising the new sovereigns and ratifying the act of convention, he distinguished himself greatly by the able manner in which he defended the principles of the revolution. The legality of the convention having been questioned by a member of the opposition, because it had not been summoned by writ, the solicitor-general answered the objection with much spirit. He said that if it was not a legal parliament, they who were then met, and had taken the oaths enacted by that parliament, were guilty of high treason; that the laws repealed by it being still in force, they must presently return to King James; that all the money levied, collected, and paid by virtue of the act of that parliament, made every one that was concerned in it highly criminal. "This," adds Burnet, "he spoke with such zeal, and such an ascendent of authority, that none were prepared to answer it, so that the bill passed without more opposition. This was a great service done in a very critical time, and contributed not a little to raise Somers's character."*

In the month of April, 1692, Sir John Somers was raised to the post of attorney-general; and such was the reputation he acquired both in the discharge of his official duties and in the house of commons, that he was, in the month of March, 1692-3, appointed lord keeper of the great seal. An unfortunate misunderstanding occurred, immediately after his receiving the seals, between the king and himself, relative to the filling up of the office of attorney-general, and some other legal appointments. The

* Own Times, vol. ii. p. 42. folio ed.

lord keeper had promised the place of attorney to Sir Thomas Trevor, but William had directed that it should be bestowed upon Mr. Ward. Sir John Somers, therefore, addressed a very respectful letter to the king, urging the ancient practice with regard to these appointments, and stating that he conceived it was for his majesty's service that they should be dependent on the great seal. Notwithstanding this remonstrance, Mr. Ward received the appointment, but shortly afterward was succeeded by Sir Thomas Trevor.* On accepting the great seal, Sir John Somers was not created a peer; and it was not until the year 1697 that he was raised to the peerage by the style and title of Baron Somers, of Eversham. It appears that he expressed considerable reluctance to receive this honour. "I had directions," says the Duke of Shrewsbury in a letter dated May, 1695, and enclosing a warrant for a peerage, "to have said everything I could imagine to persuade you to accept of a title, and the king is really convinced that it is for his service that you should. I beg the answer I may have, may be a bill for the king's signing. As for arguments, I have used all I have already, and by your objections you may give me leave to tell you, you are as partial and unreasonable with too much modesty, as some are with too much ambition."†

In the year 1695, during the king's absence from England, Lord Keeper Somers was constituted one of the lords justices, a post which he again filled in the years 1697 and 1698, and in 1697 he was appointed lord high chancellor. At this time the king was pleased to grant to him the manors of Reygate and Howleigh in Surrey, together with an annuity of £2100 out of the fee-farm rents. These grants formed an article in the impeachment, which a few

* Hardwicke State Papers, vol. ii. p. 427.

† Id. p. 429.

years afterward was preferred against him by the commons.

The situation of Lord Somers in the ministry was difficult and critical. Although he enjoyed the confidence of the king, yet he had rendered himself particularly obnoxious to the Tories, who had attained such influence, that William was perpetually wavering between that party and the Whigs. In a letter, which appears to have been written toward the close of the year 1698, Lord Somers expresses, in strong terms, his doubts as to the stability of the administration. "There is nothing to support the Whigs, but the difficulty of his (the king's) piecing with the other party, and the almost impossibility of finding a set of Tories who will unite. So that in the end I conclude it will be a pieced business, which will fall asunder immediately."* At length the Tories resolved to make a strenuous effort to remove the lord chancellor, whose great credit with the king had been the principal means of preserving the Whig administration: by his discretion and moderation the heat and violence, which some of the leading Whigs displayed, had been softened down and rendered less displeasing to the king, and unless he could be removed, it was in vain that the Tories struggled for power. The leaders, therefore, of that party endeavoured to persuade the king that the difficulties, into which he had been thrown, were occasioned by the odium in which the ministry were held in the house of commons. Various charges had been there preferred against Lord Somers, particularly that he had removed several gentlemen from the commission of the peace, who refused to subscribe the voluntary association which had been very generally entered into, upon the discovery of the assassination plot of 1696. In these removals Lord

* Hardwicke State Papers, vol. ii. p. 436.

Somers had merely acted in conformity to an order of the council, directing that those justices of the peace, who refused to subscribe, should be dismissed. Though his enemies did not succeed in procuring a vote of the house against him, yet the repeated attempts which they made were considered by the king to be so injurious to his service, that he resolved to dismiss Lord Somers from the office of chancellor. This act seemed the more ungracious, as the chancellor was, at the time, suffering severely from an illness, induced by his close attendance upon his various duties in court and in the cabinet. On his first appearance at court, after his restoration to health, the king told him that it seemed necessary for his service that his lordship should part with the seals, and that it was desirable that the delivery of them up should be his own act. To this proposal Lord Somers replied, that he could not make a voluntary surrender of his office, which might give his enemies occasion to charge him with being intimidated or guilty; but that if his majesty should be pleased to send a warrant, under his hand, demanding the seal, he would instantly resign it. Soon afterward, the warrant being brought by Lord Jersey, Somers immediately delivered to that nobleman the seal which he had for seven years held with so much honour.*

The conduct of William, in thus dismissing one of the most faithful and attached of his ministers, at the instigation of his enemies, a victim to the violence of faction, ill became that high character for justice and resolution which had raised him to the throne of England. Every honourable and well-judging person was disgusted with the coolness and want of heart with which the king consented to sacrifice a man, whose greatest offence was that he

* Burnet, vol. ii. p. 242. fol. ed.

had been one of the principal instruments in accomplishing that happy settlement of the nation, which placed his ungrateful master on the throne. At the close of his life, William is said to have adverted to the dismissal of Somers as an act of which he most sincerely repented.* Such was the indecent haste with which he gratified the wishes of the Tories, that no one had been selected to fill the vacant office. The seals were offered both to Holt and Trevor, who declined them; and after having been a short time in commission, were placed in the hands of Sir Nathan Wright. For some time it was thought that Lord Somers would possibly be reinstated;† but the king had fallen into the hands of the Tories, who resisted, with all their influence, his return to office.

Having thus succeeded in removing Lord Somers from the king's councils, his enemies resolved to harass him with an impeachment. The principal ground of this impeachment was the part taken by him in the celebrated partition treaties, which had rendered him extremely obnoxious to the house of commons; and accordingly, on the 1st of April, 1701, he was impeached, together with the Earl of Portland and the Earl of Orford, of high crimes and misdemeanours. Not contented with this proceeding, on the 23d of April, the commons presented an address to the king to remove those noblemen from his councils; but the lords, on the other hand, presented a counter-address, begging his majesty not to pass any censure on the accused, while the impeachment was pending against them. At length, on the 19th May, the commons exhibited articles of impeachment against Lord Somers, which were grounded, 1. On his conduct with regard to the partition trea-

* Cunningham's Hist. vol. i. p. 252.

† Hardwicke State Papers, vol. ii. p. 436.

ties ; 2. On his improperly passing certain grants under the great seal to himself and others ; 3. On the affair of Captain Kidd.

The history of the partition treaties is too well known to require repetition ; but it may be proper to state with some particularity the part taken in that affair by Lord Somers. In 1698, while the king was in Holland, certain overtures were made to him by the French government, for a treaty, settling the succession to the throne of Spain in case of the death of Charles II., whose health was at that time in a very precarious state. The terms proposed were, that the electoral prince of Bavaria should have the kingdoms of Spain, the Indies, and the Low Countries ; that the Dauphin should possess the kingdoms of Naples and Sicily, with certain other territories ; and that the Duchy of Milan should be settled on the emperor's second son, the Archduke Charles. William was pleased to entertain these proposals, and on the 15th of August, 1698, addressed a letter* to Lord Somers, desiring to have his opinion on the treaty, and commanding him to send full powers under the great seal, with the names in blank, for the appointment of commissioners to treat with Count Tallard, the agent of the King of France. By the king's permission the subject of his letter was communicated to Lord Orford, the Duke of Shrewsbury, and Mr. Montague ; and, on the 28th of August, Lord Somers transmitted to the king the result of their deliberations.† He remarked the ill consequences with which the proposal would be attended should the French not be sincere ; though at the same time, in case no treaty should be entered into, there was, he observed, considerable danger that the French, having so large a force in readiness, might take possession of Spain in case of Charles's

* Kennet, vol. iii. p. 805.

† Id. p. 806.

death. He laid before the king the state of England, discontented with the amount of the taxes, and averse to a new war; and he remarked upon the unfavourable position in which the trade of England might be placed by the transferring of Sicily to the French. Pursuant to the royal commands, the requisite commissions, with the names of the commissioners in blank, were forwarded to the king. The treaty was prepared and signed without any farther communication with Lord Somers, who, so far from affording any encouragement to it, had suggested doubts as to its policy.

The charge respecting the grants improperly passed by him appears to have been equally unfounded. He freely acknowledged that the king had been pleased to grant to him certain manors and rents; but he denied that such grants were procured by his own solicitation.

The article which charged Lord Somers with granting a commission, under the great seal, to Captain Kidd was founded on some singular circumstances which took place in the year 1695. The colonists of America had been greatly annoyed by the attacks of certain pirates, who infested those seas; and in consequence of their representations a commission was granted to Captain Kidd, the commander of a privateer, which had been fitted out for the expedition by subscription, to authorize the privateer to proceed and capture the pirates; and a grant was made, to the adventurers, of the prizes which they might take, reserving a portion to the crown. It unfortunately happened that Captain Kidd, finding himself in the command of a well-appointed vessel, conceived that it would be more profitable to become a pirate himself than to be the capturer of pirates; and accordingly commenced a

career, which ended, a few years afterward, in his execution for murder and piracy.*

To all these articles Lord Somers, on the 24th of May, delivered in his answer,† which, on the face of it, exhibited a full and satisfactory denial; and it remained for the commons to substantiate their impeachment by proofs. They insisted, however, upon the appointment of a committee of both houses to settle the preliminaries of the trial, a proposition to which the lords were unwilling to accede; and after various conferences and much dispute, the lords fixed the 17th of June for the trial. On that day, the commons not appearing in support of their impeachment, Lord Somers was acquitted. Had the commons, instead of screening themselves by affected delays, proceeded to the proofs of the charges against Lord Somers, there is little doubt that the result must still have been an acquittal. The answer given by the accused was full and sufficient; and was supported, so far as they appear, by his proofs. It was soon after this impeachment that Swift, who had visited London with an earnest desire to engage his pen in politics, published his "Discourse of the Contests and Dissensions between the Nobles and Commons in Athens and Rome, with the Consequences they had on both those States." In this pamphlet, which the author devoted to the interests of the Whigs, whose party he soon afterward forsook, the character of Lord Somers is given under the name of Aristides. "Their next great man was Aristides. Besides the mighty service he had done his country in the wars, he was a person of the strictest justice, and best acquainted with the laws as well as forms of their government, so that he was in a manner chancellor of Athens. This man, upon a

* State Trials, vol. xiv. p. 123.

† Id. p. 263.

slight and false accusation of favouring arbitrary power, was banished by ostracism; which, rendered into modern English, would signify, that they voted he should be removed from their presence and council for ever. But, however, they had the wit to recall him; and to that action owed the preservation of their state by his future services." At a subsequent period of his life, when he had become an active partisan of the Tory administration, Swift composed a very different character of Lord Somers, which will be noticed hereafter.

The conduct of the king, in dismissing Lord Somers from his councils, did not inspire him with any of that morose indisposition to serve his country which persons of meaner minds might have displayed. At the close of the year 1701, he entered into a correspondence with Lord Sunderland, with whom he had not previously been on good terms, for the purpose of effecting a reconciliation between the king and the leaders of the Whig party. In a letter from Sunderland to the king, dated 1st of September, 1701, the writer openly recommends his majesty to be guided by the advice of Lord Somers. "The Tories will not be satisfied without ruining my Lord Somers, nor the Whigs without undoing the ministers, in which the latter think they have the whole nation on their side. But at last what can the king do? He must certainly do what may determine him to take his measures. For example, let him come into England as soon as he can, and immediately send for my Lord Somers. He is the life, the soul, and the spirit of his party, and can answer for it; not like the present ministers, who have no credit with theirs, any farther than they can persuade the king to be undone. When his majesty speaks to my Lord Somers, he ought to do it openly and freely, and ask him plainly what he and his friends

can do and will do, and what they expect, and the methods they propose. By this the king will come to a judgment of his affairs, and he may be sure that my Lord Somers will desire nothing for himself or any of the impeached lords, but will take as much care not to perplex the king's business as can be desired; and if he can do nothing his majesty shall like, he will remain still zealous and affectionate to his person and government."* On the 10th of October the king addressed a short note to Lord Somers, from Loo, accrediting Lord Galway as a confidential agent, and assuring Somers of the continuance of his friendship.† In consequence of these negotiations, Somers prepared "Heads of Arguments to induce the King to call a New Parliament;"‡ and on the 10th of November the old parliament was dissolved. By the exertions and advice, principally of Somers and Sunderland, some progress was made toward the formation of a Whig ministry; but by the death of William the project was defeated, and the Tories were once more firmly established.

For some years after the accession of Queen Anne, Lord Somers does not appear to have taken any active part in politics. Much of his time was devoted to literature and science, and he was elected President of the Royal Society, of which he had long been a member. In the year 1706, he introduced into the house of lords the statute which is known by the title of the "Act for the Amendment of the Law, and the better Advancement of Justice." (4 Anne, c. 16.) This act effected several highly important changes in the administration of the law, its principal object being to prevent a failure and delay of justice, in consequence of errors in form. It compelled a party who demurred for certain formal errors to state the grounds of his objection on the

* Hardwicke State Papers, vol. ii. p. 446. † Id. 452. ‡ Id. 453.

face of the demurrer ; it prevented formal errors from being taken advantage of, after judgments by default ; it enabled a defendant to plead several defences ; it took away the necessity of an actual attornment by tenants ; it directed that no dilatory plea should be received without an affidavit of the truth ; persons sued on money-bonds were enabled to plead payment of the money, before action brought ; parties having rights of entry upon land were compelled to bring their actions within a year after the entry, in order to avoid a fine levied with proclamations ; actions against persons beyond seas were authorized to be brought after their return, notwithstanding the statute of limitations ; bail-bonds given to the sheriff were made assignable to the plaintiff in the action, who was thereby enabled to enforce them in his own name ; subpœnas in equity were prohibited before bill filed ; costs were given on quashing a writ of error to the defendant ; and, lastly, the action of account was given against executors and administrators. It is to be greatly regretted that we have only a very imperfect account of the debates on this bill. The relation of them given by Burnet, who at that time sat in the lords, is, that Lord Somers "made a motion in the house of lords to correct some proceedings in the common law and in chancery, that were both dilatory and chargeable. He began the motion with some instances that were more conspicuous and gross ; and he managed the matter so that both the lord keeper and judges concurred with him, though it passes generally for a maxim, that judges ought rather to enlarge than contract their jurisdiction. A bill passed the house that began a reformation of proceedings at law, which, as things now stand, are certainly among the greatest grievances of the nation. When this went through the house of commons, it was visible that the inte-

rest of under officers, clerks, and attorneys, whose gains were to be lessened by this bill, was more considered than the interest of the nation itself. Several clauses, how beneficial soever to the subject which touched on their profit, were left out by the commons. But what fault soever the lords might have found with these alterations, yet to avoid all disputes with the commons, they agreed to their amendments. There was another general complaint made," adds Burnet, "of the private acts of parliament that passed through both houses too easily, and in so great a number, that it took up a great part of the session to examine them, even in that cursory way, that was subject to many inconveniences. The fees that were paid for these, to the speaker and clerks of both houses, inclined them to favour and promote them. So the Lord Somers proposed such a regulation in that matter as will probably have a good effect for the future."*

Although suffering from the state of his health, Lord Somers took a very active part in the great work of the Union of Scotland, in projecting the scheme of which he is said by Burnet to have had the chief hand.† In the debates which took place on this subject, in the house of lords, he was one of the most distinguished speakers.‡ When the question of the abolition of the Scottish privy council came before parliament, he opposed, in a speech, the heads of which have been preserved,§ the existence of a separate administration. The arguments urged by him, on this occasion, might be well applied to the present government of Ireland.

In the second parliament of Queen Anne's reign, the influence of the Whigs had a decided preponderance; and in the year 1708, Lord Somers again

* Own Times, vol. ii. p. 439. fol. ed.

† Id. p. 458.

‡ Id. p. 464.

§ Hardwicke State Papers, vol. ii. p. 473.

became a member of the administration, in the character of president of the council. But neither his spirit nor his health now fitted him for the active duties of political life ; and it was probably without regret that, on the return of the Tories to power in 1710, he saw himself displaced. From this period he seldom appeared in public ; and on the accession of George I. received merely the nominal distinction of a place at the council-table. His faculties had suffered from a paralytic affection, which totally incapacitated him for business ; though in moments when the complaint had less power over him, he still expressed a warm interest in the welfare of his country. When the Septennial Bill was in progress, Dr. Friend, the celebrated physician, called on Lord Townsend, and informed him that Lord Somers was at that moment restored to the full possession of his faculties by a fit of the gout, which suspended the effect of his paralytic complaint. Townsend immediately waited on Lord Somers, who embraced him, and, congratulating him on the progress of the bill, declared that he thought it would be the greatest support possible to the liberty of the country.* His health subsequently becoming extremely infirm, he sank into a state of imbecility, from which, on the 26th of April, 1716, he was happily released by death.

Lord Somers was never married. He left two sisters, to whom his estate descended ; one of whom married Sir Joseph Jekyll, the master of the rolls, and the other Charles Cocks, Esq., from whom the present Lord Somers is descended.

The character of Lord Somers has been drawn by the pen of Addison, who has prefixed to the number of the Freeholder in which it is contained, his lordship's motto, *prodesse quam conspici*. Although this character has fallen under the censure of Horace

* Coxe's Life of Sir R. Walpole, vol. i. p. 77. 4to. ed.

Walpole, as "neither worthy of the author nor his subject," yet it must be admitted to present a very noble picture of an honourable, an enlightened statesman, and an accomplished scholar. It is, therefore, given entire.

"It often happens, that extirpating the love of glory, which is observed to take the deepest root in noble minds, tears up several virtues with it, and that suppressing the desire of fame is apt to reduce men to a state of indolence and supineness. But when, without any incentive of vanity, a person of great abilities is zealous for the good of mankind; and as solicitous for the concealment, as the performance of illustrious actions; we may be sure, that he has something more than ordinary in his composition, and has a heart filled with goodness and magnanimity.

"There is not, perhaps, in all history, a greater instance of this temper of mind, than what appeared in that excellent person whose motto I have placed at the head of this paper. He had worn himself out in his application to such studies as made him useful or ornamental to the world, in concerting schemes for the welfare of his country, and in prosecuting such measures as were necessary for making those schemes effectual; but all this was done with a view to the public good that should rise of these generous endeavours, and not to the fame that should accrue to himself. Let the reputation of the action fall where it would, so his country reaped the benefit of it, he was satisfied. As this turn of mind threw off, in a great measure, the oppositions of envy and competition, it enabled him to gain the most vain and impracticable into his designs, and to bring about several great events for the safety and advantage of the public, which must have died in the birth, had he been as desirous of appearing beneficial to mankind as of being so.

“As he was admitted into the secret and most retired thoughts and counsels of his royal master, King William, a great share in the plan of the protestant succession is universally ascribed to him. And if he did not entirely project the union of the two kingdoms, and the bill of regency, which seem to have been the only methods in human policy for securing to us so inestimable a blessing, there is none who will deny him to have been the chief conductor in both these glorious works. For posterity are obliged to allow him that praise after his death, which he industriously declined while he was living. His life seems to have been prolonged beyond its natural term, under those indispositions which hung upon the latter part of it, that he might have the satisfaction of seeing the happy settlement take place, which he had proposed to himself as the principal end of all his public labours. Nor was it a small addition to his happiness, that by this means he saw those who had been always his most intimate friends, and who had concerted with him such measures, for the guaranty of the protestant succession, as drew upon them the displeasure of men who were adverse to it, advanced to the highest posts of trust and honour under his present majesty. I believe there are none of these patriots, who will think it a derogation from their merit to have it said, that they received many lights and advantages from their intimacy with my Lord Somers, who had such a general knowledge of affairs, and so tender a concern for his friends, that, whatever station they were in, they usually applied to him for his advice in every perplexity of business, and in affairs of the greatest difficulty.

“His life was, in every part of it, set off with that graceful modesty and reserve, which made his virtues more beautiful the more they were cast in such agreeable shades.

“His religion was sincere, not ostentatious; and such as inspired him with an universal benevolence toward all his fellow-subjects, not with bitterness against any part of them. He showed his firm adherence to it, as modelled by our national constitution, and was constant to its offices of devotion, both in public and in his family. He appeared a champion for it, with great reputation, in the cause of the seven bishops, at a time when the church was really in danger. To which we may add, that he held a strict friendship and correspondence with the great Archbishop Tillotson, being actuated by the same spirit of candour and moderation, and moved rather with pity than indignation toward the persons of those who differed from him in the unessential parts of Christianity.

“His great humanity appeared in the minutest circumstances of his conversations. You found it in the benevolence of his aspect, the complacency of his behaviour, and the tone of his voice. His great application to the severer studies of the law had not infected his temper with anything positive or litigious; he did not know what it was to wrangle on indifferent points, to triumph in the superiority of his understanding, or to be supercilious on the side of truth. He joined the greatest delicacy of good breeding to the greatest strength of reason. By approving the sentiments of a person, with whom he conversed, in such particulars as were just, he won him over from those points in which he was mistaken; and had so agreeable a way of conveying knowledge, that whoever conferred with him grew the wiser, without perceiving that he had been instructed. We may probably ascribe to this masterly and engaging manner of conversation the great esteem which he had gained with the late queen, while she pursued those measures which had carried the British nation to the highest pitch of glory; no:

withstanding she had entertained many unreasonable prejudices against him, before she was acquainted with his personal worth and behaviour.

“As in his political capacity we have before seen how much he contributed to the establishment of the protestant interest, and the good of his native country, he was always true to these great ends. His character was uniform and consistent with itself, and his whole conduct a piece. His principles were founded in reason, and supported by virtue, and therefore did not lie at the mercy of ambition, avarice, or resentment. His notions were no less steady and unshaken than just and upright.

“In a word, he concluded his course among the same well-chosen friendships and alliances with which he began it.

“This great man was not more conspicuous as a patriot and a statesman, than as a person of universal knowledge and learning. As, by dividing his time between the public scenes of business and the private retirements of life, he took care to keep up both the great and good man; so, by the same means, he accomplished himself not only in the knowledge of men and things, but in the skill of the most refined arts and sciences. That unwearied diligence, which followed him through all the stages of his life, gave him such a thorough insight into the laws of the land, that he passed for one of the greatest masters of his profession at his first appearance in it. Though he made a regular progress through the several honours of the long robe, he was always looked upon as one who deserved a superior station to that he was possessed of, till he arrived at the highest dignity to which these studies could advance him.

“He enjoyed, in the highest perfection, two talents which do not often meet in the same person; the greatest strength of good sense, and the most

exquisite taste of politeness. Without the first, learning is but an incumbrance, and without the last, is ungraceful. My Lord Somers was master of these two qualifications in so eminent a degree, that all the parts of knowledge appeared in him with such an additional strength and beauty, as they want in the possession of others. If he delivered his opinion of a piece of poetry, a statue, or a picture, there was something so just and delicate in his observations, as naturally produced pleasure and assent in those who heard him.

“His solidity and eloquence, improved by the reading of the finest authors, both of the learned and modern languages, discovered itself in all his productions. His oratory was masculine and persuasive, free from everything trivial and affected. His style in writing was chaste and pure, but at the same time full of spirit and politeness, and fit to convey the most intricate business, to the understanding of the reader, with the utmost clearness and perspicuity. And here it is to be lamented that this extraordinary person, out of his natural aversion to vain glory, wrote several pieces, as well as performed several actions, which he did not assume the honour of: though, at the same time, so many works of this nature have appeared, which every one have ascribed to him, that I believe no author of the greatest eminence would deny my Lord Somers to have been the best writer of the age in which he lived.

“This noble lord, for the great extent of his knowledge and capacity, has been often compared with the Lord Verulam, who had also been chancellor of England. But the conduct of these two extraordinary persons, under the same circumstances, was vastly different. They were both impeached by a house of commons. One of them, as he had given just occasion for it, sank under it, and was reduced to such an abject submission as very much

diminished the lusture of so exalted a character : but my Lord Somers was too well fortified in his integrity, to fear the importance of an attempt upon his reputation ; and though his accusers would gladly have dropped their impeachment, he was instant with them for the prosecution of it, and would not let that matter rest till it was brought to an issue ; for the same virtue and greatness of mind, which gave him a disregard of fame, made him impatient of undeserved reproach.

“There is no question but this wonderful man will make one of the most distinguished figures in the history of the present age ; but we cannot expect that his merit will shine out in its proper light, since he wrote many things which are not published in his name ; was at the bottom of many excellent counsels, in which he did not appear ; did offices of friendship to many persons who knew not from whom they were derived ; and performed great services to his country, the glory of which was transferred to others : in short, since he made it his endeavour rather to do worthy actions than to gain an illustrious character.”

Horace Walpole has himself sketched in a few words the most striking features of Lord Somers's character.* “He was one of those divine men, who, like a chapel in a palace, remain unprofaned, while all the rest is tyranny, corruption, and folly. All the traditional accounts of him, the historians of the last age and its best authors, represent him as the most incorrupt lawyer, and the honestest statesman, as a master orator, a genius of the finest taste, and a patriot of the noblest and most extensive views ; as a man who dispensed blessings by his life, and planned them for posterity.” “He was,” says Burnet,† “very learned in his own profession, with a great deal more learning in other professions, in

* Works, vol. i. p. 430. † Own Times, vol. ii. p. 107. fol. ed.

divinity, philosophy, and history. He had a great capacity for business, with an extraordinary temper ; for he was fair and gentle, perhaps to a fault, considering his post. So that he had all the patience and softness, as well as the justice and equity, becoming a great magistrate."

Such are the representations of his character given by those whose opinions, on political subjects, coincided with his own ; but we also possess a portrait of him drawn by the unfriendly hand of one who, in earlier life, is said to have been indebted to him for various benefits, and who, as we have seen, had formerly painted him in very different colours. Where his political interests were concerned, (for it would scarcely be correct to attribute his conduct to *principle*,) Swift is always to be distrusted, and, in drawing the following character, must be considered as performing the duty of a hired partisan. It is contained in his "History of the Last Years of the Queen." "The Lord Somers may very deservedly be reputed the head and oracle of that party : he has raised himself by the concurrence of many circumstances, to the greatest employments of the state, without the least support from birth or fortune ; he has constantly, and with great steadiness, cultivated those principles under which he grew. That accident, which first produced him into the world, of pleading for the bishops whom King James had sent to the Tower, might have proved a piece of merit as honourable as it was fortunate ; but the old republican spirit, which the revolution had restored, began to teach other lessons ; that since we had accepted a new king from a Calvinistical commonwealth, we must also admit new maxims in religion and government. But since the nobility and gentry would probably adhere to the established church, and to the right of monarchy as delivered down from their ancestors, it was the practice of these politicians

to introduce such men as were perfectly indifferent to any or no religion, and who were not likely to inherit much loyalty from those to whom they owed their birth: of this number was the person I am now describing. I have hardly known any man with talents more proper to acquire and preserve the favour of a prince; never offending in word or gesture, in the highest degree courteous and complaisant, wherein he set an excellent example to his colleagues, which they did not think fit to follow. But this extreme civility, so universal and undistinguished, and in private conversation, where he observes it as inviolably as if he were in the greatest assembly, is sometimes censured as formal. Two reasons are assigned for this behaviour; first, that, from the consciousness of his humble origin, he keeps all familiarity at the utmost distance, which otherwise might be apt to intrude; the second, that, being sensible how subject he is to violent passions, he avoids all incitements to them, by teaching those he converses with, by his own example, to keep a great way within the bounds of decency and respect. And it is, indeed, true, that no man is more apt to take fire upon the least appearance of provocation, which temper he strives to subdue, with the utmost violence upon himself, so that his breast has been seen to heave, and his eyes to sparkle with rage, in those very moments when his words and the cadence of his voice were in the humblest and softest manner. Perhaps that force upon his nature may cause that insatiable love of revenge which his detractors lay to his charge, who consequently reckoned dissimulation among his chief perfections. Avarice he has none, and his ambition is gratified by being the uncontested head of his party. With an excellent understanding, adorned by all the polite arts of learning, he has very little taste for conversation, to which he prefers the pleasure of reading and thinking, and in

the intervals of his time amuses himself with an illiterate chaplain, an humble companion, or a favourite servant." In the same spirit of depreciation, Swift, in a letter addressed to Lord Bolingbroke, says that "Somers's timorous nature, joined with the trade of a common lawyer, and the consciousness of a mean extraction, had taught him the regularity of an alderman or a gentleman-usher."

The character of Lord Somers as a lawyer, and especially as a constitutional lawyer, has always been held in the highest estimation. His celebrated argument in the great case of the Bankers* may be referred to as a proof of his professional abilities and extensive learning. It has been termed by Mr. Hargrave "one of the most elaborate judgments ever delivered in Westminster Hall."† In collecting books and pamphlets for the purpose of this argument, Lord Somers is said to have expended several hundred pounds ‡.

He was a most industrious collector both of manuscripts and printed tracts, and after his death his valuable manuscript collection came into the possession of the Hardwicke family, who were allied to him by marriage. It filled upward of sixty volumes in quarto, and was deposited in the chambers of the Honourable Charles Yorke, in Lincoln's Inn, where, in the year 1752, it was unfortunately destroyed by an accidental fire. From the fragments spared by the flames, Mr. Yorke collected a few papers which, after correcting the damaged passages with his own hand, he bound in a folio volume. From this volume a selection was given in the "Miscellaneous State Papers," published by the Earl of Hardwicke, in 1778, some of which have been referred to in the preceding memoir. "The world," says Lord Hardwicke,§ will do that justice

* State Trials, vol. xiv. p. 1 † Id. p. 3. ‡ Id. p. 39.

§ State Papers, vol. ii. p. 399.

to the collection, as not to suppose that these specimens from it, *immitis ignis reliquiæ*, will afford an adequate idea of its merits. It filled upward of sixty volumes in quarto, and did not contain a paper from Lord Somers's pen which the most intimate friend would have wished to secrete, or the bitterest enemy could have fairly turned to his prejudice."

Many of the valuable pamphlets which Lord Somers had collected were published in the middle of the last century, in sixteen volumes quarto, usually known under the name of the *Somers' Tracts*, a work which was republished a few years since, under the superintendence of Sir Walter Scott, who has adopted a much more convenient and methodical arrangement of the materials. Lord Somers appears to have spared no expense in the formation of his library, and is said to have given upward of five hundred pounds to "Tom Britton, the celebrated smallcoal man, of Clerkenwell," for his collection of choice pamphlets.*

LORD MANSFIELD.

1704—1793.

THE Honourable William Murray, the fourth son of Andrew, Viscount Stormont, was born at Perth, on the 2d of March, 1704, O. S. At the early age of three years he was removed to London, and in 1719 was admitted a king's scholar at Westminster. At the election, in 1723, he stood the first on the list of those destined to be sent to Oxford, and was entered of Christ Church on the 18th of June in that year. Both at Westminster and at Oxford he distinguished himself by his classical attainments, and after taking his degree of M. A., he left the uni-

* Morgan's *Phoenix Brit.* vol. i. p. 558.

versity in the year 1730, and spent some months in travelling abroad. On his return, he was called to the bar in Michaelmas term, 1731. It does not appear that at this period of his life he devoted much of his time to the study of his profession, though while a student he was in the habit of attending the meetings of a society of young men, who assembled for the purpose of discussing legal questions. The classical tastes and literary attainments of Mr. Murray led him to prefer the society of scholars and men of genius to that of his professional brethren. "When he first came to town," says Johnson, "he drank champaign with the wits."

The rank, the personal character, and the reputation which he had acquired at the university, all contributed to Mr. Murray's success. It has been said, that for some time after he was called to the bar he was without any practice, and that he had been heard to say, that he never knew the difference between a total want of employment and an income of £3000 a year.* It appears, however, that in 1732, the year after his being called, he was engaged in an important appeal case, in which the attorney and solicitor-general were employed, and that in the two following years he was very frequently retained in similar cases before the house of lords.†

The frequent appearance of Mr. Murray in cases of appeal has been alluded to by Pope. The particular period at which the poet and Mr. Murray became acquainted does not appear, but it is probable that it was soon after the return of the latter from his travels. One of his biographers tells us, that "one day he was surprised by a gentleman of Lincoln's Inn, who took the liberty of entering his room without the ceremonious introduction of a servant, in the singular act of practising the graces of a speaker

* Character of Lord Mansfield, by Mr. Butler, *Seward's Anecdotes*, vol. iv. p. 492.

† *Holliday's Life*, p. 28.

at a glass, while Pope sate by in the character of a friendly preceptor.”* Of the friendship of Pope and Murray, Warburton has said, “Mr. Pope had all the warmth of affection for this great lawyer; and indeed no man ever more deserved to have a poet for his friend, in the obtaining of which, as neither vanity, party, nor fear had a share, so he supported his title to it by all the offices of a generous and true friendship.”† In the year 1737, Pope published his imitation of the sixth epistle of the first book of Horace, which he dedicated to Mr. Murray, and in which he introduced him in the following flattering lines :

“Go, then, and if you can admire the state
Of beaming diamonds and reflected plate,
Procure a taste to double the surprise,
And gaze on Parian charms with learned eyes ;
Be struck with bright brocade or Tyrian dye,
Our birth-day nobles’ splendid livery.
If not so pleased, at council-beard rejoice
To see their judgments hang upon thy voice ;
From morn to night, at Senate, Rolls, and Hall.
Plead much, read more, dine late, or not at all.
But wherefore all this labour, all this strife,
For fame, for riches, for a noble wife ?
Shall one whom native learning, birth conspired
To form, not to admire, but be admired,
Sigh while his Chloe, blind to wit and worth,
Weds the rich dulness of some son of earth ?
Yet time ennobles or degrades each line ;
It brighten’d Craggs’s, and may darken thine.
And what is fame ? the meanest have their day ;
The greatest can but blaze and pass away.
Graced as thou art with all the power of words,
So known, so honour’d, in the house of lords—
Conspicuous scene ! another yet is nigh
More silent far, where kings and poets lie ;
Where Murray (long enough his country’s pride)
Shall be no more than Tully or than Hyde !”

In the course of the same year Pope published his imitation of Horace’s Ode to Venus, in which he again introduces his friend Murray.

* Holliday’s Life, p. 24.

† Notes on Imitations of Horace.

"Again? new tumults in my breast?
 Ah, spare me, Venus! let me, let me rest!
 I am not now, alas! the man,
 As in the gentle reign of my Queen Anne.
 Ah, sound no more thy soft alarms,
 Nor circle sober fifty with thy charms.
 Mother too fierce of dear desires,
 Turn, turn, to willing hearts your wanton fires;
 To *number five** direct your doves,
 There spread round MURRAY all your blooming loves;
 Noble and young, who strikes the heart
 With every sprightly, every decent part;
 Equal the injured to defend,
 To charm the mistress or to fix the friend;
 He with a hundred arts refined,
 Shall stretch thy conquest over half the kind.
 To him each rival shall submit,
 Make but his riches equal to his wit."

It is said that at this period of his life Mr. Murray unsuccessfully addressed a lady of great wealth, to which allusion is made in both of the poems above mentioned.

The celebrated conveyancer Mr. Booth [Note 44.] was among the most valued of his early friends. The following affectionate letter, addressed to him in 1735, is a pleasing specimen of Mr. Murray's epistolary style:

"My dear friend,

"I received yours last night. I cannot but applaud the protection you give a sister, whom I know you love tenderly; yet it seems a little rash to carry your beneficence so far as to dry up the source of all future generosity; and I am sure it is greatly against the interest of every one, who has the least dependence upon you, that you should do anything which makes it at all difficult for you to persevere in a way where you must at last succeed. Of this I have no doubt: and, therefore, it is as superfluous to add my advice for your coming to town immediately, as it would be to tell you that I omit no

* No. 5, King's Bench Walk.

opportunity of mentioning your name and promoting your interest. You cannot fail but by staying in the country, and suffering people who have not half your merit to step in before you. With regard to everything you say of Mr. Pigot, we will talk more at large hereafter : I as little think he will bring you into his business while he lives, as that you can be kept out of a great part of it when he dies. I am at present consulted upon a devise settlement of his, whereby a great estate is left to a noble Roman Catholic family, which I am very clear is good for nothing. Can you contrive a way by which an estate can be left to a papist ? Though I have no more doubt of the case put to me, than whether the sun shines at noon, I told the gentleman who consulted me I would willingly stay to talk with a Roman Catholic conveyancer, &c., whom I expected soon in town, and named you to him.

“ I own I am desirous you should come to town, and be assured the best service you can do your friends is, to put yourself in a way to serve them effectually. As to any present occasions you have, you know where to command while I have a shilling.

“ I am, I do assure you, with great cordiality and esteem,

“ Dear Booth,

“ Your affectionate friend and faithful servant,

“ W. MURRAY.”

The first cause in the common law courts in which Mr. Murray distinguished himself was an action for criminal conversation brought by Theophilus Cibber against Mr. Sloper. Mr. Murray was junior counsel for the defendant, and in consequence of a sudden attack of illness, by which his leader was prevented from appearing in court, the duty of conducting the defence devolved upon him. At his request the cause was postponed for an hour, at the expiration of which time he again appeared in court, and con-

ducted himself so ably, and made so forcible an address to the jury, that his client escaped with a very small penalty. From this time business poured in upon him from all sides, and an income of a few hundreds was swelled at once to thousands. In after-life he frequently referred, with expressions of lively pleasure, to the event of this cause.

In the proceedings in parliament which took place subsequently to the celebrated Porteous riots in Edinburgh, Mr. Murray was employed to oppose the bill for incapacitating the provost, and fining the city; and, in consequence of his great exertions on this occasion, was presented with the freedom of the city of Edinburgh in a gold box.

In the year 1743, Mr. Murray was appointed solicitor-general, and was returned to parliament. In the house of commons his eloquence, and the respect with which he was regarded, soon rendered him a very efficient supporter of the administration.

At the trial of the rebel lords in 1746, Mr. Murray assisted in his character of solicitor-general. His speech on the trial of Lord Lovat is said to be one of the few of his speeches which have been authentically given.* It consists, indeed, of little more than a concise and lucid statement of the evidence. "Every gentleman," said the solicitor-general, "who has spoken in this trial has made it a rule to himself to urge nothing against the prisoner but plain facts and positive evidence without aggravation." The prisoner himself made some singular observations on the address of Mr. Murray. "My lords, I am very sorry I gave your lordships so much trouble on my trial, and I give you a million of thanks for being so good in your patience and attention while it lasted. I thought myself very much loaded by one Murray, who, your lordships know, was the bitterest enemy there was against me. I have since

* Boswell's Johnson, vol. i. p. 158. 2d ed.

suffered by another Mr. Murray, who, I must say with pleasure, is an honour to his country, and whose eloquence and learning are much beyond what is to be expressed by an ignorant man like me. I heard him with pleasure, though it was against me. I have the honour to be his relation, though perhaps he neither knows it nor values it. I wish that his being born in the north may not hinder him from the preferment that his merit and learning deserves. 'Till that gentleman spoke, your lordships were inclined to grant my earnest request, and to allow me farther time to bring up my witnesses to prove my innocence; but it seems that has been overruled.* In concluding his defence, Lord Lovat added, "I have said all I have to say; and beg your lordships' pardon for the rude, long discourse I made to your lordships. I had great need of my cousin Murray's eloquence for half an hour, and then it would have been more agreeable."†

While Mr. Murray filled the office of solicitor-general, his attachment to the reigning family was called in question, but the charge was never substantiated. In his early life, he had been intimately acquainted with two gentlemen of the names of Fawcett and Stone, and with Dr. Johnson, afterward Bishop of Gloucester. Fawcett had become a provincial barrister, and recorder of Newcastle, and Stone had been appointed sub-governor of the young prince. At a dinner given by the Dean of Durham, at which Fawcett, Lord Ravensworth, and other persons, were present, the preferment of Dr. Johnson being spoken of, Fawcett observed that "he was glad Johnson was so well off, for he remembered him a jacobite several years ago, and that he used to be with a relation of his who was very disaffected, one Vernon, a mercer, where the pretenders's health was fre-

* State Trials, vol. xviii. p. 827.

† Id. p. 833.

quently drunk." This conversation having been repeated to Mr. Pelham, the minister, an inquiry was instituted into the facts ; in the course of which, Fawcett stated, that though he could not recollect positively whether Johnson drank those healths, yet that Murray and Stone had done so several times. The delinquency of the bishop was now forgotten in the accusation against persons of such consideration in the state as the solicitor-general and the preceptor of the prince. Both the king and the minister were inclined to treat the charge slightly ; but Stone, for his own justification, insisted on an inquiry. The matter was accordingly referred to the cabinet council, before whom Stone appeared and entered on his defence.* The solicitor-general was then heard. He represented that he had been well affected to the present establishment ever since he could think on the subject. That when he went to Oxford he had taken the oaths to the government, and that he had done it with seriousness. That when he pleaded at the bar of the commons, he had studiously professed the principles by which the government was supported. That he had determined never to come into parliament but upon Whig principles ; and that, with regard to office, it was not to be supposed that a person of Sir John Strange's well-known loyalty would have resigned to him, if he had not been thoroughly convinced of his sincerity. That ever since he had been in the king's service, he had got nothing by his employment (he spoke it not by way of complaint) but the ordinary perquisites of office, and had never recommended any friend of his own to preferment. That he had not been able to learn any objection to his conduct without doors, but the not having loaded the rebels with reproachful epithets, as if epithets would have added to their guilt. That he did not think such sort of language would be agreeable to

* Doddington's Diary, sub anno 1753.

his royal master ; and that had he been employed for the crown against Sir Walter Raleigh, and that unfortunate person had been as guilty of high treason as the rebels, he would not have made Sir Edward Coke's speech against him for his estate. He concluded by acknowledging the indulgence of the lords in hearing him, and the justness and goodness of the king, who would not suffer his servants to be stabbed in the dark, but gave them an opportunity of clearing their innocence. He then took the voluntary oath, as the others had done, and gave a particular answer to every part of the charge, denying that he had ever been present at Mr. Vernon's when treasonable healths were drunk, and stating that he believed that gentleman incapable of such behaviour. Mr. Murray having concluded, the lords came to an unanimous resolution of reporting to the king, that there appeared to them no foundation for any part of the charge, and that it ought not to asperse the character of the bishop, or of either of the gentlemen affected by it.* The affair was afterward brought before the house of lords by the Duke of Bedford, who moved an address to the king, that his majesty would be pleased to suffer the proceedings of the council to be laid before the house ; but the motion being lost by a large majority, no farther inquiry was made into the circumstances.

Although the imputation of jacobitism was thus indignantly and successfully met by Mr. Murray, yet with many persons he still suffered from suspicions which it was impossible to remove. In the house of commons his political adversaries did not hesitate to affront him with allusions, the application of which could not be misunderstood ; and upon one occasion Mr. Pitt, in uttering a vehement invective against the university of Oxford, made an obvious reference to the supposed youthful opinions of Mr.

* Holliday.

Murray. He said, "that the body he meant (Oxford) was learned and respectable—so much the more dangerous! He would mention what had happened to himself the last summer on a party of pleasure thither. They were at the window of the Angel Inn: a lady was desired to sing *God save great George our King!* The chorus was re-echoed by a set of young lads drinking at a college over the way, but with additions of rank treason. He hoped, as they were lads, that he should be excused for not having taken more notice of it. After this, walking down the high street, in a bookseller's shop he observed a print of a young Highlander with a blue riband. The bookseller, thinking he wanted to buy it, held it out to him. But what was the motto? *Hunc saltem everso juvenem!* This was the prayer of that learned body, for it was in Latin."—"Colours, much less words," adds Horace Walpole, who has reported this speech, "could not paint the confusion and agitation that worked in Murray's face during this almost apostrophe. His countenance spoke everything that Fawcett had been terrified to prevaricate away."*

Of the political life of Mr. Murray, while, as solicitor and attorney-general, he supported the measures of government in the house of commons, it is difficult to gather any very accurate account; the debates of that day, where preserved at all, being reported in a manner which renders it impossible to rely upon their authenticity. In the Memoirs of Horace Walpole, at that period himself a member of the house, we find frequent mention of the solicitor-general, and always in language denoting the respect in which his talents were held. We are told that on the question of the Bavarian subsidy he made a very masterly speech, and we find him throughout all the debates on the regency bill dis-

* Memoirs, vol. i. p. 358.

tinguishing himself by his skill as a debater. He appears again in the debates on the Saxon treaty, and on various other occasions. Of his style as a parliamentary orator, and of the character which he held in the house, Walpole has spoken in terms of high commendation. "Murray, who at the beginning of the session was awed by Pitt, finding himself supported by Fox, surmounted his fears, and convinced the house, and Pitt, too, of his superior abilities. He grew most uneasy to the latter. Pitt could only attack; Murray only defend. Fox, the boldest and ablest champion, was still more formed to worry; but the keenness of his sabre was blunted by the difficulty with which he drew it from the scabbard; I mean the hesitation and ungracefulness of his delivery took off from the force of his arguments. Murray, the brightest genius of the three, had too much and too little of the lawyer: he refined too much, and could wrangle too little, for a popular assembly. Pitt's figure was commanding; Murray's engaging, from a decent openness; Fox's dark and troubled; yet the latter was the only agreeable man. Pitt could not unbend; Murray in private was inelegant; Fox was cheerful, social, communicative. In conversation none of them had wit; Murray never had: Fox had in his speeches, from clearness of head and asperity of argument. Pitt's wit was genuine; not tortured into the service, like the quaintnesses of my Lord Chesterfield."*

The latter nobleman, in a letter to his son, has also penegyrised the parliamentary talents of Mr. Murray. "Your fate depends upon your success as a speaker, and take my word for it, that success turns more upon manner than matter. Mr. Pitt, and Mr. Murray the solicitor-general, are, beyond comparison, the best speakers. Why? Only because they are the best orators. They alone can inflame or

* Memoirs, vol. i. p. 490.

quiet the house ; they alone are attended to in that numerous and noisy assembly, that you might hear a pin fall while either of them is speaking. Is it that their matter is better, or their arguments stronger, than other people's ? Does the house expect extraordinary information from them ? Not in the least ; but the house expects pleasure from them, and therefore attends ; finds it, and therefore approves."

Throughout the whole course of Murray's career in the house of commons, he was the invariable object of Pitt's unsparing invective. "Pitt," says Lord Waldegrave,* "undertook the difficult task of silencing Murray, the attorney-general, the ablest man, as well as the ablest debater, in the house of commons." Dissimilarity of character, no less than of political principles, added bitterness to the eloquence of Pitt. Despising the policy, and distrusting the principles of Murray, he eagerly availed himself of every occasion which presented itself of expressing his indignant sarcasms. Brilliant and argumentative as was the oratory of Murray, he did not always possess the nerve necessary to ward off or to return assaults so terrible as these, and for the most part he bore, in agitated silence, the attacks to which he did not venture to make any reply. In a letter from Lord Holland,† describing the speech which has been just given, the writer says, "In both Mr. Pitt's speeches every word was *Murray*, yet so managed that neither he nor anybody else could or did take public notice of it, or in any degree reprehend him. I sate near Murray, who suffered for an hour." "It was, perhaps, on this occasion," observes Mr. Butler,‡ "that Pitt used an expression that was once in every mouth. After Murray had suffered for some time, Pitt stopped, threw his eyes

* *Memoirs*, p. 31.

† Appendix to Lord Waldegrave's *Mem.*, p. 153.

‡ *Reminis.*, vol. i. p. 154.

around, then fixing their whole power on Murray, said, 'I must now address a few words to Mr. Solicitor: They shall be few, but they shall be daggers.' Murray was agitated; the look was continued; the agitation increased. 'Judge Festus trembles,' exclaimed Pitt: 'he shall hear me some other day.' He sate down; Murray made no reply, and a languid debate is said to have shown the paralysis of the house."

On the death of Mr. Pelham, in the month of March, 1754, among the persons whose reputation and station in the country rendered it probable that they might be selected to fill the place of premier, Mr. Murray was named;* but various circumstances concurred to prevent such an appointment. The imputation, though unproved, of his youthful predilection for the pretender, rendered him more than suspected by the Whigs. Pitt and Fox were both opposed to his advancement, and even the chancellor regarded him with an eye of jealousy.† In addition to these reasons it appears that he felt a disinclination to accept a place unconnected with his profession; and accordingly, on the formation of the Duke of Newcastle's administration, he was raised to the office of attorney-general, vacant by the promotion of Sir Dudley Ryder to the dignity of lord chief justice of the king's bench. As attorney-general, Mr. Murray continued to be one of the most efficient supporters of government in the house of commons, and in particular rendered himself most useful to the Duke of Newcastle, in supporting his weakness and covering his deficiencies.

When Mr. Murray had filled the office of attorney-general for about the space of two years, Sir Dudley Ryder, the chief justice of the king's bench, died, and the vacant office was immediately supplied by the appointment of Mr. Murray, whose ambition

* Doddington's Diary, p. 264. † Walpoles Memoirs, vol. i. p. 329.

had long been the obtaining of this office, accompanied by a peerage.* No one had pretensions to compete with him, and he succeeded to the dignity with the common assent of the whole country. His high personal character, his extended professional reputation, his discreet conduct in public life, and his suavity of manners, all pointed him out as the fittest person to preside in the first common law court of the kingdom. The resignation of his place in parliament was, however, a most severe and painful inconvenience to the head of the administration, who had relied, in every case of emergency, upon the friendship and abilities of the attorney-general. "I wish you joy," observed Charles Townsend to Murray, on the rumour of his promotion, "or rather myself; for you will ruin the Duke of Newcastle by quitting the house of commons, and the chancellor by going into the house of lords."† If full credit may be given to the narrative of a memoir writer of the day,‡ the most extravagant offers were made to Mr. Murray by administration, in order to induce him to retain, even for a few months, his place in the house of commons. The loss of Minorca, under circumstances little creditable to the nation, had placed the ministers in a position of considerable difficulty, and they anxiously sought to secure the assistance which the talents and character of the attorney-general conferred. The duchy of Lancaster and a pension of £2000, with the reversion of a valuable post for his nephew, Lord Stormont, were the first offers made to him; and, subsequently, the amount of the proposed pension was increased to £6000; but Mr. Murray was firm. "He knew," says Walpole, "that it was safer to expound laws than to be exposed to them; and he said pre-emptorily at last, that if he was not to be chief justice,

*Waldegrave's Memoirs, p. 56. †Walpole's Memoirs, vol. ii. p. 64.

‡Horace Walpole. *Id.* p. 67, and Waldegrave's Mem., p. 60.

neither would he any longer be attorney-general." He received his appointment of chief justice on the 8th of November, 1756, and was immediately created a peer, by the title of Baron Mansfield, of Mansfield, in the county of Nottingham.

On his elevation to the seat of chief justice, Lord Mansfield, contrary to the general usage, became a member of the cabinet; but the length of time during which he continued to sit there has not been very clearly ascertained. In the debates which took place in 1806, on the admission of Lord Ellenborough into the cabinet, the case of Lord Mansfield was insisted on and admitted to be a precedent. It was said by Lord Temple, that "he had that day seen the original writ of summons issued to Lord Mansfield. He could take upon himself to say, that the noble and learned lord attended every council from 1760 to 1763. In 1763 he left off attending the council, not from any sense of its incompatibility with his judicial situation, but, according to a letter of his own, which was in existence, because he would not sit with the Duke of Bedford, whose measures he disapproved of. In 1765 he returned again, and was named as one of the council of regency in the bill framed by Sir Fletcher Norton."* It appears, however, from his own declaration, that he ceased to take any part in the discussions of the cabinet after the formation of the Rockingham administration in 1765, and that he never resumed his place at the table.†

On occasion of his taking leave of the society of Lincoln's Inn, the usual complimentary speech was delivered by the Honourable C. Yorke, the son of Lord Hardwicke, upon whom the chief justice in reply pronounced the following panegyric :

* Cobbett's Parl. Debates, vol. vi. p. 307.

† Parl. Hist., vol. xviii. p. 275, post, p. 189.

“ I am too sensible, sir, of my being undeserving of the praises which you have so elegantly bestowed upon me, to suffer commendations so delicate as yours to insinuate themselves into my mind ; but I have pleasure in that kind of partiality which is the occasion of them. To deserve such praises is a worthy object of ambition ; and from such a tongue flattery itself is pleasing.

“ If I have had, in any measure, success in my profession, it is owing to the great man who has presided in our highest courts of judicature the whole time I attended the bar. It was impossible to attend him, to sit under him every day, without catching some beams from his light. The disciples of Socrates, whom I will take the liberty to call the great lawyer of antiquity, since the first principles of all law are derived from his philosophy, owe their reputation to your having been the reporter of the sayings of their master. If we can arrogate nothing to ourselves, we can boast the school we were brought up in ; the scholar may glory in his master, and we may challenge past ages to show us his equal.

“ My Lord Bacon had the same extent of thought, and the same strength of language and expression ; but his life had a stain.

“ My Lord Clarendon had the same ability and the same zeal for the constitution of his country ; but the civil war prevented his laying *deep* the foundations of law ; and the avocations of politics interrupted the business of the chancellor.

“ My Lord Somers came the nearest to his character ; but his time was short, and envy and faction sullied the lustre of his glory.

“ It is the peculiar felicity of the great man I am speaking of, to have presided very near twenty years, and to have shone with a splendour that has risen superior to faction, and that has subdued envy.

“ I did not intend to have said, I should not have

said so much on this occasion, but that in this situation with all that hear me, what I say must carry the weight of testimony rather than appear the voice of panegyric.

“For you, sir, you have given great pledges to your country; and large as the expectations of the public are concerning you, I dare say you will answer them.

“For the society, I shall always think myself honoured by every mark of their esteem, affection, and friendship, and shall desire the continuance of it no longer than while I remain zealous for the constitution of this country, and a friend to the interests of virtue.”

Shortly after Lord Mansfield's promotion he became deeply engaged in the various ministerial arrangements which took place at that period. On the dismissal of Mr. Pitt, and the resignation of Legge, the chancellor of the exchequer, the seals of the latter office were, *pro tempore*, placed in the hands of Lord Mansfield, who, upon Lord Waldegrave being directed to form a new administration, was employed to negotiate with his friend the Duke of Newcastle and his old rival, Mr. Pitt, for their accession to the projected ministry. He was directed to attend the king at Kensington, for the ostensible object of delivering back the exchequer seals; but being admitted into the presence, the king consulted him confidentially on the subject of the administration, and finally intrusted him with full powers to negotiate with Pitt and the Duke of Newcastle. The power thus given him appears, however, to have been soon withdrawn. “The negotiation,” says Lord Waldegrave,* “did not remain long in Lord Mansfield's hands; some thinking him too able, others that he was not enough their friend. The Duke of Newcastle, after what had passed, was ashamed and afraid to appear in the king's presence,

* Memoirs, p. 133.

so the treaty was undertaken and concluded by the Earl of Hardwicke." Many years afterward, in one of the debates on the American war, Lord Mansfield alluded to the coalition which took place at this time, in effecting which he stated he had the honour of being an instrument.* The impression which an insight into these negotiations gave him, of the motives and views of the public men of that day, was most unfavourable, though probably most just. "I have been," he observes, in a speech delivered many years afterward,† "I have been in cabinets where the great struggle has not been to advance the public interests; not by coalition and mutual assistance to strengthen the hands of government, but, by cabals, jealousy, and mutual distrust, to thwart each other's designs, and to circumvent each other, in order to obtain power and pre-eminence."

Lord Mansfield had now attained the station which, it is very probable, he had always regarded as the summit of his ambition. His temperament, cautious even to timidity, had prevented him from preferring those just pretensions to political offices to which his fame and talents entitled him; the same reasons probably induced him to refuse the office of the great seal, when it was, upon more than one occasion, tendered to him. The resignation of the Duke of Newcastle, at the close of the year 1756, was shortly afterward followed by that of Lord Hardwicke, the chancellor, and strenuous endeavours were made to induce Lord Mansfield's acceptance of the seals; but his attachment to the Duke of Newcastle, and his disinclination to a political life, led him to decline the office.‡ The great seal was consequently given in commission to Lord Chief Justice Willes, Mr. Justice Wilmot, and Mr. Baron Smyth. In the following year, it was again offered to Lord Mans-

* Parl. Hist., vol. xviii. p. 956.

† Id. p. 279.

‡ Walpole's Memoirs, vol. ii. p. 106.

field, upon whose repeated refusal, it was committed to the hands of Sir Robert Henley, afterward created Lord Northington.*

One of the first occasions on which Lord Mansfield distinguished himself in the house of lords, after his elevation to the peerage, was in the debate on the bill for the amendment of the *habeas corpus* act. A gentleman having been impressed and confined in Savoy, his friends applied for a writ of *habeas corpus*; but as the imprisonment was not for any criminal matter, it was found that the statute of 31 Car. 2. c. 2. did not apply. This palpable deficiency in the law attracted the attention of some friends to liberty, who introduced a bill into the house of commons for the purpose of extending the provisions of the statute of Charles II. to cases where the imprisonment was not upon any criminal charge. The bill passed the lower house, but was violently opposed in the house of lords by Lord Mansfield and Lord Hardwicke. The king himself talked openly against the bill at his levee, and the supporters of it were understood to incur his displeasure. The motives which actuated Lord Mansfield in his opposition to a bill so reasonable and so constitutional, are attributed by Horace Walpole to personal feelings; and such was the earnestness and so great the ingenuity and eloquence which he exerted on the occasion, that the bill was ultimately rejected. "The fate of the bill," says Horace Walpole, "which could not be procured by the sanction of the judges, Lord Mansfield was forced to take upon himself. He spoke for two hours and a half: his voice and manner, composed of harmonious solemnity, were the least graces of his speech. I am not averse to own that I never heard so much argument, so much sense, so much oratory united. His deviations into the abstruse

* Walpole's Memoirs, vol. ii. p. 226.

minutiæ of the law served but as a foil to the luminous parts of the oration. Perhaps it was the only speech which, in my time at least, had real effect; that is, convinced many persons; nor did I ever know how true a votary I was to liberty, till I found that I was not one of the number staggered by that speech. I took as many notes of it as I possibly could; and, prolix as they would be, I would give them to the reader, if it would not be injustice to Lord Mansfield to curtail and mangle, as I should, by the want of connexion, so beautiful a thread of argumentation.”* In the year 1816, a bill † passed without opposition, similar in its provisions to that which was rejected by the efforts of Lord Mansfield.

On the occurrence of the disputes between England and her North American colonies, Lord Mansfield supported the right of the mother country to tax the colonists, without any assent on their part; and in the debate which took place in the month of February, 1766, spoke at considerable length on the subject. Of that speech a copy, corrected with his lordship’s own hand, has been preserved.‡ A great portion of it was directed in answer to Lord Camden, who had spoken against the right of taxation without assent. In reply to those arguments, Lord Mansfield insists upon the unintelligible doctrine of virtual representation.

“There can be no doubt but that the inhabitants of the colonies are represented in parliament, as the greatest part of the people of England are represented; among nine millions of whom, there are eight who have no votes in electing members of parliament. Every objection, therefore, to the dependency of the colonies upon parliament, which arises to it upon the ground of representation, goes to the whole present constitution of Great Britain;

* Memoirs, vol. ii. p. 301.

† 56 G. 3. c. 100.

‡ Holliday, p. 242.

and I suppose it is not meant to new-model that too. People may form their own speculative ideas of perfection, and indulge their own fancies, or those of other men. Every man in this country has his particular notions of liberty ; but perfection never did, and never can, exist in any human institution. For what purpose, then, are arguments drawn from a distinction in which there is no real difference, of a virtual and actual representation ? A member of parliament, chosen for any borough, represents not only the constituents and inhabitants of that particular place, but he represents the inhabitants of every other borough in Great Britain. He represents the city of London, and all other the commons of this land, and the inhabitants of all the colonies and dominions of Great Britain ; and is in duty and conscience bound to take care of their interests.”

According to another report of his lordship's speech preserved in the Hardwicke Collection,* he advanced in the course of his argument doctrines which in other times would have subjected him to the well-merited censures of the commons. “ In Great Britain the legislative is in parliament, the executive in the crown. The parliament first depended upon tenures. How did representation by election first arise ? *Why, by the favour of the crown.*”

Lord Mansfield thus concluded :—“ You may abdicate your right over the colonies. Take care, my lords, how you do so, for such an act will be irrevocable. Proceed then, my lords, with spirit and firmness, and when you shall have established your authority, it will then be a time to show your lenity. The Americans, as I said before, are a very good people, and I wish them exceeding well ; but they are heated and inflamed. The noble lord who spoke before concluded with a prayer ; I cannot end better than by saying to it Amen ! and in the words of Mau-

* Parl. Hist., vol. xvi. p. 172.

rice, Prince of Orange, concerning the Hollanders, 'God bless this industrious, frugal, and well-meaning, but easily-deluded people.'"

It may not be improper in this place to notice the part which, at subsequent periods, Lord Mansfield took with regard to the American question. In the stormy debate of the 7th of February, 1775, on the address to the king upon the disturbances in North America, his lordship stated, that this country was reduced to the alternative of adopting coercive measures, or for ever relinquishing her claim of sovereignty and dominion over the colonies. He argued also that the Americans were in a state of actual rebellion, and asserted the right of the mother country to repress them. In answer to some observations of the Duke of Grafton, he explained and defended the part that he had taken as a minister of the crown in the different administrations which had governed the country. "He said he had been a cabinet minister part of the last reign, and the whole of the present; that there was a nominal and an efficient cabinet; that for several years he acted as a member of the latter, and consequently deliberated with the king's minister; that, however, a short time previous to the administration in which the noble marquis (Rockingham) presided at the head of the treasury, and some considerable time before the noble duke succeeded him in that department, he had prayed his majesty to excuse him, and from that day to the present he had declined to act as an efficient cabinet minister. He said he had lived with every administration on equal good terms, and never refused his advice when applied to; that particularly the noble marquis must recollect his giving him every assistance his poor abilities were capable of affording; nor was it his fault that the noble duke did not experience the same; for had he been applied to, he would have cheerfully rendered him every assistance

in his power." The attack made upon Lord Mansfield by the Duke of Grafton was followed up by Lord Shelburne. "The noble and learned lord," said he, "has disclaimed having any direct concern in the present business, and endeavours to strengthen his bare assertions by showing what little or no temptation he could have to interfere. But the noble lord knows, every noble lord in this house knows, a court has many allurements besides even place or emolument. His lordship denies any obligations or personal favours whatever. I am ready to give his lordship full credit for this declaration; but he will permit me, at the same time, to observe, that smiles may do a great deal; that if he had nothing to ask for himself, he has had friends, relations, and dependents amply provided for; I will not say beyond their deserts; but this I may say, much beyond their most sanguine expectations." In answer to these observations, Lord Mansfield, rising with great passion, said, "He thought it had been the leading characteristic of that assembly, when contrasted with the other house, which too often descended to altercations and personal reflections, always to conduct themselves like gentlemen; but he was sorry to see this rule departed from this evening for the first time. He charged the last noble lord with uttering the most gross falsehoods. He totally denied that he had any hand in framing all the bills of the last session; and was certain that the law officers of the crown never asserted that they had no hand in them; but whether they had or not was of no consequence to him, for he was clear that the charge, when applied to him, was as unjust as it was maliciously and indecently urged."* In the debate which took place in November, 1778, on the Duke of Grafton's motion respecting the British forces in America, Lord Mansfield again spoke, and opposed all measures of

* Parl. Hist., vol. xviii. p. 265, et. seq.

conciliation, as only "furnishing America with grounds to erect new claims on, or to hold out terms of pretended obedience and submission."* In the following month, in the debate on the American prohibitory bill, he urged in strong language the necessity of active measures against the colonists. "What a Swedish general said to his men, in the reign of Gustavus Adolphus, is extremely applicable to us at present. Pointing to the enemy, who were marching down to engage them, said he, 'My lads, you see those men yonder: if you do not kill them, they will kill you.' If we do not, my lords, get the better of America, America will get the better of us."† In the following year Lord Mansfield opposed the Duke of Grafton's proposition for conciliation with America as "nugatory, ill-timed, and ineffectual;"‡ and shortly afterward he spoke against a similar motion made by Lord Chatham.§ Thus throughout the whole of the great struggle for independence, into which the colonists were driven, Lord Mansfield uniformly opposed every measure which might have prevented the result he so greatly deprecated. It is fortunate that out of the most ill-judged and unjust designs, by the operation of that moral chemistry which is so little understood, the happiest events are not unfrequently found to proceed.

While, in politics, Lord Mansfield was thus adverse to those liberal principles which might have taught him to view the resistance of the colonists in another light, in matters of religion his opinions were fortunately of a much more tolerant character. In the earlier part of his judicial life several cases came before him in which he had occasion to express these opinions, which he did with a candour and openness highly creditable to his fame. One of the first of these cases was a question of evidence—the admis-

* Parl. Hist., vol. xviii. p. 955. † Id. p. 1102. ‡ Id. 1284.
 § Id. vol. xix. p. 351.

sibility of a quaker's affirmation in an action of debt on the statute against bribery, 2 Geo. 2. c. 24. In delivering his judgment in this case, Lord Mansfield, in the first instance, laid down the following liberal rule for the construction of the act of toleration :—
“ I think it of the utmost importance, that all the consequences of the act of toleration should be pursued with the greatest liberality, in case of the scrupulous consciences of dissenters on the one hand ; but so as those scruples of conscience should not be prejudicial to the rest of the king's subjects : for a scruple of conscience entitles a party to indulgence and protection, so far as not to suffer for it ; but it is of consequence that the subject should not suffer too.” He then traces the history of the disabilities of the quakers :—“ This act sprang up during the troubles, and was found at the Restoration, with many other sects of non-conformists, equally scrupulous. At that time the law considered their scruples of conscience as a crime ; and, therefore, they were not allowed to be set up as an excuse or justification of another offence. Therefore, when a quaker who was subpoenaed to give evidence absented himself, and an attachment issued in consequence of it, he could not, in excuse, say that his conscience prevented him from giving evidence, for that was a crime. So in the case of interrogatories, the consequence was, that he was obliged to answer or be committed to prison ; and, if his obstinacy continued, he lay there for life.

“ The experience of eight-and-twenty years, from the Restoration to the time of the Revolution, showed that this obstinacy was not merely a pretence or colour given to right or wrong, but that it was a *scruple*, and that the sect was ready to go through all kinds of suffering in the pertinacious adherence to it.

“ A more liberal way of thinking prevailed after the Revolution. The principles of toleration were

explained and justified in consequence of the writings of Mr. Locke, Lord Somers, and other great men of those times ; and a statute passed which, though not general, was very extensive in the relief it afforded to scrupulous consciences. The statute was 1 W. & M. c. 18, commonly called the *Toleration Act*."

In the course of his judgment, Lord Mansfield noticed the singular and unreasonable exemption in the statute 7 & 8 W. 3. c. 34, which prohibited the reception of a quaker's affirmation in criminal cases ; an exception occasioned, as he said, "by a strong prejudice in the minds of the great men who passed the statute." Among the judicious improvements which have taken place in the criminal law in our own day, this extraordinary anomaly has been abolished.

In the year 1767, the Rev. James Webb, a catholic priest, was tried before Lord Mansfield on the prosecution of one Payne, a common informer, for saying mass, contrary to the provisions of the statute of William. In summing up to the jury, Lord Mansfield was almost unjustifiably astute in favour of the prisoner. Of the penal laws against the catholics he thus spoke : "In the beginning of the protestant religion, in order to establish it, they thought it in some manner necessary to enact those penal laws ; for then the pope had great power, and they thought that they could not take too effectual means to prevent him exercising any part of it in these dominions ; and the jesuits were then a very formidable body ; and, apprehending great danger from them, knowing their close cennexions with the pope, the penal laws were chiefly designed against them. But now the case is quite altered : the pope has very little power, and seems to grow less and less daily. As for the jesuits, they are now banished out of most kingdoms in Europe, so that there is now nothing to fear from either of those quarters ; neither was it ever the design of the legislators to have these laws

enforced by every common informer, but only at proper times and seasons, when they saw a necessity for it, and by proper persons appointed by themselves for that purpose ; and yet, more properly speaking, they were never designed to be enforced at all, but were only made *in terrorem*.”*

In the year 1767, an opportunity was again afforded Lord Mansfield of expressing his liberal sentiments in matters of religion. By a by-law of the corporation of London, a fine was imposed upon those persons who refused to serve the office of sheriff ; and several dissenters having been elected, and declining to accept the office because they could not conscientiously take the sacrament, pursuant to the directions of the corporation act, were fined. At length, a gentleman of the name of Evans, a dissenter, having been elected, refused either to serve or to pay the fine ; upon which, an action was brought for the amount by the chamberlain of London in the sheriff's court, and judgment was given for the plaintiff. The defendant having appealed to the court of hustings, the judgment was affirmed ; but upon an appeal to the court of the judges delegates, the judgments of the inferior courts were reversed. Upon this the city brought a writ of error in the house of lords, and the judges were directed to give their opinions. Lord Mansfield then, rising in his place as a peer, addressed the house in support of the judgment of the judges delegates. Of this speech, so honourable to the enlightened intellect and liberal views of Lord Mansfield, a full note was taken by Dr. Philip Furneaux, who was present at the delivery, and who afterward submitted it to his lordship, by whom it was returned with a few alterations, and with an express consent to make it public as a ge-

* Holliday, p. 179.

nuine document.* In the course of this admirable speech his lordship laid down, in bold and broad terms, the great principle of religious liberty.

“The defendant in the present case pleads that he is a dissenter within the description of the toleration act; that he had not taken the sacrament in the church of England within one year preceding the time of his supposed election, nor even in his whole life, and that he cannot in conscience do it.

“Conscience is not controllable by human laws, nor amenable to human tribunals. Persecution, or attempts to force conscience, will never produce conviction, and are only calculated to make hypocrites or martyrs.

“My lords, there never was a single instance, from the Saxon times down to our own, in which a man was ever punished for erroneous opinions concerning rites or modes of worship, but upon some positive law. The common law of England, which is only common reason or usage, knows of no persecution for mere opinions. For atheism, blasphemy, and reviling the Christian religion, there have been instances of persons prosecuted and punished upon the common law; but bare nonconformity is no sin by the common law; and all positive laws, inflicting any pains or penalties for nonconformity to the established rites or modes, are repealed by the act of toleration, and dissenters are thereby exempted from all ecclesiastical censures.

“What bloodshed and confusion have been occasioned from the reign of Henry IV., when the first penal statutes were enacted, down to the revolution in this kingdom, by laws made to force conscience! There is nothing certainly more unreasonable, more inconsistent with the rights of human nature, more contrary to the spirit and precepts of the Christian religion, more iniquitous and unjust, more impolitic,

* Holliday, p. 251. Belsham's Life of Lindsay.

than persecution. It is against natural religion, revealed religion, and sound policy.

“Sad experience and a large mind taught that great man, the President De Thou, this doctrine. Let any man read the many admirable things which, though a papist, he hath dared to advance on this subject, in the dedication of his history to Henry IV. of France, (which I never read without rapture,) and he will be fully convinced, not only how cruel but how impolitic it is to prosecute for religious opinions. * * *

“There was no occasion to revoke the edict of Nantes; the jesuits needed only to have advised a plan similar to that which is contended for in the present case: make a law to render them incapable of office; make another to punish them for not serving. If they accept, punish them (for it is admitted on all hands, that the defendant, in the case before your lordships, is prosecutable for taking the office upon him)—If they accept, punish them; if they refuse, punish them; if they say yes, punish them; if they say no, punish them. My lords, this is a most exquisite dilemma, from which there is no escaping; it is a trap a man cannot get out of; it is as bad persecution as that of Procrustes; if they are too short, stretch them; if they are too long, lop them.”*

The lords immediately affirmed the judgment of the delegates, reversing the judgment of the sheriff's court and of the court of hustings.

In the year 1770, Lord Mansfield supported the bill for preventing delays of justice by reason of privilege of parliament, upon which he spoke at considerable length. In the course of his speech, he took occasion to express a sentiment, which formed a remarkable feature of his character—his contempt of popularity. “It has been said by a noble lord on my left hand, that I likewise am

* Holliday, p. 260. Parl. Hist., vol. xvi. p. 316.

running the race of popularity. If the noble lord means by popularity that applause bestowed by aftertimes on good and virtuous actions, I have long been struggling in that race, to what purpose all-trying time can alone determine; but if the noble lord means that mushroom popularity, that is raised without merit, and lost without a crime, he is much mistaken in his opinion. I defy the noble lord to point out a single action in my life, where the popularity of the times ever had the smallest influence on my determinations. I thank God, I have a more permanent and steady rule for my conduct—the dictates of my own breast. Those that have foregone that pleasing adviser, and given up their minds to be the slaves of every popular impulse, I sincerely pity; I pity them still more, if their vanity leads them to mistake the shouts of a mob for the trumpet of fame. Experience might inform them, that many, who have been saluted with the huzzas of a crowd one day, have received their execrations the next; and many who, by the popularity of their times, have been held up as spotless patriots, have nevertheless appeared upon the historian's page, when truth has triumphed over delusion, the assassins of liberty. Why, then, can the noble lord think that I am ambitious of present popularity, that relic of folly and shadow of renown, I am at a loss to determine.”*

Had Lord Mansfield wished to adopt the surest mode of avoiding the popularity he so earnestly deprecated, he could not have found a more favourable opportunity than was afforded him in the course of the year 1770. The public mind had been excited and irritated, in an unusual degree, by the events attending the celebrated Middlesex election, and the expulsion of Wilkes from the house of commons. A general dissatisfaction had pervaded the nation,

* Parl. Hist., vol. xvi. p. 977.

and the metropolis had been the scene of very serious riots. In the midst of these discontents appeared "The Letters of Junius," the most remarkable and effective work in the political literature of England. It was obvious that government could not suffer a production like this to pass unnoticed. Accordingly, on the appearance of the celebrated letter to the king, informations were filed by the attorney-general against Woodfall, the original printer and publisher, Almon, Miller, Say, Robinson, and Baldwin, who had republished it in various forms. The first case brought to trial was that against Mr. Almon, before Lord Mansfield and a special jury, on the 2d of June, 1770, when it was proved for the crown, that a copy of the libel had been bought at the shop of the defendant, from a person acting there as his servant. Mr. Sergeant Glynn, for the defendant, insisted that a man could not be made a criminal by the act of his servant; but Lord Mansfield having directed the jury, that a sale by the servant was evidence, when not contradicted or explained, of a publication by the master, on the principle that whatever a man does by another he does himself, the jury found a general verdict of *guilty*.*

In the ensuing term, Almon's counsel moved for a new trial, contending that there was no proof whatever of a *criminal intention* in his client, or even the least knowledge by him of the libel having been sold in his shop. A new trial was refused, on the ground that the publication at the shop of the defendant was *primâ facie* evidence of a guilty publication *by him*. The rule was thus stated by Lord Mansfield:—"The buying the pamphlet in the public open shop of a known professed bookseller and publisher of pamphlets, of a person acting in the shop, *primâ facie* is evidence of a publication

* State Trials, vol. xx. p. 803.

by the master himself; but it is liable to be contradicted, where the fact will bear it, by contrary evidence tending to exculpate the master, and to show that he was not privy nor assenting to it, nor encouraging it; and this being *primâ facie* evidence of a publication by the master himself, stands good till answered by him; and if not answered at all, becomes *conclusive* so far as to be sufficient to convict him." The other judges of the king's bench concurred in opinion with Lord Mansfield. The judgment of the court in this case was made the subject of much severe animadversion, both within and without the walls of parliament, and the conduct of Lord Mansfield upon the trial was commented upon, in the house of commons, in the harshest manner by Mr. Dunning.* This case has frequently been considered as an authority for the broad position, that in prosecutions for libel a man is responsible for the act of his servant; a position which, in fact, it does not establish.

On the 13th of June, the information against Mr. Woodfall came on for trial, and Lord Mansfield, in his summing up, directed the jury, "that the printing and sense of the paper were alone what the jury had to consider of."† The jury, after much deliberation, found the defendant "Guilty of printing and publishing *only*." Upon this, two applications were made to the court of king's bench. The first, by the defendant in arrest of judgment; the second, on behalf of the crown, to enter the verdict according to the legal finding of the jury. In delivering the opinion of the court, which was that a *venire de novo* ought to issue, Lord Mansfield took occasion to justify the direction which he had given to the jury. "That the law," said he, "as to the subject matter of the verdict, is as I have stated, has been so often unani-

* Parl. Hist., vol. xvi. p. 1279, and post, Life of Dunning.

† State Trials, vol. xx. p. 900.

mously agreed by the whole court upon every report I have made of a trial for a libel, that it would be improper to make it a question now in this place. Among those that concurred, the bar will recollect the dead and the living not now here. And we all again declare our opinion, that the direction is right and according to law.”*

The information against Miller was tried on the 18th July, when Lord Mansfield directed the jury in the following manner: “I have the satisfaction to know, that if I should be mistaken in the direction I am about to give as to your duty on the present occasion, it will not be final and conclusive; but it is under the full conviction of my own mind, that I am warranted by the uniform practice of past ages, and by the law of the land, that I inform you that the question for your determination is, whether the defendant printed and published a paper of such tenor and meaning as is charged by the information. If the tenor had been wrong, the prosecution would at once have fallen to the ground; but that is not objected to, nor is any meaning suggested by the defendant different to that supplied by the filling up the blanks in the information. If you find the defendant *not guilty*, you find that he did not print or publish as set forth: if you find him *guilty*, you find that he did print and publish a paper of the tenor and meaning set forth in the indictment. Your verdict finally establishes that fact; but you do not by that verdict find whether that production was legal or illegal: for should the defendant be found guilty, he may arrest the judgment, by insisting there is nothing illegal in this paper, and may carry this matter before the highest court of judicature in the kingdom.” The incongruity of this doctrine seems to have forced itself even upon the mind of Lord Mansfield, who, at the con-

clusion of the summing up, added, "If you choose to determine the point of law, you should be very sure, for your conscience's sake, that your determination is law; but if the law was in every case to be determined by juries, we should be in a miserable condition, as nothing could be more uncertain, from the different opinions of mankind."

The jury, after consulting together for several hours, delivered a verdict of Not guilty, at the chief justice's house in Bloomsbury Square. They had been followed from Guildhall by a great concourse of people, who, on the announcement of the verdict, testified their satisfaction by loud and repeated acclamations.*

In another case, which occupied in the course of the same year, Lord Mansfield incurred additional, though undeserved, odium. Two informations having been filed against the celebrated Wilkes, for the publication of No. 45 of the *North Briton*, and of another libel, and the cases standing for trial, an application was made to Lord Mansfield, at chambers, for leave to amend the records in a formal point. Leave was given to amend, the causes proceeded, and Mr. Wilkes, not appearing, was outlawed. Some time afterward, having appeared, he endeavoured to reverse the outlawry, and loud complaints were made by his friends against Lord Mansfield for the part he had taken in allowing the amendments to be made. On delivering his judgment in the writ of error brought by Mr. Wilkes, Lord Mansfield, after examining the authorities, thus continued:—"But here let me pause:—it is fit to take some notice of the various terrors hung out; the numerous crowds which have attended, and now attend, in and about the hall, out of all reach of hearing what passes in court; and the tumults which, in other places, have shamefully insulted all order and government. Audacious

* State Trials, vol. xx. p. 896.

addresses in print dictate to us, from those they call the people, the judgment to be given now, and afterward upon the conviction. Reasons of policy are urged, from danger to the kingdom, by commotions and general confusion.

“Give me leave to take the opportunity of this great and respectable audience, to let the whole world know all such attempts are vain. Unless we have been able to find an error which will bear us out to reverse the outlawry, it must be affirmed. The constitution does not allow reasons of state to influence our judgments: God forbid it should! We must not regard political consequences, how formidable soever they might be: if rebellion was the certain consequence, we are bound to say, ‘*Fiat justitia, ruat cœlum.*’ The constitution trusts the king with reasons of state and policy; he may stop prosecutions; he may pardon offences; it is his, to judge whether the law or the criminal should yield. We have no election. None of us encouraged or approved the commission of either of the crimes of which the defendant is convicted: none of us had any hand in his being prosecuted. As to myself, I took no part (in another place) in the addresses for that prosecution. We did not advise or assist the defendant to fly from justice: it was his own act; and he must take the consequences. None of us have been consulted, or had anything to do with the present prosecution. It is not in our power to stop it: it was not in our power to bring it on. We cannot pardon. We are to say what we take the law to be: if we do not speak our real opinions, we prevaricate with God and our own consciences.

“I pass over many anonymous letters I have received. Those in print are public, and some of them have been brought judicially before the court. Whoever the writers are, they take the wrong way. I will do my duty unawed. What am I to fear? that

mendax infamia from the press, which daily coins false facts and false motives? The lies of calumny carry no terror to me. I trust, that my temper of mind, and the colour and conduct of my life, have given me a suit of armour against these arrows. If, during the king's reign, I have ever supported his government, and assisted his measures, I have done it without any other reward than the consciousness of doing what I thought right. If I have ever opposed, I have done it upon the points themselves, without mixing in party or faction, and without any collateral views. I honour the king, and respect the people; but many things, acquired by the favour of either, are, in my account, objects not worth ambition. I wish popularity, but it is that popularity which follows, not that which is run after. It is that popularity which, sooner or later, never fails to do justice to the pursuit of noble ends by noble means. I will not do that which my conscience tells me is wrong, upon this occasion, to gain the huzzas of thousands, or the daily praise of all the papers which come from the press: I will not avoid doing what I think is right, though it should draw on me the whole artillery of libels, all that falsehood and malice can invent, or the credulity of a deluded populace can swallow. I can say with a great magistrate, upon an occasion and under circumstances not unlike, 'Ego hoc animo semper fui, ut invidiam virtute partam, gloriam, haud infamiam, putarem.'

“The threats go farther than abuse: personal violence is denounced. I do not believe it: it is not the genius of the worst men of this country in the worst of times. But I have set my mind at rest. The last end that can happen to any man never comes too soon, if he falls in support of the law and liberty of his country (for liberty is synonymous to law and government). Such a shock, too, might be productive of public good: it might awake the better part

of the kingdom out of that lethargy which seems to have benumbed them ; and bring the mad part back to their senses, as men intoxicated are sometimes stunned into sobriety.

“ Once for all, let it be understood, that no endeavours of this kind will influence any man who at present sits here. If they have any effect, it would be contrary to their intent : leaning against their impression, might give a bias the other way. But I hope, and I know, that I have fortitude enough to resist even that weakness. No libels, no threats, nothing that has happened, nothing that can happen, will weigh a feather against allowing the defendant, upon this and every other question, not only the whole advantage he is entitled to from substantial law and justice, but every benefit from the most critical nicety of form, which any other defendant could claim under the like objection. The only effect I feel, is an anxiety to be able to explain the grounds upon which we proceed, so as to satisfy all mankind, that a flaw of form, given way to in this case, could not have been got over in any other.”*

Wilkes having been imprisoned under the judgment of the court of king’s bench for the publication of these libels, petitioned the house of commons for relief, alleging, among other grounds, the alteration of the record by the order of Lord Mansfield. The debate on this petition was one of the few occasions in which Mr. Blackstone appeared as a speaker in the house of commons. He shortly, but strenuously, defended Lord Mansfield, and concluded with moving, “ that the complaint of Mr. Wilkes was an audacious aspersion on the chief justice, calculated to convey a gross misrepresentation of the fact, and to prejudice the minds of the people against the administration of public justice.”

In the interminable debates which arose out of the

* State Trials, vol. xix. p. 1111.

proceedings connected with Mr. Wilkes, the conduct of Lord Mansfield, in matters of libel, became the subject of frequent discussion, and of much censure. In the debate on Lord Chatham's motion, of the 5th of December, 1770, declaring the capacity to be chosen a member of parliament an inherent right of the subject, his lordship took occasion to observe upon the modern manner of directing a jury from the bench, and giving judgment upon prosecutions for libel. Lord Mansfield, in reply, defended himself with considerable vigour, concluding his speech in the following words :

“ Judges, my lords, cannot go astray from the express and known law of the land. They are bound by oath punctually to follow the law. I have ever made it the rule of my conduct to do what was just, and, conscious of my own integrity, am able to look with contempt upon libels and libellers. Before the noble lord, therefore, arraigns my judicial character, he should make himself acquainted with facts. The scurrility of a newspaper may be good information for a coffee-house politician; but a peer of parliament should always speak from higher authority; though, if my noble accuser is no more acquainted with the principles of law in the present point than in what he advanced to support the motion, where he told us an action would lie against the house of commons for expelling Mr. Wilkes, I am fearful the highest authorities will not extend his ideas of jurisprudence nor entitle him to a patient hearing upon a legal question in this assembly.”*

Lord Chatham, in answer, said, “ My lords, if I conceive the noble lord on the woolsack right, or have been rightly informed by the public prints, from which, I candidly confess, I originally derived my information on this subject, the doctrine of the king's bench is, that a libel or not a libel is a question of

* Parl. Hist., vol. xvi. p. 1305.

law to be decided only by the court, and the sole power of the jury is to determine upon the fact of printing and publishing. This, my lords, I understand to be the noble lord's opinion ; but this I never understood to be the law of England : on the contrary, I always understood that the jury were competent judges of the law as well as of the fact, and indeed, if they are not, I can see no essential benefit, arising from their institution, to the community.

“I am, therefore, desirous, my lords, I am earnestly desirous, that a day may be appointed for examining into the conduct of such judges as dare to establish this anti-constitutional practice in our courts. I am well assured, from the most respectable authority, that the practice is immediately subversive of our dearest rights, our most invaluable liberties ; and, profligate as the times may be, these are objects that interest should lead us to defend, even if we are wholly unactuated by principle.”

Lord Chatham was followed by Lord Camden, who spoke of the administration of justice in terms calculated to wound the feelings of Lord Mansfield in the deepest manner.

“I am but too sensible, my lords,” said he, “of the disreputable state of our law courts at present, and I heartily wish that some effectual method may be taken to recover their former credit, their former dignity. The best method of doing this is, in my opinion, to ascertain the truth or the falsehood of the popular reports, so boldly, so generally propagated against their mode of administering justice. Let us try, my lords, whether they are venal or whether they are otherwise. As a lawyer, I am a friend to the courts ; and should be sincerely concerned, if the spirit of the times has fastened any unmerited stigma on their characters. If they are, as they ought to be, immaculate, we cannot do them a more es-

sential service than to fix a day for inquiring into their conduct : we shall then be able to certify in their favour ; we shall then give their probity the sanction of our evidence, and restore them to the esteem, to the confidence of their country. On the other hand, should the popular rumours have unhappily any foundation in fact, we owe it to ourselves and to posterity to drive them indignantly from the seats which they dishonour, and to punish them in an exemplary manner for their malversation." Lord Mansfield was then defended by the Duke of Grafton, who moved and carried an adjournment.

In the meantime, the opponents of Lord Mansfield in the other house were not idle. Sergeant Glynn having made a motion* for an inquiry into the administration of criminal justice, which was lost, and in the course of which the conduct of Lord Mansfield was severely commented on, his lordship, on the following day, desired that the house of lords might be summoned, he having some matters to communicate to the house. The lords accordingly met on the 10th of December, but instead of entering into any explanation, Lord Mansfield contented himself with informing the house that he had left with the clerk of the house a copy of the judgment of the court of king's bench in the case of *The King against Woodfall*,† and that their lordships might read it and take copies of it, if they pleased. On an inquiry from Lord Camden whether his lordship meant to have the paper entered on the journals, he replied, "No, only to leave it with the clerk." On the following day, Lord Camden said, "My lords, I consider the paper delivered in by the noble lord on the woolsack as a challenge directed personally to me, and I accept of it. He has thrown down the glove, and I take it up. In direct contradiction to him, I maintain that his doctrine is not the law of

* Parl. Hist., vol. xvi. p. 1211

† Ante, p. 199.

England. I am ready to enter into the debate whenever the noble lord will fix a day for it. I desire and insist that it may be an early one." He then delivered in six questions, founded on the paper deposited by Lord Mansfield with the clerk, desiring to have his lordship's answers thereon. Lord Mansfield replied, that this method of proposing questions was taking him by surprise ; that it was unfair, and that he would not answer interrogatories. Lord Camden then pressed him to appoint a day for giving in his answers ; and Lord Mansfield, after some hesitation, pledged himself to the house that the matter should be discussed, but ultimately refused to fix any day. In this manner did the discussions in the lords, on this subject, in which Lord Mansfield certainly betrayed his constitutional timidity, and suffered his opponents to use a tone of undue superiority and arrogance toward him, terminate. His conduct in relation to this charge will be examined hereafter.

In the celebrated riots of 1780, Lord Mansfield was a conspicuous sufferer. Although he had not taken any active part in the measures for the relief of the catholics, he incurred, in common with many other eminent persons, the hostility of the populace. The mob, which assembled round the houses of parliament on the 2d of June, not only assailed the lords and members who were supposed to favour the catholics with the most vehement abuse, but proceeded in many cases to personal violence. The Archbishop of York had his lawn sleeves torn off and flung in his face ; the Bishop of Lincoln, after fainting in his carriage, was taken into a gentleman's house, from which he escaped in disguise ; Lord Stormont's life was placed in the most imminent danger, and Lord Mansfield, who at that time officiated as speaker in the absence of the lord chancellor, bore upon his person, as he entered the house, evident marks of the ill usage of the rioters. After a

debate, disturbed by the violence and vociferations of those without, the lords gradually retired, retreating through the darkness of the night, or escaping in hackney coaches, until, to the discredit and disgrace of their lordships' house, the Earl of Mansfield, in his 76th year, was left alone and unprotected, except by the officers of the house and his own servants. The tumults not having been surpressed at their commencement, increased on the second day so fearfully, as not only to strike individuals with dismay, but to threaten even the stability of the government itself. With a confidence in their power which their successes gave them, the rioters did not hesitate to announce publicly the particular mansions which they had devoted to destruction, among which was that of Lord Mansfield in Bloomsbury Square. His lordship, being aware of the intended attack, despatched a messenger to Sir John Hawkins, the magistrate, requesting his immediate attendance.* Sir John, accompanied by a number of constables, proceeded without delay to Bloomsbury Square, where he found Lord Mansfield in a state of great agitation. The Archbishop of York, who resided in one of the adjoining houses, was present, and appeared to be more collected. By the advice of Sir John Hawkins, a detachment of military was sent for, who soon afterward arrived. A consultation was then held as to the position in which the guards should be placed, when Lord Mansfield, notwithstanding the remonstrances of Hawkins, insisted that they should be stationed in the vestry of St. George's church. The commanding officer endeavoured, in vain, to dissuade him from suffering the troops to leave the house; but his lordship was peremptory, and the guards were marched to their station. The mob soon afterward arrived, and in an inconceivably short space of time the walls of the house alone

* Miss Hawkins's Memoirs, vol. ii, p. 108.

remained standing. The whole of the library of printed books and MSS., the private papers, the pictures, furniture, and other valuable effects, were all consumed. In order to show how disinterested was their enthusiasm, a large silver tankard, containing a considerable sum in guineas, was thrown into the blaze.

Sir Nathaniel Wraxall, who was an eye-witness of the conflagration, has left the following account of it:† “I was personally present at many of the most tremendous effects of the popular fury on the memorable 7th of June, the night on which it attained its highest point. About nine o'clock on that evening, accompanied by three other gentlemen, who, as well as myself, were alarmed at the accounts brought in every moment of the outrages committed, and of the still greater acts of violence meditated, as soon as darkness should favour and facilitate their farther progress, we set out from Portland Place, in order to view the scene. Having got into a hackney coach, we drove to Bloomsbury Square, attracted to that spot by a rumour generally spread, that Lord Mansfield's residence, situate at the north-east corner, was either already burnt or destined for destruction. Hart-street and Great Russell-street presented each to the view, as we passed, large fires, composed of furniture taken from the houses of magistrates or other obnoxious individuals. Quitting the coach, we crossed the square, and had scarcely got under the wall of Bedford House, when we heard the door of Lord Mansfield's house burst open with violence. In a few minutes, all the contents of the apartments, being precipitated from the windows, were piled up, and wrapt in flames. A file of foot-soldiers arriving, drew up near the blazing pile; but without either attempting to quench the fire, or to impede the mob, who were, indeed, far too numerous to admit of their being dispersed, or even intimidated, by a small

* Memoirs, vol. i. p. 319.

detachment of infantry. The populace remained masters ; while we, after surveying the spectacle for a short time, moved on into Holborn, where Mr. Langdale's dwelling-house and ware-houses afforded a more appalling picture of devastation. They were altogether enveloped in smoke and flame. In front had assembled an immense multitude of both sexes, many of whom were females, and not a few held infants in their arms. All appeared to be, like ourselves, attracted as spectators solely by curiosity, without taking any part in the acts of violence. The kennel of the street ran down with spirituous liquors, and numbers of the populace were already intoxicated with this beverage. So little disposition, however, did they manifest to riot or pillage, that it would have been difficult to conceive who were the authors and perpetrators of such enormous mischief, if we had not distinctly seen at the windows of the house men, who, while the floors and rooms were on fire, calmly tore down the furniture, and threw it into the street, or tossed it into the flames. They experienced no kind of opposition, during a considerable time that we remained at this place ; but, a party of the horse-guards arriving, the terrified crowd instantly began to disperse ; and we, anxious to gratify our farther curiosity, continued our progress on foot, along Holborn, toward Fleet Market. The conduct of the lord chancellor had been more prudent. He admitted a sergeant's guard into his house in Great Ormond-street, and by a judicious display of this small force, which was marched and countermarched, so as to give it the appearance of fresh detachments arriving, he deterred the populace from making an attack."

It was afterward the subject of regret to Lord Mansfield, that he had not displayed a similar vigour. "I shall never, indeed, forget," says Mr. Erskine,* "what I have heard the late mild and venerable magistrate, Lord Mansfield, say upon this subject,

* Speeches, vol. iii. p. 33.

whose house was one of the first attacked in London. I have more than once heard him say, that, perhaps, some blame might have attached upon himself and others in authority, for their forbearance in not having directed force to have been *at the first moment* repelled by force; it being the highest humanity to check the infancy of tumults."

Lord Mansfield narrowly escaped in safety. For a few days he did not appear in court; but on the 14th of June he again took his seat. "The reverential silence," says Mr. Douglas, who at that time reported the decisions of the king's bench, "which was observed when his lordship resumed his place on the bench, was expressive of sentiments of condolence and respect, more affecting than the most eloquent address the occasion could have suggested."* The loss which Lord Mansfield sustained was irreparable. In pursuance of a vote of the house of commons, the Treasury, through the surveyor-general, made an application to his lordship for the particulars and amount, in order to arrange a proper compensation. To this application his lordship returned the following answer:

"Besides what is irreparable, my pecuniary loss is great. I apprehended no danger, and therefore took no precaution. But how great soever that loss may be, I think it does not become me to claim or expect reparation from the state. I have made up my mind to my misfortune as I ought, with this consolation, that it came from those whose object manifestly was general confusion and destruction at home, in addition to a dangerous and complicated war abroad. If I should lay before you any account or computation of the pecuniary damage I have sustained, it might seem a claim or expectation of being indemnified. Therefore you will have no farther trouble on this subject from," &c., &c.,

"MANSFIELD."

* Dougl. Rep. p. 446.

On the trial of Lord George Gordon for his participation in these proceedings, Mr. Erskine, in the admirable speech which he delivered on that occasion, alluded with great felicity to the destruction of Lord Mansfield's house, and drew from it an argument in favour of his client. "Can any man living," he exclaimed, "believe that Lord George Gordon could possibly have excited the mob to destroy the house of that great and venerable magistrate, who has presided so long in this great and high tribunal, that the oldest of us do not remember him with any other impression than the awful form and figure of justice; a magistrate, who had always been the friend of the protestant dissenters against the ill-timed jealousies of the establishment; his countryman too; and, without adverting to the partiality not unjustly imputed to men of that country, a man of whom any country might be proud? No, gentlemen; it is not credible that a man of noble birth and liberal education (unless agitated by the most implacable personal resentment, which is not imputed to the prisoner) could possibly consent to this burning of the house of Lord Mansfield."*

Among the poetical effusions which this catastrophe produced, the following verses appeared from the pen of Cowper:

"When wit and genius meet their doom
In all-devouring flame,
They tell us of the fate of Rome,
And bid us fear the same.

"O'er Murray's loss the Muses wept:
They felt the rude alarm;
Yet bless'd the guardian care that kept
His sacred head from harm.

"There memory, like the bee that's fed
From Flora's balmy store,
The quintessence of all he read
Had treasured up before.

"The lawless herd, with fury blind,
Have done him cruel wrong:
The flowers are gone; but still we find
The honey on his tongue."

* Erskine's Speeches, vol. i. p. 112.

Of Lord Mansfield's political life after the year 1780 little remains to be said. He had long ceased, as he stated himself,* to be one of the efficient advisers of the crown; and it was only in his place as a peer, or by the exertion of that influence which always waits upon a man of high character in a high station, that he took any part in politics. During the famous coalition administration in 1782, he opposed, in conjunction with the chancellor, Lord Thurlow, the bill for the prevention of contractors sitting in parliament,† and that for excluding officers of the excise and customs from voting.‡ In the latter speech he controverted the then popular doctrine, that the influence of the crown was increasing, and ought to be diminished, and spoke with considerable energy against "the associations and meetings without doors for the express purpose of awing and controlling parliament." He also, in the course of the same year, spoke against the insolvent debtors' bill, considering it as an injury to credit.§ One of the latest occasions upon which he addressed the house of peers was upon Lord Effingham's motion relative to the resolutions of the house of commons against Mr. Pitt's administration. His lordship opposed the resolutions moved by Lord Effingham, as tending to produce a breach between the two houses. The speech exhibited even more than a usual portion of that constitutional timidity by which Lord Mansfield was distinguished: it was almost wholly composed of fears and prognostications of evil.||

At length, after having presided for upward of thirty-two years over the court of king's bench, the increasing infirmities of Lord Mansfield induced him to retire from his office. His resignation took place in the year 1788, upon which occasion the counsel practising in his court presented to him the following address, by the hands of Mr. Erskine:

* Ante, p. 183. † Parl. Hist., vol. xxii. p. 1362.

‡ Id. vol. xxiii. p. 95. § Id. p. 1104. || Id. vol. xxiv. p. 515.

“To the Earl of Mansfield.

“My Lord,

“It was our wish to have waited personally upon your lordship in a body, to have taken our public leave of you, on your retiring from the office of chief justice of England; but judging of your lordship’s feelings upon such an occasion by our own, and considering, besides, that our numbers might be inconvenient, we desire, in this manner, affectionately to assure your lordship, that we regret, with a just sensibility, the loss of a magistrate whose conspicuous and exalted talents conferred dignity upon the profession, whose enlightened and regular administration of justice made its duties less difficult and laborious, and whose manners rendered them pleasant and respectable.

“But, while we lament our loss, we remember, with peculiar satisfaction, that your lordship is not cut off from us by the sudden stroke of painful distemper, or the more distressing ebb of those extraordinary faculties which have so long distinguished you among men; but that it has pleased God to allow to the evening of a useful and illustrious life the purest enjoyments which Nature has ever allotted to it—the unclouded reflections of a superior and unfading mind over its varied events; and the happy consciousness that it has been faithfully and eminently devoted to the highest duties of human society, in the most distinguished nation upon earth.

“May the season of this high satisfaction bear its proportion to the lengthened days of your activity and strength!”

To this address Lord Mansfield immediately returned the following answer:

“To the Honorable T. Erskine, Sergeants’ Inn.

“Dear sir,

“I cannot but be extremely flattered by the letter which I this moment have the honour to receive.

“If I have given satisfaction, it is owing to the learning and candour of the bar: the liberality and integrity of their practice freed the judicial investigation of truth and justice from difficulties. The memory of the assistance I have received from them, and the deep impression which the extraordinary mark they have now given me of their approbation and affection has made upon my mind will be a source of perpetual consolation in my decline of life, under the pressure of bodily infirmities, which made it my duty to retire.

“I am, dear sir,

“With gratitude to you and the other gentlemen,

“Your most affectionate

“And obliged humble servant,

“MANSFIELD.”

Caen Wood, June 18, 1788.

It was Lord Mansfield's good fortune to retain, to an extended old age, the use of those faculties by which in early life he had been so much distinguished. In the year 1793, his nephew, Lord Stormont, having occasion to consult him on a cause in the house of lords, in which he was interested, found his mind perfectly clear and collected. A few days after this interview he was seized with an attack which soon terminated fatally: he became drowsy, and complained of feeling very sleepy: he seemed to suffer no pain, but desired to be put to bed, saying, “Let me sleep; let me sleep:” after which he never spoke. He lay in this state for several days, and died without awaking from it, on the 20th of March, 1793, in the 89th year of his age. According to the directions of his will, he was buried in Westminster Abbey, in the same vault with Lady Mansfield.

Lord Mansfield died without issue; but the earldom, which was granted to him in 1776, descended to his nephew, Viscount Stormont.

Characters drawn by contemporary pens in general

present more lively pictures of the individual than those which are only traced from the relation of others. Bishop Hurd has thus sketched Lord Mansfield's: "Mr. Murray, afterward Earl of Mansfield, and lord chief justice of England, was so extraordinary a person, and made so great a figure in the world, that his name must go down to posterity with distinguished honour in the public records of the nation; for his shining talents displayed themselves in every department of the state, as well as in the supreme court of justice, his peculiar province, which he filled with lustre of reputation not equalled, perhaps, certainly not exceeded, by any of his predecessors. Of his conduct in the house of lords I can speak with the more confidence, because I speak from my own observation. Too good to be the leader, and too able to be the dupe of any party, he was believed to speak his own sense of public measures; and the authority of his judgment was so high, that, in regular times, the house was usually decided by it. He was no forward or frequent speaker, but reserved himself, as was fit, for occasions worthy of him. In debate he was eloquent as well as wise; or rather, he became eloquent by his wisdom. His countenance and tone of voice imprinted the ideas of penetration, probity, and candour; but what secured your attention and assent to all he said, was his constant good sense, flowing in apt terms and in the clearest method. He affected no sallies of the imagination, or bursts of passion; much less would he condescend to personal abuse, or to petulant altercation. All was clear, candid reason, letting itself so candidly into the minds of his hearers as to carry information and conviction with it. In a word, his public senatorial character very much resembled that of Messala, of whom Cicero says, addressing himself to Brutus, 'Do not imagine, Brutus, that for worth, honour, and a warm

love of his country, any one is comparable to Messala.' So that his eloquence, in which he wonderfully excels, is almost eclipsed by those virtues, and even in his display of that faculty his superior good sense shows itself most; with so much care and skill has he formed himself to the truest manner of speaking! His powers of genius and invention are confessedly of the first size; yet he almost owes less to them than to the diligent and studious cultivation of judgment. In the commerce of private life Lord Mansfield was easy, friendly, and very entertaining, extremely sensible of worth in other men, and ready on all occasions to countenance and patronise it."

The judicial character of Lord Mansfield has been the subject of repeated panegyrics. The very long period during which he presided over the court of king's bench, his commanding talents, his high personal character, and his eloquence, all contributed to the great reputation which he enjoyed. No judge ever impressed so forcibly upon the jurisprudence of this country the peculiar qualities of his own mind. In scarcely any other instance can the influence of any judge of the courts of common law be traced by any marked improvement in the principles of law, or in the practice of the courts. With Lord Mansfield it was widely different; and many of the most important branches of modern law derive their character, and almost their existence, from his genius. The law of insurance has been frequently mentioned as an instance of the admirable manner in which his powerful mind created a system of law adapted to all the exigencies of society. When his lordship was raised to the bench, the contract of insurance was little known, and a few unimportant *nisi prius* decisions were all that were to be found on the subject. Yet this branch of law, so little understood,

grew up under his administration into a system, remarkable for the excellence of its principles and the good sense and simplicity of its practice. In many other branches of law the same mind is visible, governing their principles, and reconciling their incongruities.* It has, indeed, been said, that Lord Mansfield leaned too much in his decisions to equitable principles; and certainly, in some instances, his opinions have been reviewed and overruled on this ground; yet, considering the anomalous scheme of the English law, and the expense and injustice which frequently arise from compelling a party who is clearly entitled to redress to seek it in another form, at the expense of infinite delay and vexation, it is difficult to say whether the preservation of the exact boundaries between the tribunals of the common law and of equity are wisely preserved at such a cost. The learning of Lord Mansfield has also been questioned, and, perhaps, his mind was not deeply imbued with the more recondite knowledge of his profession. So great, however, was the grasp of his intellect, and so lively and quick his powers of apprehension, that, on subjects where abstruse and recondite learning was required, he was always enabled to make, with small preparation, a brilliant display. He excelled particularly in the statement of a case, arranging the facts in an order so lucid, and with so nice a reference to the conclusions to be founded on them, that the hearer felt inclined to be convinced before he was in possession of the arguments.

His eloquence was peculiar; rather subtle and insinuating, than forcible and overpowering. His articulation was slow and distinct, and his voice remarkably sweet in all its tones. In his style of speaking he was often careless, sometimes using low and mean expressions, and he is said not always

* See Evans's View of Lord Mansfield's Decisions.

to have observed the rules of grammar. There was occasionally great confusion in his periods, which were involved in endless parentheses;* but such was the general effect of his eloquence, that these blemishes passed unnoticed.

In his demeanour on the bench he was distinguished at once by the dignity and by the courtesy of his manners. To the junior counsel he was kind and encouraging, and introduced in their favour the practice of *going through the bar*, allowing the senior counsel to make only one motion at a time, while they had previously been in the habit of making all their motions before the juniors could be heard. Occasionally Lord Mansfield indulged in sallies of humour, which were sometimes aimed at the gravity and abstraction of Mr. Sergeant Hill. "I have seen the sergeant," says Mr. Hawkins,† "standing up in the court, immoveable as a statue, looking at no object, and arguing in support of his client's cause, so wrapt in the workings of his own mind as, seemingly at least, to be insensible to any objects around him. In the midst of his argument, which was frequently so perplexed by parenthesis within parenthesis, as to excite the laughter of the whole court, Lord Mansfield would interrupt him with, 'Mr. Sergeant! Mr. Sergeant!' He was rather deaf: the words were repeated without effect; at length, the counsel sitting near him would tell him that his lordship spoke to him: this roused him. Lord Mansfield would then address him with, 'The court hopes your cold is better.' All this was done with a tone, and in a manner, which showed that he wished to make the object of his apparent civility in fact an object of ridicule, and so far must be considered as having succeeded. How far it was perfectly decorous in a judge sitting in court to indulge this little mischief, for we do not wish to call it by a harsher name,

* Butler's Reminiscences.

† Miss Hawkins's Memoirs.

others may decide ; but, certainly, he was very agreeable to the bar in other respects. Indeed, whenever this foible did not show itself, his patient attention, his assisting questions, if I may be allowed the term, and his intuitive comprehension of what was submitted to his understanding, made him an exceedingly pleasant judge to those who were called to argue deep questions before him."

The judicial character of Lord Mansfield did not escape severe censure. One of the most serious charges against him, so often and so acrimoniously urged in parliament, and repeated by Junius, was his conduct in cases of libel, in which he invariably directed the jury, that it was no part of their province to consider whether the writing in question was or was not libellous, that being a matter of law reserved for the consideration of the court. That this opinion was erroneous cannot now be doubted ; and the legislature has, by a declaratory act, pronounced upon its illegality. But, in estimating the culpability of Lord Mansfield in supporting a doctrine which is so decidedly opposed to the interests of freedom, it is necessary to look with accuracy to the circumstances under which that opinion was advanced. There have not been wanting, at any period of our judicial annals, authorities upon which the opinion of Lord Mansfield may be defended. Judges of learning and character have held those opinions to be law ; and though, in selecting between opposing authorities, it may well be regretted that Lord Mansfield did not choose those which would have placed the liberty of the subject upon a surer foundation, it is not just to accuse him of a wilful and corrupt misinterpretation of the law. His political opinions did not lean to the extension of popular privileges, and those opinions necessarily governed him in the decision to which he came on this subject. That he himself was satisfied that he had given a correct

exposition of the law cannot be doubted. "For twenty-eight years past," says Mr. Justice Buller, speaking of his lordship's directions in cases of libel—"during which time we have had a vast number of prosecutions, in different shapes, for libels—the uniform and invariable conduct of that noble judge has been to state the questions as I have just stated them to you; and though the cases have been defended by counsel not likely to yield much, yet that point was never found fault with by them; and, often as it has been enforced by the court, they never have attempted yet, by any application, to set it aside. At last it came on in this way: the noble judge himself brought it on by stating to the court what his directions had always been, with a desire to know whether, in their opinions, the direction was right or wrong? The court was unanimously of opinion that it was right, and that the law bore no question or dispute."* The appeal thus made by Lord Mansfield to the court does not betray any consciousness of having acted wrong; but, on the contrary, manifests an honest desire to examine and correct his opinions. That he was incapable of perverting the power which he thus vindicated, as the province of the court, to purposes injurious to liberty, we may admit with Mr. Erskine, who, in the argument arising out of the trial of the Dean of St. Asaph, tendered his testimony to the integrity of the chief justice: "I am one of those," said he, "who could almost lull myself by these reflections from the apprehension of *immediate* mischief, even from the law of libel laid down by your lordship, if you were always to continue to administer it yourself. I should feel a protection in the gentleness of your character; in the love of justice, which its own intrinsic excellence forces upon a mind enlightened by

* Trial of Dean of St. Asaph, Erskine's Speeches, vol. i. p. 219.

science, and enlarged by liberal education ; and in that dignity of disposition which grows with the growth of an illustrious reputation, and becomes a sort of pledge to the public for security. But such a security is a shadow which passeth away. You cannot, my lord, be immortal, and how can you answer for your successor ? If you maintain the doctrines which I seek to overturn, you render yourself responsible for all the abuses that may follow from them to our latest posterity.”*

The political principles of Lord Mansfield were not strongly marked ; but the bias of his mind was decidedly toward Toryism. In the expression of his opinions he was cautious and moderate, and was very unwilling to appear the advocate of strong or violent measures. This irresolute and almost timorous disposition was manifested in his conduct during the riots of 1780. He was the frequent object of popular invective, and fell under the lash of Junius, who has not hesitated to accuse him, not only of an early devotion to the house of Stuart, but of adhering to the principles of that family after deserting their fortunes. The unproved, and probably unfounded, charge of having been in his earlier years a partisan of the pretender, is treated by Junius as a fact too well established to be doubted : “ Your zeal in the cause of an unhappy prince was expressed with the sincerity of wine, and some of the solemnities of religion. This, I conceive, is the most amiable point of view in which your character has appeared. Like an honest man, you took that part in politics which might have been expected from your birth, education, country, and connexions. There was something generous in your attachment to the banished house of Stuart. We lament the mistake of a good man, and do not begin to detest him until he affects to renounce his principles. Why did you

* Trial of Dean of St. Asaph, Erskine's Speeches, vol. i. p. 261.

not adhere to that loyalty you once professed? Why did you not follow the example of your worthy brother? With him you might have shared in the honour of the pretender's confidence; with him you might have preserved the integrity of your character, and England, I think, might have spared you without regret. Your friends will say, perhaps, that although you deserted the fortune of your liege lord, you have adhered firmly to the principles which drove his father from the throne; that, without openly supporting the person, you have done essential service to the cause, and consoled yourself for the loss of a favourite family, by reviving and re-establishing the maxims of their government.”*

Lord Mansfield had no predilections that could lead him to look with favour upon popular doctrines. Himself a member of the aristocracy, and of a family which had given to the exiled princes one of their most devoted adherents, though probably in his own person free from the taint of jacobitism, there was nothing in his birth or natural connexions to ally him with the people, or with their cause. Educated at Oxford, it was not probable that he should imbibe at that seat of learning any popular doctrines; and, upon his entrance into political life, he found little encouragement to alter the principles which he had always professed. From the earliest period of his parliamentary career, even down to its close, he was the marked object of attack to the popular orators in both houses of parliament. While a member of the commons, he was pursued by Pitt's unsparing invective; and in the lords he was followed, with all the pertinacity of political hatred, by the argumentative eloquence of Lord Camden. In almost every debate in which the name of Lord Mansfield occurs, it is immediately followed by that of Lord Camden. These circumstances must have contri-

* Letter to Lord Mansfield.

buted to fix in the mind of Lord Mansfield those sentiments of opposition to popular principles with which he began life. Upon various occasions, in the course of his judicial duties, he expressed his contempt for popularity and for popular judges, of which some instances have already been given in the course of the present memoirs.

That Lord Mansfield was honest and sincere in the expression of his political opinions there can be no reason to doubt : the circumstances already adverted to, as moulding his principles, are fully sufficient to establish their sincerity. It is to be borne in mind, also, that he frequently refused power, when he might have accepted it without any imputation upon his character ; and therefore, if dishonest, his dishonesty must have been without object. If in any case he ever swerved from those principles of action which usually governed him, it is much more probable that such deviation was the consequence of political timidity than of political dishonesty. He did not possess the bold and vigorous heart of Lord Chatham ; and he was always ready rather to compromise measures than to push them to extremity. Hence his love of coalitions, which in every case of difficulty he was forward to recommend. His character was deficient in the highest of all political virtues—a determined resolution to serve the public without any regard to personal considerations, whether of fear or of favour.

In reviewing the political character of Lord Mansfield, it must not be forgotten that he was the first judge who openly discountenanced prosecutions founded on the harsh and cruel laws against the catholics, and that he boldly advocated the cause of the protestant dissenters. In his speech on the riots of 1780, he professed, in the following terms, the principles of toleration :

“ My principle of not wishing to disturb any man merely for conscience-sake is pretty well known ;

and many of those who are supposed to have formed the late mobs are not ignorant of my general tolerating principles when tolerating sectaries does not portend any mischief to the state. I have held these opinions respecting dissenters from the established church of all denominations ; and the sect in particular who are usually called methodists well know, that, when attempts were repeatedly made to disturb them in the enjoyment of their religious worship, I have always discouraged them as unworthy of the protestant religion, the purity of whose doctrines, and not persecution, should be the only incentive to bring proselytes into her bosom. I was of the same opinion respecting the Roman catholics ; and though, as I observed before, I had no hand, directly or indirectly, in the law, which has furnished a pretext for the late dangerous insurrections, I shall ever be of opinion that they, in common with the rest of his majesty's subjects, should be allowed every possible indulgence consistent with the safety of the state."*

In private life Lord Mansfield appears to have been much and justly beloved. His moral character was blameless. In his friendships he was warm and constant ; in his charities judicious and discriminating, not bestowing small sums to relieve himself from present importunities, but assisting in a more substantial manner those who were capable of benefiting by such kindness. In society, and especially at his own table, he was remarkable for the liveliness and intelligence of his conversation, in which, however, he never indulged to the exclusion of others. One of his most distinguished characteristics was the decorum and propriety that pervaded not only his actions but his manners, his personal appearance, and even his domestic establishment, in every department of which good sense and good taste were seen conjoined. Lord Mansfield's features were regular

* Parl. Hist., vol. xxi. p. 697.

and expressive, and his presence graceful and dignified. His eye is said to have been remarkable for its intelligence and brilliancy. Cowper, in a letter to Hayley, has playfully but forcibly described the impression made upon him by Lord Mansfield's personal appearance:—"The monument of Lord Mansfield, for which you say Flaxman is engaged, will, I dare say, prove a noble effort of genius. Statuaries, as I have often heard an eminent one say, do not much trouble themselves about likeness, else I would give much to be able to communicate to Flaxman the perfect idea that I have of this subject such as he was forty years ago. He was at that time wonderfully handsome, and would expound the most mysterious intricacies of the law, or recapitulate both matter and evidence of a cause as long as from here to Eartham, with an intelligent smile on his features, that bespoke plainly the perfect ease with which he did it. The most abstruse studies, I believe, never cost him any labour."

Cumberland, (the author,) who had opportunities of seeing Lord Mansfield, has detailed the impression which his manners conveyed. "I was frequently," says he, "in his company; but have no right to think that I was ever so far in his confidence as to render me a competent delineator of his character. Some few features, as they caught my observation, I may venture to trace out, and can say of him what everybody who knew him in his social hours must say, without the risk of a mistake. I cannot recollect the time when, sitting at the table with Lord Mansfield, I ever failed to remark that happy and engaging art which he possessed of putting the company present in good humour with themselves; I am convinced they naturally liked him the more for his seeming to like them so well: this has not been the general property of all the witty, great, and learned men whom I have looked up to in my course of life.

“He would lend his ear most condescendingly to his company, and cheer the least attempt at humour with the prompt payment of a species of laugh, which cost his muscles no exertion, but was merely a subscription that he readily threw in toward the general hilarity of the table. He would take his share in the small talk of the ladies with all imaginable affability; he was, in fact, like most men, not in the least degree displeased at being incensed by their flattery. He was no great starter of new topics, but easily led into anecdotes of past times; these he detailed with pleasure; but he told them correctly rather than amusingly. I am inclined to think that he did not covet that kind of conversation that gave him any pains to carry on: his professional labours were great, and it was natural that he should resort to society more for relaxation and rest of mind than for anything that could put him upon fresh exertions. Even dulness, so long as it was accompanied with placidity, was no absolute disrecommenda- tion of the companion of his private hours; it was a kind of cushion to his understanding.

“I agree with the general remark, that he had the art of modelling his voice to the room or space in which he was; but I am not one of those who admired its tone: it was of a pitch too sharp to please my ear, and seemed more tuned to argumentation than urbanity. His attentions, whenever he was pleased to bestow them, were not set off with any noble air, and I should rather call them civil than polite; for the stamp of his profession was upon him, and his deportment wanted gracefulness and ease. Pope, above all the sons of song, was his Apollo; but I suspect he had no real attachment to the Muses, and was merely civil to them in return for the compliments they had paid to him.”*

The same writer has described an interview which

* *Memoirs*, vol. ii. p. 344.

took place between Lord Mansfield and Lord Sackville, shortly before the death of the latter nobleman, which may be regarded as characteristic of Lord Mansfield's temperament. "He wished to take his last leave of the Earl of Mansfield, then at Tunbridge Wells: I signified this to the earl, and accompanied him in his chaise to Stoneland. I was present at their interview. Lord Sackville, just dismounted from his horse, came into the room where we had waited a very few minutes, and staggered as he advanced to reach his hand to his respectable visiter. He drew his breath with palpitating quickness, and, if I remember rightly, never rode again. There was a death-like character in his countenance that visibly affected and disturbed Lord Mansfield, in a manner that I did not quite expect, for it had more of horror in it than a firm man ought to have shown, and less perhaps of other feelings than a friend, invited to a meeting of that nature, must have discovered, had he not been frightened from his propriety."*

Some of the opinions of Lord Mansfield, on subjects connected with the law and with legal literature, have been preserved by Mr. Charles Butler.†

"His lordship was sometimes charged with not entertaining the high notions which Englishmen feel, and, it is hoped, will ever feel, of the excellence of the trial by jury. Upon what this charge is founded does not appear: between him and his jury there never was the slightest difference of opinion. He treated them with unvaried attention and respect; they always showed him the utmost deference. It is remembered, that no part of his office was so agreeable to him as attending the trials at Guildhall. It was objected to him, that, in matters of libel, he thought the judges were to decide on its criminality. If his opinions on this subject were erroneous, the

* *Memoirs*, vol. ii. p. 249.

† *Seward's Anecdotes*, vol. iv. p. 498. *Reminis.*, vol. i.

error was common to him with some of the most eminent among the ancient and modern lawyers. It was also objected to him, that he preferred the civil law to the law of England. His citations from the civilians were brought as a proof of his supposed partiality to that law; but they were rather occasional than frequent, and he seldom introduced them where the case was not of a new impression, so that the scantiness of home materials necessarily led him to avail himself of foreign ware. Sometimes, however, he intimated an opinion that the modification of real property in England, in wills and settlements, was of too intricate and complex a nature, and, for that reason, inferior to the more simple system of the Roman usufruct. The frequent necessity there is in our law to call in trustees, whenever property is to be transmitted or charged, so as to be taken out of immediate commerce, appeared to him an imperfection; and he wished the nature of our jurisprudence permitted the adoption of the rule of the civil law, that, when a debt is extinguished, the estate or interest of the creditor, in the lands or other property mortgaged for its security, is extinguished with it. It will be difficult to show any other instance in which he preferred the civil law to the law of England.

“In a conversation he permitted a student at the English bar to have with him, he expressed himself in terms of great esteem for Littleton, but spoke of Lord Coke, particularly of ‘his attempting to give reasons for everything,’ (that was his phrase,) with great disrespect. He mentioned Lord Hardwicke in terms of admiration, and of the warmest friendship: ‘when his lordship pronounced his decrees, wisdom herself,’ he said, ‘might be supposed to speak.’

“He observed with great satisfaction, that, during the long period of his chief justiceship, there had been

but one case in which he had ultimately differed with his brother judges of the same court : that was the case of Perryn against Blake. He lamented the difference, but declared his conviction that the opinion he delivered upon it was right.

“He recommended Saunders’ Reports. He observed, that the quantity of professional reading absolutely necessary, or even really useful, to a lawyer, was not so great as was usually imagined ; but, he observed, ‘that it was essential he should read much,’ as he termed it, ‘in his own defence : lest, by appearing ignorant on subjects which did not relate to his particular branch of the profession, his ignorance of that particular branch might be inferred.’

“Speaking of the great increase of the number of law books, he remarked that it did not increase the quantity of necessary reading, as the new publications frequently made the reading of the former publications unnecessary. Thus, he said, since Mr. Justice Blackstone had published his Commentaries no one thought of reading Wood’s Institutes, or Finch’s Law, which, till then, were the first books usually put into the hands of students. He said, that, when he was young, few persons would confess they had not read a considerable part at least of the year books : but that, at the time he was then speaking, few persons would pretend to more than an occasional recourse to them in very particular cases. He warmly recommended the part of Giannone’s History of Naples which gives the history of jurisprudence, and of the disputes between the church and the state. He mentioned Chillingworth as a perfect model of argumentation.”

NOTES TO VOLUME FIRST.

NOTE 1. p. 22.—The extent of the mischief occasioned by these courts may be learned from the fact that there were 2000 causes depending in them at one time. Coke mentions, in this place, the amount of business in the court of chancery at that time:—95 causes to be heard in Easter Term, and 72 in Trinity.

NOTE 2. p. 23.—Of the correctness of this assertion James gave an excellent proof on his journey from Scotland, in ordering a cutpurse to be executed without trial.—*Stow*, 821.

NOTE 3. p. 29.—Mr. Hume has asserted, that during this reign the issuing of proclamations with the effect of laws was “established by uniform and undisputed practice, and was *even acknowledged by lawyers*, who made, however, this difference between laws and proclamations, that the authority of the former was perpetual, while that of the latter expired with the sovereign who emitted them.” Not only have we the opinion of the judges as above given, in direct opposition to this statement, but even the admission of James himself in a “Proclamation signifying his majesty’s pleasure touching some former proclamations.” “So, although we know that by the constitution of the frame and policy of this kingdom, royal proclamations and ordinances are *not of equal force*, nor in the like degrees with our laws,” &c.—*Booke of Proclamations*, p. 235.

NOTE 4. p. 31.—Some years before, Coke had refused to deliver his opinion in writing. “The lord chancellor desired that we should put our resolutions in writing; to which I answered, that the judges were not used to put their resolutions in writing, but that if the attorney or solicitor came to us, as the ancient use hath been to our predecessors, we will deliver our opinions to them *ore tenus*, but not in writing.”—12 *Rep.*, 132. See also *Fortescue’s Rep.*, 389.

That Coke’s opinion was against the court may be gathered from *Bacon’s Letters*, by *Birch*, p. 56.

NOTE 5. p. 33.—For the history of these dark transactions, see the different trials in the second volume of the *State Trials*; the article *Coke* in the *Biog. Brit.*; the pamphlet of *Truth brought to Light*, &c.; the *Secret History of the Court of King James*, and the *Restrospective Review*, vol. vii. p. 29.

NOTE 6. p. 43.—In a letter to the king he says, “To conclude this point, after I had received by a former letter of his lordship (Buckingham) knowledge of his mind, I think Sir Edward Coke himself, the last time he was before the lords, might particularly perceive an alteration in my carriage.”—*Bacon’s Letters*, by *Birch*, p. 132.

NOTE 7. p. 43.—If the reader wishes for more information on this subject, he may consult Mr. D’Israeli’s *Curiosities of Literature*.

NOTE 8. p. 44.—See a witticism of Gondomar, the Spanish ambassador, on Sir Edward Coke and his lady.—*Howell’s Letters*, 103, 7th ed.

NOTE 9. p. 44.—See the *Proceedings and Debates of the House of Commons in 1620*, vol. i. pp. 65, 73, &c. Sir Edward thus commenced one of his speeches against Sir Francis Michell the monopolist :

“Integer vitæ scelerisque purus
Non eget Mauri jaculis neque arcu
Non venenatis, &c.
Michell pharetra !”

“Michell is *vir multarum artium*, he hath played in many parts,” &c.

NOTE 10. p. 57.—Perhaps his treatment of Dr. Cowell, the learned civilian, may be considered an exception to this observation. Cowell had depreciated the merit of *Littleton's Tenures*, and had been employed by Bancroft to prepare the *Articuli Cleri*, or charges against the common law courts. Coke not only attacked his book, *The Interpreter*, but is said to have taken all occasions to affront him, calling him, in derision, “*Dr. Cow-heel*.”—*Birg. Brit. art. Cowell*. James issued a proclamation, evidently penned with his own hand, against Cowell's *Interpreter*. The introduction to this proclamation is singularly amusing.

NOTE 11. p. 58.—That Coke could not or would not appreciate the genius and learning of Bacon appears from the following anecdote : Bacon presented to him a copy of his *Novum Organum* with the title *Instauratio Magna*, and containing a device of a ship sailing. Upon the title page Coke has written—

*Edw. C. ex dono auctoris.
Auctori consilium.*

*Instaurare paras veterum documenta sophorum,
Instaura leges justitiamque prius.*

And over the device—

*It deserveth not to be read in schools,
But to be freighted in the ship of fools.*

The volume still remains at Holkham.

NOTE 12. p. 61.—Where no other authority is mentioned, this Memoir is founded on the life of Selden by Dr. Aikin, which is principally derived from the life prefixed to the edition of Selden's works by Dr. David Wilkins.

NOTE 13. p. 62.—In the opinion of his friend Archbishop Usher, this was Selden's “best book.” *Mem. of Evelyn*, vol. i. p. 294. See Bishop Nicholson's opinion of this work, *English Hist. Library*, p. 22, ed. 1696. It was translated into Latin and printed at Francfort in 1696.

NOTE 14. p. 68.—For the speeches and arguments of Selden see *Howell's State Trials*, vol. iii. pp. 16, 78, 94, 175, 236, 264, and the 7th and 8th vols. of the *Old Parliamentary History*.

NOTE 15. p. 69.—Another edition of this work was published at Oxford in 1676, by Dr. Prideaux, and by Maittaire in 1732. It appears that Evelyn was the person who prevailed upon Mr. Henry Howard to bestow these valuable monuments of antiquity upon the University of Oxford.—*Evel. Mem.*, vol. i. p. 409.

NOTE 16. p. 75.—For an account of his interment see *Wood, Ath. Oxon.* vol. ii. col. 184. The master of the Temple performed the service, and Archbishop Usher preached the funeral sermon.

NOTE 17. p. 76.—It is said by Evelyn in a letter to Pepys, that there is a fragment of Selden's library at the Middle Temple. *Evelyn's Mem.*, vol. ii. p. 247. Anthony Wood arranged Selden's library at the Bodleian. He "laboured several weeks with Mr. Thos. Barlow and others in sorting them, carrying them up stairs, and placing them. In opening some of the books they found several pairs of spectacles, which Mr. Selden had put in and forgotten to take out." *Life of Wood*, p. 132. See, in the same place, the conditions on which the library was presented to the Bodleian. In the title or first page of all his books Selden used to write his motto *περι παντος την ελευθεριαν*.—*Wood, Ath. Ox.*, p. 180.

NOTE 18. p. 76.—They were marked S to distinguish them from the Arundel Marbles, which were marked H. See *the Life of Anth. Wood*, p. 146.

NOTE 19. p. 77.—Oct., 1650, Letters in *Parr's Life of Usher*. Meric Casaubon sold parts of his father's MSS. to Sir Edward Coke. See *Evelyn's Mem.*, vol. ii. p. 247.

NOTE 20. p. 79.—The *Table Talk* was published after Selden's death, and dedicated to his executors.

NOTE 21. p. 79.—Where no authority is cited, this Memoir is drawn from *The Life and Death of Sir M. Hale*, by Bishop Burnet.

NOTE 22. p. 80.—"He said that he came from the university with some aversion for lawyers, and thought them a barbarous set of people, unfit for anything but their own trade; but having occasion to speak about business with Serg't Glanville, he found him of such prudence and candour, that from that time he altered his apprehensions, and betook himself to the study of the law."—*Seward's Anecdotes*, vol. iv. p. 416.

NOTE 23. p. 81.—"He said that he studied 16 hours a day for the first two years after he came to the inns of court, but almost brought himself to his grave, though he was of a very strong constitution; and after reduced himself to eight hours, but that he would not advise anybody to so much. That he thought six hours a day with attention and constancy was sufficient; that a man must use his body as he would his horse and his stomach, not tire him at once, but rise with an appetite."—*Seward's Anecdotes*, vol. iv. p. 416.

NOTE 24. p. 82.—Noy was a very industrious and learned man. "With infinite pains," says Howell, in his Letters, "he came to his knowledge of the law, but I never heard a more pertinent anagram than was made of his name William Noy, *I moyl in law*." When Charles I. was anxious to find a man whose principles and talents might fit him for the place of his attorney-general, he applied to Noy, who, after some importunity, was prevailed upon to accept the office. He affected great moroseness of manner, but was not inaccessible to flattery; and the courtiers worked upon this foible so successfully that he was won over to a participation in all the worst measures of the government, and rendered himself particularly obnoxious by his zeal in the matter of ship-money. See *Clarendon's Rebellion*, vol. i. According to Howell, Noy "left an odd will, which was short and in Latin. Having bequeathed a few legacies, and left his second son one hundred marks a year, and £500 in money to bring him up to his father's profession, he concludes—*reliqua meorum omnia primogenito meo Edvardo*

dissipanda, (nec melius unquam speravi ego,) I leave the rest of all my goods to my first born Edward, to be consumed or scattered, for I never hoped better."

NOTE 25. p. 82.—This volume is now in the library of Lincoln's Inn, among the MSS. bequeathed to that society by Hale.

NOTE 26. p. 82.—Vaughan was also one of the early friends of Clarendon, who has left the following character of him: "John Vaughan was then a student of the law in the Inner Temple, but at that time indulged more to the politer learning, and was in truth a man of great parts of nature and very well adorned by arts and books, and so much cherished by Mr. Selden that he grew to be of entire trust and friendship with him, and to that owed the best part of his reputation: for he was of so magisterial and supercilious a humour, so proud and insolent a behaviour, that all Mr. Selden's instructions, and authority and example, could not file off that roughness of his nature, so as to make him very grateful. He looked most unto those parts of the law which disposed him to least reverence to the crown, and most to popular authority, yet without inclination to any change in government; and therefore before the beginning of the civil war, and when he clearly discerned the approaches to it in parliament, of which he was a member, he withdrew himself into the fastnesses of his own country, North Wales, where he enjoyed a secure and as near an innocent life as the iniquity of that time would permit; and upon the return of King Charles II. he appeared under the character of a man who had preserved his loyalty entire, and was esteemed accordingly by all that party." *Clarendon's Life*, vol. i. p. 32, ed. 1759. He was born 14th of September, 1603, and died 10th of December, 1674. See the Preface to his Reports.

NOTE 27. p. 84.—"In republica ita est versatus ut semper optimarum partium et esset et existimaretur; neque tamen se civilibus fluctibus committeret, quod non magis eos in sua potestate existimabat esse, qui se iis dedissent quam qui maritimis jactarentur."—*Cor. Nep.*

NOTE 28. p. 85.—This appears from the following note in the State Trials: "The Lord Chancellor Finch told me that this argument was not Mr. Herne's, though he pronounced it, for he could not argue, but it was Mr. Hale's, afterward lord chief justice. And he said farther, that, being then a young lawyer, he stood behind Mr. Herne when he spake at the bar of the lords' house, and took notes of it." Vol. iv. p. 677. Though Herne could not argue, he could make a witty reply. When Sergeant Wilde in answer to the argument observed that they did not allege that any one crime of Laud's amounted to high treason, but that all his misdemeanors by way of accumulation made many grand treasons, Herne answered, "I crave you mercy, good Mr. Sergeant; I never understood before this time that two hundred couple of black rabbits would make a black horse."

NOTE 29. p. 86.—As to the efforts of the long parliament to effect a reform in the law, see Godwin's *Hist. of the Commons*, vol. iii. p. 573, and consult *Scobel*. It would seem, from what is said by Hale in his tract on the *Amendment of the Laws*, p. 274, that at this time he did not favour the project of a legal reform.

NOTE 30. p. 86.—Though the tender of amends has been introduced by statute in some particular cases, yet in general a party who has committed a wrongful act has no power of making compensation.

NOTE 31. p. 87.—Burnet adds, “If he made no declaration of acknowledging their authority, *which he never did.*” This is not correct, for as before-mentioned he took the engagement, and in fact the acceptance of office was a direct acknowledgment of their authority.

NOTE 32. p. 90.—Hale, and Thorpe, a Baron of the Exchequer, were the only judges who served in this parliament.—*Godwin*, vol. iv. p. 112.

NOTE 33. p. 92.—In an interview with Langton, Hale said, “that £1000 a year was a great deal for any common lawyer to get; and Mr. B. said that Mr. Winnington did make £2000 a year by it. My Lord answered that Mr. Winnington made great advantages by his city practice, but did not believe that he made so much of it.”—*Seward's Anecdotes*, vol. iv. p. 419.

NOTE 34. p. 94.—“Nothing has ever been found more vindictive and cruel than fanaticism acting under the influence of preternatural terror, and assuming to punish offences created by its own gloomy reveries. Under such circumstances it becomes itself the very demon whose agency it seeks to destroy. It loses sight of all the common principles of reason and of evidence. It sees nothing around it but victims for sacrifice. It hears nothing but the voice of its own vengeance. It believes nothing but what is monstrous and incredible. It conjures up every phantom of superstition, and shapes it to the living form of its own passions and phrensies. In short, insanity could hardly devise more refinements in barbarity, or profligacy execute them with more malignant coolness. In the wretched butcheries of those times (for so, in fact, they were) in which law and reason were equally set at defiance, we have shocking instances of unnatural conduct. We find parents accusing their children, children their parents, and wives their husbands, of a crime which must bring them to the scaffold. We find innocent persons misled by the hope of pardon, or wrought up to phrensy by the pretended sufferings of others, freely accusing themselves of the same crime. We find gross perjury practised to procure condemnations, sometimes for self-protection, and sometimes from utter recklessness of consequences. We find even religion itself made an instrument of vengeance. We find ministers of the gospel and judges of the land stimulating the work of persecution, until, at last, in its progress, its desolations reached their own fire-sides.”—*A Discourse pronounced at the Request of the Essex Historical Society in commemoration of the first settlement of Salem, Massachusetts, by Judge Story. Boston, U. S., 1828.*

NOTE 35. p. 98.—In another place the same writer gives a much more favourable character of Hale, describing him as “a most propitious judge to a poor man's cause; and before him if any leaning were, it was of his favour to that side that seemed to be oppressed.”—*North's Examen*, p. 530.

NOTE 36. p. 104.—“It is much to be lamented,” says Mr. Butler, “that he did not carry into execution his favourite object, a complete edition of the printed and MS. works of Sir Matthew Hale, an eternal monument of the profound knowledge, possessed by that great man, of the laws and constitution of this kingdom. They are distinguished by deep and extensive learning, patient investigation, method, and perspicuity. His language is always guarded, and he carefully avoids drawing any conclusion which his premises do not warrant. He deserved such an editor as Mr. Hargrave.”—*Reminiscences*, vol. i, p. 121.

NOTE 37. p. 105.—A more competent judge of the merits of this work could not have been found than Dr. Parr, who has thus spoken of a portion of it: "Much as I have been delighted and interested by the representations which Plato and Xenophon have given of their illustrious contemporary Socrates, I confess myself to have been equally delighted, and more delighted, and more interested, by Hale's *Account of the good Steward*. 'It is the very picture,' as says the Editor, "wherein, representing the good steward passing his account, it was impossible for him not to give a lively representation of himself;" and rarely do we meet with an instance in which any man speaks so unreservedly and so largely of his own opinions and actions with so much propriety. Upon every account of matter, style, and spirit, it is a work which deserves to be read every year by every 'light of the Church, and every sage of the Law' in Christendom."—*Characters of Fox*, vol. ii. p. 346.

NOTE 38. p. 109.—For an account of Sir Geoffrey Palmer, see the *Examen*.

NOTE 39. p. 121.—See *Selwyn's Nisi Prius*, title *Statute of Frauds*.

NOTE 40. p. 126.—"I have heard," says Roger North, "Sir John Churchill, a famous chancery practiser, say, that in his walk from Lincoln's Inn down to the Temple Hall, where, in the Lord Keeper Bridgman's time, causes and motions out of term were heard, he had taken £28 with breviate only for motions and defences for hastening and retarding hearings."—*Life of Lord Guilford*, vol. i. p. 425, new ed.

NOTE 41. p. 140.—The most copious details as to the life of Jefferies will be found in the memoirs of him by Mr. Woolrych. It is to be regretted, however, that the author has not always cited his authorities.

NOTE 42. p. 146.—The reader who is attached to the study of legal biography, will not forget the admirable portrait of Saunders in the *Life of the Lord Keeper Guilford*.

NOTE 43. p. 176.—Johnson says, The poem was ascribed to Somers. *Lives of the Poets*, vol. ii. p. 39. Sir Walter Scott, in his *Life of Dryden*, p. 257, says, that Lord Somers positively disavowed the poem. See also *Malone's Life of Dryden*, p. 116. "The gross ribaldry of it cannot be supposed to have flowed from so humane and polished a nature as Lord Somers."—*Horace Walpole's Works*, vol. i. p. 432.

NOTE 44. p. 206.—Mr. Booth was a Roman catholic. He is noticed by Mr. Butler in his *Historical Memoirs of the English Catholics*. "Mr. James Booth, acknowledged to be the father of the modern practice of conveyancing, was not the author of any work; but his written opinions were given at great length and are very elaborate. They are held in great esteem, and always mentioned at the bar and from the bench with great respect. The copies of them are numerous, and in the works entitled, *Printed Copies of Opinions of Eminent Counsel*, several of them found their way to the press." Vol. ii. p. 337.

INDEX TO VOLUME FIRST.

A.

ABBOTT, Archbishop, succeeds Bancroft in the see of Canterbury ; renews complaints against the judges, summoned before the king, 24.

Addison, his character of Lord Somers, 200.

America, Lord Mansfield's speech on, 220.

B.

Bacon, Sir Francis, his dislike to Coke ; appointed solicitor-general ; his letter to Coke, 19. Eager to obtain the office of attorney-general, 27. Pamphlet against Coke ; ambitious and crafty, 30. Created lord keeper ; tries to frustrate the restoration of Coke, 42.

Bancroft, Archbishop of Canterbury, differs from Coke respecting the royal authority over the judges, 22

Baxter, trial of, 148.

Blackstone's, Sir William, speech in defence of Lord Mansfield, 239.

Booth's character of Lord Jefferies, 144. Lord Mansfield's letter to him, 207.

Buckingham, Villiers Lord, Lord Coke declares him a grievance to the country, 49.

Burnet's account of the capture of Lord Jefferies, 164.

Busby, Dr., master of Westminster school, educates Lord Jefferies, 140.

C.

Camden, Lord, his speech against the law courts, 241.

Chatham, Lord, his speech on directing a jury ; his answer to Lord Mansfield, 240.

Clarendon, Lord, resolves to remodel the bench, 90.

Coke, Edward, born in the year 1550 ; called to the bar at an early age ; his first case that of Lord Crom-

well, 13. Chosen speaker ; employed against Essex and Southampton, 14. Violent temper displayed against Sir Walter Raleigh, 15. In 1606, conducts the prosecution against the parties implicated in the gunpowder conspiracy ; violence against the jesuits, 16. Appointed chief justice of the common pleas in 1606 ; his dislike to Bacon, 18. Maintains his character for integrity while on the bench ; parties appeal for protection to the courts of common law ; justifies himself and brothers for granting prohibitions ; in 1608, summoned before his majesty, 22. Declares his majesty not learned in the laws of his realm (see note 2) ; offends the king, 23. His name inserted in the reformed commission, 25. Refuses to sit ; his service to his country by stripping illegal courts of the sanction which a notion of their legality afforded, 25. Summoned to attend the council ; advised to maintain the power and prerogative of the king ; his opinion against the legality of the proclamation, 27. His influence over the minds of his brother judges, 29. Member of the privy council, 30. In 1613, supposed to have sanctioned the illegal taxation called a benevolence, 31. Declares that a free will grant to the queen is lawful ; bound to declare the law as it existed ; employed in the discovery of the murder of Sir Thomas Overbury ; examines 200 witnesses ; his industry and zeal forces an encomium from Bacon, 32. Coke and the judges reprimanded by the king ; independent spirit of Coke, 34. Dispute between the lord chancellor and Coke ; threatens the lord chancellor with a præmunire, 35. The court inflicts punishment on him ; removed from office ; his fortitude forsaken him ; Villiers supposed to have hastened his removal, 36. The negotiation of marriage between Sir

John Villiers and Coke's youngest daughter renewed, 41. Temper of his wife; she prefers a complaint against him in the star-chamber, 42. Reinstated at the council table, 44. 1620, represents Leskard in Cornwall; devotes himself to the service of his country; supports the cause of freedom and liberty; opposes the first bill against the corn laws, 44. Charged with concealing some examinations during the trial of the Earl of Somerset; sent to Ireland to inquire into the church establishment; honourable banishment, 48. Subject of grievances; the crown demands constant supplies; takes a conspicuous part; Buckingham a great grievance to the country; his advice prevails; subsidies refused, and the king dissolves the parliament, 49. Created sheriff of Buckingham; returned knight of the shire; a suit commenced against him by Lady Clare; commons levy taxes under the name of loans; his speech, 50. A bill to remedy various grievances; the famous bill of rights; donounces the favourite, 52. In 1628, retires from public life; his house searched for seditious papers; several MSS. carried away; dies, 1634, 53. Appearance, frame, and habits, 54. Unrivalled head of his profession; characters of Coke and Bacon compared, 57. His comment on Littleton, 59. Calvin's case; political cases, 59. His commentaries on ancient statutes; founder of the library of MSS. at Holkham, 60.

Colledge, his trial, 123.

Cowper, his verses on the destruction of Lord Mansfield's house, 248.

Cromwell, Lord, Coke employed against him, 18.

E.

Ellesmere, Chancellor, his dispute with Coke, 35.

Essex, Lord, Coke employed against, 14.

F.

Fox, Mr., opposes Lord Mansfield, 215.

G.

Grafton, Duke of, Lord Mansfield opposes, 225.

Guilford, Lord Keeper, his life by his brother; educated under a schoolmaster at Isleworth; a rigid presbyterian; taught to pray by the Spirit, 106. Entered St. John's College, Cambridge, in 1653; applies himself to mathematics and natural philosophy; in 1665 admitted a student of the Middle Temple; very intelligent; his character by his brother, 107. Called to the bar in 1661; much noticed by Sir Geoffrey Palmer; writ of error in the reign of Charles the First; highly regarded by the court; the benchers jealous of him; complains of them, 109. They are rebuked; he is elected a bencher in 1668; his discretion while on circuit; his reputation extends; one of the most rising men at Westminster; his life at this period, 110. Appointed solicitor-general, and receives the honour of knighthood; confines his practice to the court of chancery, 112. Marries a daughter of the Earl of Down; returned member for Lynn; becomes attorney-general, 117. Acquires a general knowledge of the French, Italian, Spanish, and Dutch languages; promoted chief justice of the common pleas; introduces the clause of *ac etiam* into the process of common pleas; offends the bar, 118. His reformation of abuses in the law; tries an old man for a wizard, 121. His conduct on the trial of Colledge; member of the privy council, 123. Appointed lord keeper; reforms many abuses of the court of chancery, and of the register's office, 125. His policy at court; his mode of life, 127. On the death of the king his prospects begin to fail, 129. Declines in favour; becomes depressed in spirits, 130. Resolves to quit the great seal; retires into the country; his disease increases, 131. Dies; his character by his brother and biographer, 132-3. Anecdotes concerning him, 137.

H.

Hale, Sir Matthew, born 1609; student of Oxford; plunges into dissipation; resolves to enter the Prince of Orange's army; deterred by an accident; induced to visit London, 79. Becomes acquainted with Sergeant Glanville; student of Lincoln's Inn in 1629; devotes sixteen hours a day to study; remarkable for his strict religious opinions and conduct, 81. Attracts the notice of Noy the attorney-general; secures the friendship of Selden and John Vaughan; studies mathematics and natural philosophy, 82. Called to the bar; his entrance into public life; proposes the life of Atticus to himself as a model; takes no part in politics; exerts himself to liberate his country; engages in state trials; counsel for the Earl of Strafford and Archbishop Laud; counsel for the Duke of Hamilton, Lords Holland, Capel, and Craven; threatened for appearing against the government; his reply, 84. Takes the Covenant in 1643; reduction of Oxford; tries to save it; takes the engagement to be true and faithful to the commonwealth; secures the confidence of parliament, 1651, 1652; the committee for the reformation of the law; his associates, 85. Raised to the bench; presides at the trials of criminals, 87. Displeasure at his decisions; his reply, 89. Trial of Penruddock; his refusal; 1684, elected one of the knights of the shire; proposes a resolution in parliament; refuses to act under the Protector Richard; returned one of the members for Oxford, 90. Knight of the shire in the parliament which recalled Charles II.; distinguishes himself by a motion; the motion opposed; Lord Clarendon resolves to remodel the bench; Hale declines to accept office; reasons for his refusal, 91. Appointed chief baron of the exchequer, 92. In 1665, his trial of two women indicted for witchcraft; his belief in witchcraft, 93. 1672, created chief justice of the court of exchequer; health declines; his writ of *habeas corpus*; retires from

office in 1675; dies, 1676; buried at Alderly; was twice married; his character as a judge, 94. His resolutions on being made chief baron; anecdotes of, 97. Character as a lawyer, 100. His work on the Pleas of the Crown; his Analysis of the civil part of our law; his treatise *De jure maris, de portubus maris*; his opinion on the amendment of the law; the mode explained by him, 101. His treatise on the Jurisdiction of the Lords' House of Parliament, published by Mr. Hargrave, in 1796; bequeaths a collection of MSS. to the library of Lincoln's Inn; a scholar; chief study, theology; his work on the Primitive Origination of Mankind; his Contemplations moral and divine, 104. His character in private life, 105.

Hamilton, Duke of, Sir Matthew Hale counsel for, 85.

Holmes, Major, story of, 151.

Hurd, Bishop, his character of Lord Mansfield, 257.

J.

Jefferies, Lord, born 1648; educated at St. Paul's free-school, and by Dr. Busby at Westminster; assumes the bar gown; ingratiates the citizens, 140. Appointed common sergeant, 1670; sacrifices his political principles; elected recorder, 1678; made solicitor; Welsh judge; chief justice of Chester; created a baronet, 1681, 141. His cruelty and injustice as recorder; an address for his removal; reprimanded; made to surrender his office; his character as judge, by Booth, 143. Case against the city of London; Rye House plot; trial of Lord Russell; appointed chief justice, and member of the privy seal, 1683; created a peer; trial of Algernon Sydney, 146. Trial of Baxter, 148. His conduct in the west of England; the king's letter to his brother, 150. Story of Major Holmes; execution of Mrs. Lisle, 151. Abuses discovered at Bristol, 156. Appointed lord chancellor, 158. His advice to re-establish the high commission court, 159. Opposes the calling a parlia-

ment, 160. Hated by the nation; disguises himself; is apprehended; committed to the Tower, 162. Dies there, 1689; his capture, Burnet's account of, 162. Personal character of, 164.

Jesuits, Coke's violence against, 16.

Junius's letters, 233.

L.

Laud, Archbishop, Selden a member of the committee against, 71.

Lovat, Lord, Lord Mansfield's speech on his trial, 208.

M.

Mansfield, Lord, William Murray, born 1704; king's scholar at Westminster; called to the bar, 1731; engaged in an appeal case, 203. Friendship of Pope and Murray; Pope alludes to him in two of his poems, 205. Letter to Booth, 206. First cause, 207. Presented with the freedom of Edinburgh; appointed solicitor-general, 1743; supports the administration; speech on the trial of Lord Lovat, 208. Loyalty doubted; an inquiry instituted; defence, 210. Pitt his political enemy; his invective against Murray, 211. Murray's speech on the Bavarian subsidy and regency bill; the style of Murray, Pitt, and Fox, as orators, compared by Walpole, 212. Letter of Lord Chesterfield to his son, 213. Pitt's sarcasm against Murray; his politics suspected by the Whigs; Pitt and Fox oppose his advancement; created attorney-general; useful to the Duke of Newcastle, 214. Appointed chief justice, and created a peer; great offers made him by the administration; his refusal of, 215. Member of the cabinet; his panegyric on the Honourable C. Yorke, 217-18. The seals placed in his hands; negotiates with Pitt and the Duke of Newcastle; seals withdrawn; speech on the American war; offered the seals; refusal of; speech on the habeas corpus act, 220. Bill introduced into the commons; he opposes it in the lords; his speech; fate of the bill, 221. Dis-

putes between England and America; supports the mother country; speech preserved; insists on virtual representation and election for parliament by favour of the crown; advises coercive measures, 223. Lord Shelburne's speech against; answer to, 225. Opposes the Duke of Grafton's measures as regarded America; liberal in matters concerning religion, 226. Statute against bribery; Quakers; his judgment respecting them; rules for the toleration act; traces their disabilities, 227. Trial of a Catholic priest; speech on the penal laws, 228. His speech in defence of religious liberty in 1767, 228. His speech in 1770; expresses his contempt of popularity, 231. Celebrated Middlesex election; the expulsion of Wilkes; Junius's Letters; prosecution of the publishers of, 232-3. Direction to the jury; justifies his direction, 234. Speech on the trial and outlawry of Wilkes, 236. Wilkes imprisoned; petitions the house for relief; his conduct much censured; defended by Blackstone, 239. Lord Chatham on directing a jury; Mansfield's defence; Lord Chatham's answer, 240. Lord Camden's speech against the law courts; Lord Mansfield defended by the Duke of Grafton, 241. Censured by his opponents; Lord Camden presses him to answer their questions; promises to do so; refuses to fix a day; betrays timidity, 242. In the riots of 1780, a sufferer; displeasure of the populace; supposed to favour the Catholics; personally ill-treated; house set fire to and destroyed, 243-4. Account of the transaction; narrowly escapes; the commons and treasury wish to compensate him; his refusal of, 247. Mr. Erskine's speech on the trial of Lord G. Gordon; alludes to the destruction of Lord Mansfield's house; verses on the occasion by Cowper, 248. Opposes several bills in parliament, 249. Becomes infirm; retires from office; his counsel present him with an address, 249-50. His answer, 251. Dies; buried in Westminster abbey; no issue; character by Bishop Hurd;

judicial character, 251-2-3. Conduct on the bench, 255. Political principles of, 258.

O.

Onslow, Denzil, his case, 171.
Oxford, proposed reduction of, 85.

P.

Penal laws, Lord Mansfield's speech on, 228.

Penruddock, his trial, 88.

Pitt, Lord Mansfield's political enemy; sarcasms against Lord Mansfield, 211.

Pope, his friendship for Lord Mansfield; alludes to him in two of his poems, 205.

Q.

Quakers, their affirmation disputed; their disabilities, 227.

R.

Raleigh, Sir Walter Coke displays violence of temper against; his dignified rebuke, 14.

Russell, Lord, his trial, 146.

S.

Scott, Sir Walter, republishes *Somer's Tracts*, 203.

Selden, John, born 1584; educated at the free-school at Chichester, 61. Enters the university of Oxford; called to the bar; compiles an early history of England; in 1610, publishes two tracts relative to English history, entitled "England's *Epinomis*," and "*Jani Anglorum Facies altera*;" also a short piece, entitled "*Duello*;" in 1614 publishes a work on titles of honour, one of the most valuable works in the English historical library, 62. In 1616, edits the treatise of Sir John Fortescue; addressed to Sir F. Bacon his "*Brief Discourse*" on the chancellorship of England; his tract on the Jews; his celebrated work "*De Diis Syriis Syn-*

tagmata duo;" and in 1618 publishes his "*History on Tithes*," 63. The church vindicate their rights; Selden summoned to appear before the king; promises to write an explanation; again summoned before the court of high commission, and compelled to subscribe an ignominious declaration, 64. The churchmen send him numerous answers; the king forbids him to reply, 65. Publishes three tracts, 66. Committed to prison; in 1623-4 returned member of parliament; adopts the popular side, 67. Committed to the Tower, and transferred to the Marshalsea; released upon bail; publishes several works; in 1636 he produces the "*Mare Clausum*," 69. Joins the proceedings against the Earl of Strafford; appointed a member of the committee against Archbishop Laud, 71. Receives a letter from Lord Falkland; his reply; Selden suspected of having joined in the conspiracy of Waller's plot; denied firmly by Waller; subscribes the Solemn League and Covenant in 1644; made keeper of the records in the Tower, 73. In 1640 publishes a learned work on the civil and religious polity of the Jews; produces several literary works in the years 1642, 1644, 1646, 1650, and 1653; elected master of Trinity Hall, which he declines, 74. Dies, 1654; leaves considerable wealth; bequeaths his library to the Bodleian, 75. His character, 76. Selden's "*Table Talk*" published after his death; its authenticity doubted; his friendship for Hale, 78.

Shelburne, Lord, his speech against Lord Mansfield, 225.

Sidney, Algernon, trial of, 146.

Somers, Lord, born 1650; enters Trinity College, Oxford, 1675; called to the bar, 1676; case of Denzil Onslow, 170. His tract on the history of succession, 172. His vindication of the last two parliaments, 173. His tract upon grand juries, 174. His classical pursuits; his translation of *Dido to Æneas*, and *Ariadne to Theseus*, 175. He translates the life of Alcibiades; removes to London,

- 1682 ; acquires reputation at the bar, 176. Employed as counsel for the bishops ; they object to his youth ; returned member for Worcester, 178. Appointed solicitor-general ; receives the honour of knighthood ; defends the revolution, 181. Appointed attorney-general, 1692 ; appointed lord keeper, 1692-3 ; created a peer, 1697, 181. One of the lords justices, 1695 : appointed lord chancellor, 1697 ; obnoxious to the Tories ; their efforts for his removal, and struggle for power, 182. Charges against him ; dismissed from office, 183. Is impeached, 1701, 185. Delivers his answer, 188. Is acquitted ; Swift's pamphlet in favour of the Whigs, 188. The king's letter to Lord Somers ; the parliament dissolved ; a new one called ; the Whig ministry revives, 190. Death of the king ; the Tories re-established ; devotes his time to science and literature ; introduces a statute ; takes part in the union with Scotland, 190. His speech on the Scottish privy council ; becomes a member of the administration, 1708 ; is displaced, 1710 ; his health declines ; dies, 1716 : never married, 191. His character by Addison, 194. By Swift ; to be distrusted, 200. As a lawyer ; his books and manuscripts ; in possession in the Hardwicke family ; destroyed by fire, 202. Somers's Tracts ; republished by Sir Walter Scott, 203.
- Somerset, Earl of, his trial, 48.
- Southampton, Lord, Coke employed against, 14.
- State trials, Sir Matthew Hale engaged in, 85.
- Stafford, Earl of, his trial ; Sir Matthew Hale's defence of, 85
- Swift, his pamphlet in favour of the Whigs, 188. His character of Lord Somers, 200.
- T.
- Tories, their dislike to Lord Somers ; their efforts for his removal, and struggle for power, 182.
- W.
- Waller's plot ; Selden suspected of having joined the conspiracy, 73.
- Walpole, Harace, his opinion of the comparative style of Fox, Pitt, and Murray, 213.
- Wilkes, his expulsion and imprisonment, 236.
- Y.
- Yorke, the Hon. C., Lord Mansfield's panegyric on, 218.

END OF VOL I.

