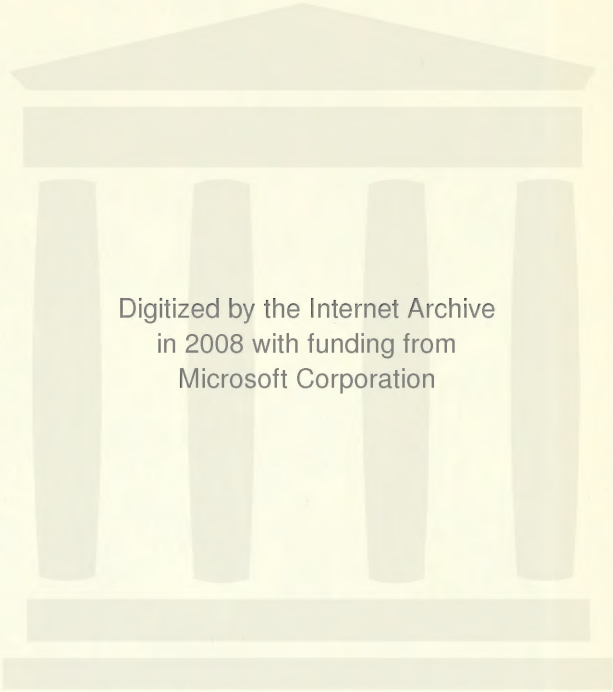

THE RETURN OF THE JEWS TO ENGLAND

BEING A CHAPTER IN THE HISTORY OF ENGLISH LAW

BY

H. S. Q. HENRIQUES, M.A., B.C.L.

OF THE NORTHERN CIRCUIT, BARRISTER-AT-LAW
FORMERLY SCHOLAR OF WORCESTER COLLEGE AND
VINERIAN SCHOLAR IN THE UNIVERSITY OF OXFORD

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OF THE LONDON COMMITTEE OF DEPUTIES
OF THE BRITISH JEWS

IN RECOGNITION OF THEIR EFFORTS TO EXTEND AND
SAFEGUARD THE LEGAL RIGHTS OF THEIR
CO-RELIGIONISTS

Da veniam scriptis, quorum non gloria nobis
Causa, sed utilitas officiumque, fuit.

Ov. *ex Ponto*, III. 9. 55.

PREFACE

THE following pages are reprinted from the *Jewish Quarterly Review* in which they appeared as the fourth, fifth, sixth, and seventh of a series of articles under the heading of the Jews and the English Law. The series is not yet concluded, but the section now published is complete in itself, and will, it is believed, be of some use to those engaged in the practical working out of legal problems concerning the Jews in this country.

H. S. Q. HENRIQUES.

4 KING'S BENCH WALK,
TEMPLE, E.C.
February, 1905.

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THE RETURN OF THE JEWS TO ENGLAND

I.

Date of the return of the Jews to England.

For a period of more than three and a half centuries Jews were not permitted to live in England, nor is the date when they were first allowed to settle here by any means certain. However, in considering the course of legislation, so far as it concerns the Jews, the time of the legal recognition of their resettlement is of great importance, and was much discussed in the recent case of *De Wilton* v. *Montefiore*, where Mr. Justice, now Lord Justice Stirling, decided it to be November 13, 1685. The words of the learned judge are: "The history of the Jews in this country, so far as it is material to the present question, is given in a note to the report of *Lindo* v. *Belisario*[1]. After stating that the Jews appeared to have been brought here in considerable numbers by William I from Rouen in 1070, and that they lived as bondsmen of the kings, and under special protection, regulations, and exemptions, till they were banished in 1290, the note proceeds as follows: 'They did not appear

[1] 1 Hag., *Cons.* 216.

again in this kingdom as a distinct body[1] till the time of Charles II. They had petitioned in 1648 to be allowed to return and enjoy their religion, and the question was much agitated but nothing was done. On the Restoration, Charles II promised them protection and the use of their religion, and an order of Council issued to that effect.' The order is given in the Appendix, p. 3. It is dated November 13, 1685, and it provides as follows: 'Upon reading this day at the board the petition of Joseph Henriques, Abraham Delivera, and Aaron Pacheco, overseers of the Jewish synagogue, and the rest of the Jewish nation, setting forth that his late Majesty, of blessed memory, having found the petitioners and their nation ever faithful to the government, and ready to serve him on all occasions, was pleased in February, 1673, to signify his royal pleasure, that whilst they continued quiet, true, and faithful to the government, they should enjoy the liberty and profession of their religion, which they accordingly peaceably exercised till Michaelmas Term last; that several writs out of the King's Bench, on the statute made in the twenty-third year of Queen Elizabeth, had been taken out against forty-eight of the Jewish nation by one Thomas Beaumont, and thirty-seven of them arrested thereupon, as they were following their occasions on the Royal Exchange, to the great prejudice of their reputation both here and abroad; and therefore praying his Majesty to permit and suffer them, as heretofore, to have the benefit and free exercise of their religion during their good behaviour towards his Majesty's government. His Majesty having taken this matter into his royal consideration, was pleased to order, and it is hereby accordingly ordered, that his Majesty's Attorney-General do stop all the said proceedings at law against the petitioners; his Majesty's intention being that they should not be troubled upon

[1] By these words Dr. Haggard probably means having a synagogue and communal organization and openly practising their religion.

this account, but quietly enjoy the free exercise of their religion, whilst they behave themselves dutifully and obediently to his government.' From that time forward the Jews appear to have been permitted to reside in England and to practise the rites of their religion[1]."

Popular, historical, and legal theories.

This date, November 13, 1685, in the reign of James II, is inconsistent with the popular theory that the Jews came over during the Protectorate of Oliver Cromwell in the wake of their great Rabbi, Menasseh Ben Israel, in the year 1655, and have been legally settled here ever since, nor is it much less at variance with the view of the historians, that the Jews obtained a legal settlement in England sometime during the reign of Charles II, though the precise date is not given. The true date is of some importance when the course of subsequent legislation as it affects the Jews is placed under review; and as much may be said on behalf of either theory, and as the legal theory is not necessarily correct, it will not be out of place to summarize the evidence upon which the rival theories are based, so that the reader may be enabled to form an impartial judgment on the subject under discussion. Here it will be necessary to travel outside the contents of the statute book and the law reports, and to extract, though it is to be hoped not at undue length, certain entries in the public records. It must not of course be forgotten that an actual settlement is one thing, and the legal recognition of it another. The former must necessarily precede the latter. The date adopted in Mr. Justice Stirling's judgment is therefore a late one, and in reality marks the last occasion on which a serious attempt was made in due form of law to prevent the Jews who had already an organized community from continuing their residence in the country.

Early history of the Jews in England. Saxon times.

In order to understand the conditions for the solution of this problem, it is necessary to glance at the previous

[1] Law Reports [1900], 2 Ch. 489.

history of the Jews in this country. There can be little doubt that from the earliest times, that is, ever since England may be said to have come within the pale of civilization, Jews, prompted by that commercial instinct which has always been their characteristic, came here for the purposes of trade, and reaped the profits to be derived from it, and even settled here, though probably not in such considerable numbers as to establish distinct communities of their own until the connexion between England and the continent of Europe became closer by reason of the Norman Conquest and the events immediately preceding it. Therefore though there are at the present day few or no traces remaining of any Jewish settlements in England prior to the time of the Norman kings, it is a mistake, founded upon a passage in Prynne's *Demurrer*, to assert that the residence of Jews in England was illegal before that time. Prynne's words[1] are: "I have deduced their introduction into England only from William surnamed the Conqueror, because I finde not the least mention of them in any of our British or Saxon Histories, Councils, Synods, Canons, which doubtlesse would have mentioned them, and made some strict Laws or Canons, against their Jewish as well as against Pagan Superstitions, had they exercised them here, as they would have done as well as in Spain, and other places, had they resided here." But apart from Edward the Confessor's law, the authenticity of which Prynne disputes, there are contained in the *Liber Poenitentialis* of Theodore, who was Archbishop of Canterbury from 668 to 690 A. D., and the *Excerptiones* of Ecbert, who was Archbishop of York from 735 to 766 A. D., a not inconsiderable number of canons and regulations relating to the Jews: e. g. it was provided that a Christian woman committing fornication with a Jew should undergo severer penalties than if guilty of the same offence with a Christian[2];

[1] Prynne's *Demurrer*, part I, p. 5.
[2] Theod. *Lib. P.*, XVI, § 35.

and that if any celebrated the feast of Passover with the Jews, he should be expelled from every church[1]; and that if any Christian received unleavened bread or any food or drink from the Jews, he should do penance on bread and water for forty days[2]; and that if a Christian were to sell another Christian, although his own slave, to Jews, he was to suffer severe penalties until he redeemed him[3]. Again, mass was not to be celebrated in any place where the bodies of Jews or infidels were buried[4], and no Christian was to turn Jew or take part in Jewish feasts[5].

Legal status of the Jews after the Norman Conquest.

However this may be, there can be no doubt that after the Norman Conquest separate Jewish communities were to be found in many of the more important towns. The Jews, or "Iudaei," as they were called, living in these communities, possessed a separate and distinct legal status. This status was very similar to that of the villein, with this distinction, that the Jew was not *ascriptus glebae*, and was in every case subject to the king, and not to the lord of the manor, as the villein was. It is well described in the twenty-fifth law of Edward the Confessor, which may be translated as follows: "All Jews, in whatever part of the kingdom they may be, are under the liege protection and guardianship of the king; nor can any of them attach himself to any rich man without the king's licence, because the Jews themselves and all their chattels are the king's. But if any one detains them or their chattels, the king may claim them as his own[6]." Such a status was consistent

[1] Theod. *Lib. P.*, XXX, § 4.
[2] Ibid., XLII, § 1.
[3] Ibid., § 4; Ecb. *Ex.* 150.
[4] Theod. *Lib. P.*, XLVII, § 1.
[5] Ecb. *Ex.* 147.
[6] As to this law Prynne says: "I cannot but reject it as counterfeit, and esteem it rather a Declaration of the Jews' condition in England in Hoveden's time (inserted by him, as well as some other things of punier date, amongst these Laws) rather than any Law of, or in the Confessor's days, wherein I can find no evidence of any Jews' residence here, but only this interpolation and forged Law, which Mr. Selden wholly omits in his Collection of his Laws." Hoveden lived in the reign of Henry II, and probably died in 1201 A.D.; and though Prynne thinks the law

with a large amount of freedom: as against all the king's subjects they were free and possessed of all the rights of freemen, but their persons and property were under the absolute control and disposition of the king, whose exactions were only restricted by that prudence which warns the owner not to slay the goose that lays the golden eggs.

Exchequer of the Jews.

So important a source of revenue did the Jews become that a special court, the Exchequer of the Jews, was established in the reign of Richard I; this court had jurisdiction in all causes whether civil or criminal in which Jews were implicated; though purely civil cases in which both parties were Jews were frequently, if not generally, remitted to a purely Jewish tribunal, to be decided by Jewish and not by English law. The Jews were not popular; they were the licensed money-lenders of the land—in this trade they had an absolute monopoly[1]—

Statutes restricting the Jews' civil rights.

and the creditor is rarely beloved by his debtor. The barons looked with jealous eyes on the Jews' wide privileges in relation to their fellow men; but it was not till towards the close of Henry III's long reign that their civil rights were materially abridged by statute, though they were always subject to such restrictions as the king in his discretion might think fit to impose. In the year 1271 a statute[2] was enacted prohibiting Jews from holding lands in fee (the houses they then possessed being expressly excepted), and also from having Christian servants, while in the reign of Edward I, about the year 1275 the famous statute *de la Jeuerie* or *de Iuduismo* was passed, which forbade usury to the Jews, and enjoined that every Jew should wear a yellow badge on his outer garment and pay

spurious, he admits that it correctly represents the legal status of the Jews in the latter part of the twelfth century. See Bracton, f. 386 b. The law is now accepted as genuine, and is included in the Ancient Laws and Institutes of England printed under the direction of the Commissioners on the Public Records of the Kingdom in 1840.

[1] Usury was most strictly forbidden to Christians as being contrary to the law of God and of the land. See Co. 3 Inst., p. 251.

[2] Rymer's *Foedera*, I, 489.

a yearly tax of threepence to the king; on the other hand, the Jews were to be under the king's protection, and might gain their living by lawful merchandise and labour, and might buy houses in the cities where they lived and hold them in chief of the king, and might take farms or land for the term of ten years or less. But the licence to take lands to farm was to endure for only fifteen years[1]. Such was the position of the Jews before their final departure from the country in 1290[2]. This event is accurately described in Stubbs's *Constitutional History*: "At the same time (as the July Parliament) by an act done by himself in his private council" ("per regem et secretum concilium," Hemingb. II, 20) "he banished the Jews from England: the safe-conduct granted them on their departure is dated on the 27th of July[3]." These safe-conducts are the most important documents still in existence relating to this event. The one referred to by Bishop Stubbs is addressed to all the bailiffs, barons, and shipowners of the Cinque Ports, commanding them that, inasmuch as a certain time has been fixed for all the Jews to quit the realm, to give them a safe passage for themselves, their wives, children, and chattels, and to charge them no more than the ordinary and accustomed freight, and enjoining them under pain of severe forfeiture from injuring or, so far as in them lay, allowing others to injure or molest any of the Jews in property or person[4].

Banishment of the Jews.

[1] *Statutes of the Realm*, I, 221.

[2] For further detail the reader is referred to Pollock and Maitland's *History of English Law before the time of Edward I*, vol. I, pp. 451–459, and Gneist's *Constitutional History*, p. 228 note, and also *The Expulsion of the Jews from England in* 1290, by B. L. Abrahams, and the Introduction to the Jewish Historical and Selden Societies' edition of *Select Pleas*, Starrs, &c., by J. M. Rigg, which has appeared while these pages were in the press.

[3] Stubbs, *Const. Hist.*, II, 126.

[4] Rymer, *Foed.*, vol. I, part 2, p. 736. Coke gives from the Close Rolls a similar writ addressed to the sheriff of G. and dated July 18, 1290. Inst., II, p. 507, and see Tovey's *Ang. Iudaica*, p. 241, and at p. 232 the entry in the Red Book of the Exchequer is given.

The decree of banishment itself is no longer extant, but Dr. C. Gross has discovered a document which throws much light upon it. This document is in the form of a writ issued from King's Clipstone on November 5, 1290, and addressed to the Treasurer and Barons of the Exchequer. It recites that though by the statute passed at Westminster (the statute *de Iudaismo*) the Jews had been forbidden to take usury of any Christian, nevertheless they still exacted interest under the name of "courtesy[1]," and thereby oppressed the people; wherefore on account of their crimes and in honour of Christ, the king had compelled them to quit the realm as being perjured, and proceeds to order that no penalty or interest should be exacted in respect of debts due to the Jews, and that the debtors should pay only the principal moneys they had actually received from the Jews[2]. The exile of the Jews did not annul debts due to them, but such debts became payable to the king, whose bondmen the Jews had been. They had been ordered to leave the kingdom before a fixed time, which is not stated in any of the documents, but is generally believed to be the first of November[3]; the writ in question was therefore issued immediately after their final departure.

Effect of the banishment on the Revenue of the King.

In consideration of having issued this decree of banishment, the Parliament which was then sitting, composed as it was in a great measure of landowners to whom Jewish usury had been a heavy burden, granted the king a fifteenth "pro expulsione Iudaeorum." But the transaction was not a very profitable one to the crown, for by it a plenteous

[1] The original word is *curialitas*, which is quite distinct from the "curialitas Angliae" or interest which the husband has in his wife's freehold land. It probably does not occur elsewhere in this sense in mediaeval jurisprudence, and is not to be found among the terms explained in "Termes de la ley." It is used in the *Corpus iuris*, but with a very different meaning. *Novell. Valentinian.* tit. 3, § 3.

[2] Add. MSS., Mus. Brit. 32,085, fol. 122, *Publications of the Anglo-Jewish Historical Exhibition*, I, 229; Rigg, *Select Pleas*, pp. xl–xlii.

[3] Mathew of Westminster, a contemporary chronicler, says the king had allowed them to stay till the Feast of All Saints (Tovey, p. 233).

source of the revenue was for ever cut off, and that at a time when the king was expected to defray the ordinary expenses of the state out of his hereditary revenues, and subsidies were only voted by the Parliament on special and extraordinary occasions. Yet in the year 1290 this source could not be expected to yield as rich a harvest as it had done in former days. The prohibition of usury in the third year of Edward I, even if occasionally evaded, had greatly diminished the resources of the Jews, and the licence to take lands to farm, which was to endure for only fifteen years, was now about to expire, and thus another road to the acquisition of wealth was closed to them. Had they been allowed to remain, the Jews hampered by these restrictions imposed by Act of Parliament, and therefore removable only by Act of Parliament, would no longer have been as profitable to the king as they had been in former times, when, in the words of Lord Coke, "a great revenue by reason of the usury of the Jews came to the crown; for between the fiftieth year of Henry III and the second year of Edward I, which was not above seven years complete, there was paid into the king's coffers four hundred and twenty thousand pounds of and for the usury of the Jews[1]." This is a truly enormous sum, having regard to the value of money and the total wealth of the country in the thirteenth century. But after the statute *de Iudaismo* such rich harvests were no longer to be reaped, and in all probability this knowledge had considerable influence on the king's mind, in addition to the proffered gift of a fifteenth by the Parliament and the knowledge that a great part of the property still remaining to the Jews would come to him by way of escheats[2].

[1] 3 Inst., 151.

[2] Madox, *History of the Exchequer*, p. 261. See note r. "MCCLXXXX electi sunt Iudaei ab Anglia cum facultatibus suis; salvis cartis Christianorum penes Dominum Regem residentibus," ex Cod. Vet. MS. (*Annals of the Church of St. Augustine at Canterbury*), 4. 7, p. 102. At p. 221 Mr. Madox says: "The King of England was wont to draw a considerable Revenue from the Jews residing in this Realm: namely, by Tallages, by Fines

Theories concerning the banishment. (1) Lord Coke's.

Looking back over the gulf of centuries, this event can be descried with sufficient clearness, but the loss of the proclamation of banishment has left it wrapped in some obscurity that has given rise to several erroneous theories that should here be mentioned. Lord Coke says that there was no banishment of the Jews, but only a voluntary exodus in consequence of the suppression of usury. "Our noble King Edward I and his father Henry III before him sought by divers Acts and Ordinances to use some mean and moderation herein, but in the end it was found that there was no mean in mischief, and as Seneca saith, 'Res profecto stulta est nequitiae modus.' And therefore King Edward I, as this Act" (the statute *de Iudaismo*) "saith, in the honour of God, and for the common profit of his people, without all respect (in respect of these) of the filling of his own coffers, did ordain, that no Jew from henceforth should make any bargain or contract for usury, nor upon any former contract should take any usury, from the Feast of Saint Edward then last past; so in effect all Jewish usury was forbidden."

"This Law struck at the root of this pestilent weed, for hereby usury itself was forbidden; and thereupon the cruel Jews thirsting after wicked gain, to the number of

relating to Law-proceedings, by Amerciaments imposed on them for Misdemeanour, and by the Fines, Ransoms and Compositions, which they were forced to pay, for having the King's Benevolence, for Protection, for Licence to trade and negotiate, for Discharges from Imprisonment, and the like. He would tallage the whole Community or Body of them at Pleasure; and make them answer the Tallages for one another. If they made Default at the Atterminations or Days of Payment prefixed to them, they were charged with great Fines or Compositions for it. In Sum, the King seemed to be absolute Lord of their Estates and Effects, and of the Persons of them, their Wives and Children. 'Tis true, he let them enjoy their Trade and bequests; but they seemed to trade and acquire for his Profit as well as their own: for at one Time or other, their Fortunes or great part of them came into his Coffers. They were a numerous Body (being settled in many, especially the great Towns of the Realm): and by Traffic and taking of usuries and mortgages of the King's subjects, they became very wealthy both in Money and Land. But as they fleeced the subjects of the Realm, so the King fleeced them."

15,060 departed out of this Realm into foreign parts, where they might use their Jewish trade of usury, and from that time that Nation never returned again into this Realm. Some are of opinion (and so it is said in some of our Histories) that it was decreed by authority of Parliament, That the usurious Jews should be banished out of the Realm; but the truth is, that their Usury was banished by this Act of Parliament, and that was the cause that they banished themselves into forein Countries, where they might live by their Usury; and for that they were odious both to God and man, that they might passe out of the Realm in safety, they made Petition to the King, that a certain day might be prefixed to them to depart the Realm, to the end that they might have the King's Writ to his Sherifes for their safe conduct, and that no injury, molestation, damage or grievance be offered to them in the mean time[1]."

Coke's error is due to his post-dating the statute *de Iudaismo*, and attributing it to the Parliament of 1290. It is still placed among the statutes of uncertain date by the commissioners responsible for the statutes of the realm. In the Harleian MS. it immediately succeeds the Statute of Westminster I, passed in the third year of Edward I, and in the document discovered by Dr. Gross at the British Museum it is stated to have been enacted "in quindena Sancti Michaelis anno regni nostri tertio"; so that the date is now placed beyond all doubt[2]. The basis of Coke's theory is thus destroyed.

(2) Prynne's.

Prynne, on the other hand, is very positive that the banishment was effected by Act of Parliament; his words are: "This their banishment was by the unanimous desire, Judgment, Edict, and Decree both of the King and his Parliament; and not by the King alone: and this Banishment, total, of them all, and likewise final, never to return

[1] 2 Inst., 507.

[2] Add. MSS., Mus. Brit., 32,085, fol. 122. Prynne in his *Demurrer*, at p. 34, places the statute in the year 1287, but in his *Records*, vol. III, p. 153, he attributes it to 4 Edw. I.

into England. Which Edict and Decree not now extant in our Parliament Rolls (many of which are lost) nor printed Statutes; yet it is mentioned by all these Authorities[1]." Prynne here alludes to different chroniclers, extracts from whose works he had already given; but these extracts when carefully examined do not bear out his assertion.

This view held by Prynne was undoubtedly very widely spread, and at one time held by both the supporters and opponents of the Jews' readmission; for the first petition presented on behalf of the Jews to the Council of War on Jan. 5, 164$\frac{8}{9}$, some seven years before Prynne wrote his *Demurrer*, is entitled, "The petition of the Jews for the repealing of the Act of Parliament for their Banishment out of England," and speaks of the instrument of expulsion as "the inhumane, cruel statute of banishment." But those responsible for this petition seem to have been but ill acquainted with English history and jurisprudence, for the banishment is said to have taken place in the reign of Richard II[2]. Prynne has the candour and honesty to admit that the alleged statute was no longer in existence, but "B. B.," the anonymous author of *A Historical and Law Treatise against the Jews and Judaism*, a virulent diatribe against the Jews, published in 1703, which was so popular with the anti-Semites here that it was reprinted in 1721 and again in 1753 as the second edition—perceiving the weakness of this theory on account of the total disappearance of the alleged statute, unblushingly asserts that it is to be seen on the Roll of Parliament in the Tower. From internal evidence it is clear that this writer had carefully studied Prynne's *Demurrer*, and it is impossible to escape the conclusion that his statement is a wilful falsehood, made in reliance on the improbability of any of his readers taking the pains to verify it. Prynne was above such a statement as this, but feeling that the authorities he had cited were not conclusive, and fearing

[1] *Demurrer*, p. 49.

[2] Hag., *Cons. Cas.*, I, Ap. No. 1.

that the term "groundless conceit," which he had applied to Sir Edward Coke's theory, might with equal justice be applied to his own, he concludes his argument with the statement that by the fundamental laws of England, "No Freemen and Natives of England can be justly banished or exiled out of it but by special judgment of Parliament, or by Act of Parliament," as authority for which he cites Magna Charta, c. 29, and a large number of Acts of Parliament banishing individuals at various times. Therefore, he says, the Jews being banished by Act of Parliament "(never since repealed or reversed) neither may nor can by Law be readmitted, reduced into England again, but by common consent and Act of Parliament: which I conceive they will never be able to obtain[1]." It can hardly be denied that Prynne was carried away with excessive zeal to make good the proposition, to prove which he had sat down to write his *Demurrer*. He had, as he says in his "Preface to the Christian Reader," been asked by Mr. Nye, the minister, "whether there were any law of England against bringing in the Jews amongst us? for the Lawyers had newly delivered their opinions, there was no law against it." To which he had answered "That the Jews were in the year 1290 all banished out of England, by Judgment and Edict of the King and Parliament, as a great Grievance, never to return again: for which the Commons gave the King the fifteenth part of their Moveables: and therefore being thus banished by Parliament, they could not now by the Laws of England, be brought in again, without a special Act of Parliament, which I would make good for Law." The conference to consider the demands of Menasseh ben Israel was still sitting at Whitehall, and party feeling ran high; otherwise so sound a lawyer as Prynne would not have overlooked the fact that the famous clause of Magna Charta applies only to freemen, and that in the year 1290 no Jew could claim to be a *liber homo*. As has been already shown, the Jews

[1] *Demurrer*, p. 50.

were serfs or villeins, and by the statute *de Iudaismo* passed only fifteen years before, the privilege had been granted to them of not being challenged or troubled in any court, except in the court of the King, "whose Bondmen they are" ("ky serfs yl sunt"). The Jews consequently had no right to the benefit of Magna Charta or any other fundamental law of the land that applied to freemen only, and could accordingly be banished, as in fact they were, by decree of the King alone. There is yet a third theory of the expulsion which need be but briefly mentioned here. It is that sentence of exile was passed upon the Jews by a synod held in London. This does not rest on very strong authority, and it is certain that the clergy, whatever their wishes might have been, had no legal power to effect the expulsion of the Jews[1].

(3) That the expulsion was by a synod held in London.

It has been lately suggested that in spite of the decree of banishment and the severe penalties which disobedience to that decree would undoubtedly have entailed, some Jews still remained in this country. The suggestion is based upon little trustworthy evidence, and does not call for any comment here; for if any did remain they were very soon amalgamated with and became indistinguishable from the general mass of the population. Then, again, as the centuries rolled on individual Jews from time to time can be proved to have landed on our shores, but they never attempted to establish a Jewish community here or to celebrate their worship publicly in this country; they were treated as other foreigners and subject to the laws which governed aliens[2]. It is therefore true to say that for a period of more than three centuries English history is a blank so far as the Jews are concerned; but in that long interval occurred two events of great importance in relation to the return of the Jews here. Those events

Period between the banishment and return of the Jews.

[1] See Wilkins's *Concilia*, II, p. 180; Pike, *History of Crime*, vol. I, p. 465.

[2] See "The Middle Age of Anglo-Jewish History," by L. Wolf, in *Publications of the Anglo-Jewish Historical Exhibition*, vol. I, and other works there cited.

were the extinction of villenage and the reformation of the English Church.

The disappearance of villenage is one of those great changes which has been brought about without the intervention of the legislature. To a great extent this result was effected by the attitude of the courts of common law, which admitted every presumption in favour of liberty, and in practice made it difficult and finally impossible to sustain a claim to a villein, if it was seriously contested. The last reported case in which villenage was pleaded was tried in Hilary Term, 1617 (15 Ja. I), and, as in numerous other instances, the claim was not upheld[1]. From the 15th of James I, says Mr. Hargrave in his learned argument in Sommersett's case, "the claim of villenage has not been heard of in our courts of justice; and nothing can be more notorious, than that the race of persons, who were once the objects of it, was about that time completely worn out by the continual and united operation of deaths and manumissions[2]." Had the case of the Jews occurred to him, he might have added banishment also. Villenage had thus become obsolete, but the laws and rules relating to villenage had never been repealed, and by these laws the sovereign as much as the private citizen was bound; therefore if Queen Elizabeth had laid claim to Rodrigo Lopez as her villein, it would have been necessary for her to prove either that Lopez had made confession that he was her villein in a court of record, or that he and his ancestors had been villeins to herself and her predecessors time out of memory—that is to say, for a period of sixty years, as limited by 32 Hen. VIII, cap. 2. Such proof would obviously not have been forthcoming, and no such claim was ever made by any of our sovereigns against those Jews who from time to time landed on our shores. But if they were not villeins then the disabling statutes enacted before

The disappearance of villenage.

[1] Pigg *v.* Caley, Noy 27.

[2] J. O. Howell's *State Trials*, p. 41.

the expulsion did not apply to those Jews who might return and reside here. The disabling acts no doubt applied to "Iudaei" or Jews, nor were any exceptions made in the statutes, but the Jews who came back to England in the seventeenth century were free men; they were no longer villeins or quasi-villeins, and were not "Iudaei" within the meaning of the Acts. This principle of interpretation is well known to English law, and after much discussion and considerable disagreement among our greatest judges as to its application, was acted on in a recent case in which it was held that the enclosure at Kempton Park was not a place within the meaning of the Betting Act[1]. In that case reliance had to be placed on the preamble of the Act, and also upon extrinsic evidence of the circumstances existing at the time when the Act was passed, and it was the necessity of going outside the words of the statute itself which occasioned the difference of opinion among the judges; but in the very body of the statute *de Iudaismo*, the Jews, as has been already pointed out, are repeatedly called the King's bondmen, and therefore this difficulty would not arise. Certain it is that many generations of Jews lived in this country in open and flagrant violation of these obsolete statutes. They did not wear yellow badges on their outer garments; they employed Christian servants, and in some cases they did put out money to usury and held lands and houses; and yet no attempt was ever made to enforce the laws prohibiting such things, and that though, as contemporary pamphlets prove, there were undoubtedly many persons willing, nay eager, to annoy and injure the Jews had it been in their power. And yet in the year 1846 it was thought advisable to solemnly repeal by Act of Parliament "the Statute or Ordinance of the fifty-fourth and fifty-fifth years of the reign of King Henry the Third, and the Statute or Ordinance commonly called *Statutum*

[1] Powell *v.* The Kempton Park Racecourse Company, Limited, [1897] 2 Q. B., 242, and [1899] A. C., 143.

de Iudaismo[1]." If the view here stated is correct this was a work of supererogation, but in any case if there ever existed any doubt after the resettlement as to the absolute freedom and equality of the Jews with their fellow citizens before the law, it has now been removed.

Consequences of the Reformation.

Much as the decay of villenage might have facilitated the return of the Jews by rendering the former disabling enactments no longer applicable to them, the various laws passed in consequence of the Reformation of the English Church and the events which immediately preceded and led up to it were no less effective in retarding a resettlement. These laws may be classified under two heads: (1) those constituting the proclamation, teaching, or propagation of doctrines at variance or inconsistent with the tenets held for the time being by the Church as by law established, a criminal offence—the law of heresy; (2) those making criminal, failure to attend the service of the Church as by law established, and also the attendance at services other than those of the Established Church—the law of uniformity, to a great extent embodied in the statutes known as the laws against recusants.

The law of Heresy.

At the time of the expulsion of the Jews, and indeed until the days of Wycliffe and the rise of the Lollards nearly a century afterwards, heresy was almost unknown in England; and if there was any legal machinery other than excommunication and ecclesiastical censure, by which such a crime could be punished, there were but few occasions when it was brought into operation, and the fact that Wycliffe and his earlier disciples escaped all temporal penalties goes far to show that though heresy even in those times was regarded as a heinous crime, there was no regular procedure by which those tainted with it could be brought to justice and punished. In any case the Jews, who had lived here as the King's villeins and under the special protection of the King, had not been liable to be charged with heresy; but if they converted a Christian

[1] 9 & 10 Vict. cap. 59.

to their religion, the apostate would have been treated with extreme rigour. Perhaps the best-authenticated case of capital punishment for heresy before the year 1400 A.D. is that of a deacon who in the year 1222, because he had become a Jew for the love of a Jewess ("pro quadam Judaea"), was degraded by Stephen Langton, Archbishop of Canterbury, at a provincial council held at Oxford, and then delivered over to the sheriff as representing the civil power and forthwith burned[1]. There is grave doubt as to the legality of the latter part of this punishment; there seems to have been no sort of judicial proceeding of any kind when once the unfortunate cleric was handed over to the civil power; nor can it be determined under what precise enactment the capital punishment was ordered, and the sheriff who carried it out was Fawkes of Breauté, a man notorious for high-handed and lawless acts of violence. The infliction of the death penalty for heresy was, however, common on the continent, and this particular case (the offence being a flagrant one), though viewed with surprise by contemporaries, seems to have met with general approval. It cannot, however, be taken as an authority that heresy would in ordinary cases be visited with severe temporal punishment. The impotence of the law is made manifest by the complete failure of the measures taken against Wycliffe and his followers, and in May of the year 1382, when the Wycliffite controversy was at its height, the clergy actually managed to fraudulently introduce into the statute book an ordinance enabling the arrest and imprisonment of heretics; but in October of the same year the Commons represented to the King that the pretended statute had never received their assent and it was accordingly repealed[2]. Wycliffe, the arch-heretic,

[1] Bracton, f. 124, vol. II, p. 300. Ann. Wykes, p. 63. Matthew Paris, vol. III, p. 71, says he was hanged. See Maitland, *Canon Law in the Church of England*, pp. 158–179.

[2] The statute is 5 Rich. II, stat. 2, cap. 5. See *Statutes of the Realm*, II, p. 25; *Rot. Parl.* III, 125 and 141; "The case of Heresy," 12 *Rep.* 56.

was allowed to die a natural death, and it was not until the beginning of the reign of Henry IV that a thoroughly reliable weapon for the suppression of heresy was placed in the hands of the Church. In the year 1401 the famous statute *de Haeretico* was passed; it enacted that no one should preach or write contrary to the Catholic faith or determination of holy church, or hold any conventicles or schools for teaching such doctrines, or favour or maintain any such teacher, and it empowered the diocesan to cause any one "defamed or evidently suspected" of being guilty of any of the offences enumerated in the statute to be arrested and detained in prison until he should canonically purge himself and abjure his heretical and erroneous opinions. The diocesan was to openly and judicially proceed against him according to the canonical decrees within three months of the arrest, and if he were convicted he was to be imprisoned and fined after the "manner and quality of the offence" at the discretion of the diocesan, but if he should refuse to abjure or after abjuration should relapse, so that according to the holy canons he ought to be left to the secular court, then he is to be handed over to the sheriff or other proper officer who shall receive him and "before the People in a high place do to be burnt[1]." Before the statute was promulgated, and while the Parliament which passed it was still sitting, William Sawtre was pronounced by Arundel, Archbishop of Canterbury, in the provincial council, a relapsed heretic, degraded and committed to the secular court. A writ was accordingly issued by the King in Parliament ordering the heretic to be burned[2], and the sentence was

The Act declaring 5 Rich. II, stat. 2, cap. 5 void was omitted (it is said through the craft of the clergy) from the published editions of the statutes; therefore in the days of the Reformation 5 Rich. II, stat. 2, cap. 5 was treated as still subsisting, but it could hardly have been acted upon until the action of the House of Commons had been forgotten. It was finally repealed by the Statute Law Revision Act, 1863.

[1] 2 Henry IV, c. 15. *Statutes of the Realm*, II, p. 125.

[2] A copy of the writ is to be found in *Rot. Parl.* III, 459.

carried out. The writ is dated February 26, though the Parliament which passed the statute *de Haeretico* did not break up until March 10, and this fact is the main basis of the argument that after the statute *de Haeretico* had been formally repealed, heretics might still be committed to the flames because the writ *de Haeretico comburendo* could issue at common law independently of the statute. Fourteen years later it was thought right to still further increase the severity of the law. 2 Hen. V, stat. 1, cap. 7 provides that the chancellor, justices, and magistrates shall make an oath to use all diligence in destroying all manner of heresies and errors, commonly called Lollardries, and that all persons convict of heresy and left to the secular power according to the laws of holy church shall forfeit their lands and tenements as in the case of attainder for felony, and that their goods and chattels shall also be forfeited to the King. These acts remained in full force till the year 1533, and were frequently resorted to. They placed almost unlimited power in the hands of the Church. There was no definition of heresy, and the bishops were thus empowered to punish any views which were at variance with their own. The procedure was also most drastic; a person once pronounced to be an obstinate or relapsed heretic was handed over to the civil power, which had no alternative but to execute the utmost rigour of the law. We can thus explain the total absence of any effort to establish a Jewish colony in England after the banishment from Spain in 1492. The knowledge of the severity of the English law combined with the memory of the cruelties that accompanied the expulsion two hundred years before would effectually discountenance any such attempt.

Alterations in the law of Heresy.

Under Henry VIII and Edward VI the law as to heresy was considerably altered, but it was not varied in such a way as to give any sort of toleration to those who held principles in conflict with the doctrines proclaimed by the sovereign as supreme head of the Church as binding on all its members. Many heretics were put to death in the

reign of Henry VIII, and in the short reign of Edward VI at least two persons were burned for heresy[1]. Mary, shortly after her accession, procured the passing of an "Acte for the renueing of three Estatutes made for the punishment of Heresies," providing that the three statutes enacted in the reigns of Richard II, Henry IV, and Henry V, already mentioned, should "from the xxth day of Januarye next coming be revived and be in full force strengthe and effecte to all Intentes construcions and purposes for ever[2]." The fierce and merciless persecution that ensued has caused a horrible but not undeserved epithet to be added to the name of the first Queen regnant of England, and though the number of the victims may have been exaggerated in after years, hundreds were brought to the stake within the short period of less than four years that elapsed before the Queen's death[3]. When Elizabeth came to the throne, the law was again recast. The first Act of Parliament passed in her reign, commonly called the Act of Supremacy (1 Eliz. cap. 1, sect. 15) expressly repealed the Act of Philip and Mary under which the persecutions had taken place, as also the former statutes for the punishment of heresies revived by that Act; but it was by no means intended to allow heresy and error to go unpunished, and therefore by sect. 17 jurisdiction for the visitation "of all manner of errors, heresies, schisms, abuses, offences, contempts, and enormities" was annexed to the crown, and by the following section the Queen was empowered to appoint commissioners to exercise her ecclesiastical jurisdiction, and to visit, reform, and correct

[1] The principal statutes are 25 Hen. VIII, cap. 14, and 31 Hen. VIII, cap. 14 (the Act of the Six Articles), 1 Edw. VI, cap. 12, 1 Edw. VI, cap. 1, and 2 & 3 Edw. VI, cap. 1 (see sect. 3). The last two, though obsolete, are still technically in force. For the whole subject see Stephen's *History of Criminal Law*, vol. II, pp. 453-460.

[2] 1 & 2 Phil. and Mary, cap. 6.

[3] The exact number is given as 277. For the persecution see Dodd's *Church History*, vol. II, pp. 101-109; Pike's *History of Crime*, vol. II, pp. 57-60, and 613.

all errors, heresies, &c., "to the pleasure of Almighty God, the increase of virtue, and the conservation of the peace and unity of this realm"; but a later section (sect. 36) limited the power of the commissioners so appointed, by declaring that nothing should be adjudged heresy unless determined to be heresy by the authority of the canonical scriptures, or by certain general councils, or by the high court of Parliament, with the assent of the clergy in their convocation. This restriction was no doubt intended, and did in fact operate, to exempt Roman Catholics from prosecution for heresy—Papists obnoxious to the government were proceeded against for other crimes—but it could not in any way relieve or exempt Jews, or any one who impugned the sacred doctrine of the Trinity. Although the procedure established by the statutes passed under the Lancastrian kings was abolished, it seems to have been assumed that a culprit in the case of contumacy could be burned, and that the writ *de Haeretico comburendo* would issue at common law. There are several instances of this having taken place. Two Anabaptists were burned in the year 1575, and two Arians as late as 1612. One of these last, Bartholomew Legatt, was charged with holding thirteen damnable tenets, most or all of which are held by every believing Jew; the last two are short and are here inserted from the collection of state trials: "12. That Christ by his Godhead wrought no miracle. 13. That Christ is not to be prayed unto[1]." There has been considerable discussion among lawyers as to the legality of the punishment in these latter cases; into this discussion it is not our purpose to enter; it is enough to state the fact that the convictions took place and that the extreme penalty was enforced, to show what might have been the position of professing Jews openly living and practising their religion in this country.

Heresy and the Court of High Commission.

Since the year 1612 no execution for heresy has taken place in England, nor were offenders, if it was intended to

[1] 2 *State Trials*, p. 729.

deal severely with them, brought before the ecclesiastical courts. They were, however, dealt with by the Court of High Commission, which had been constituted in its ultimate form in the year 1583 under the powers supposed to be conferred on the crown by the eighteenth section of the Act of Supremacy, the substance of which has already been given. The commissioners had no power to order capital punishment, but they were authorized to award "such punishment by fine, imprisonment, censure of the church or otherwise, or by all or any of the said ways, and to take such order for the redress of the same, as by their wisdom and discretions should be thought meet and convenient"; and these penalties were unsparingly inflicted. Their mode of procedure was most arbitrary, and by contemporaries not inaptly compared to that of the Inquisition. There was as a rule no jury, though the court could if it wished summon a jury; arrests were made without any legal warrant; the accused were punished, though there was no evidence against them, except such as was wrung out of their own mouths by means of the *ex officio* oath. "In two points alone it was distinguished from the Inquisition of Southern Europe. It was incompetent to inflict the punishment of death, and it was not permitted to extract confessions by means of physical torture." Such a court could be made a terrible engine of oppression by a zealous persecutor, for it assumed authority not merely to try but to seek out offenders; for example, on April 1, 1634, when Laud had held the primacy but a few months, a circular letter was sent by the commissioners to all officers of the peace in the kingdom, of the following tenor: "There remain in divers parts of the kingdom sundry sort of separatists, moralists, and sectaries, as namely—Brownists, Anabaptists, Arians, Traskites, Familists, and some other sorts, who, upon Sundays and other festival days, under pretence of repetition of sermons, ordinarily use to meet together in great numbers in private houses and other obscure places, and there keep

private conventicles and exercises of religion by law prohibited, to the corrupting of sundry his Majesty's good subjects, manifest contempt of his Highness's laws and disturbance of the Church. For reformation whereof the persons addressed are to enter any house where they shall have intelligence that such conventicles are held, and in every room thereof search for persons assembled and for all unlicensed books, and bring all such persons and books found before the Ecclesiastical Commission as shall be thought meet[1]." The circular makes no mention of Jews; had Laud and his associates known that they were at this very time beginning to creep secretly into the kingdom, this omission would hardly have been made.

Abolition of the Court of High Commission.

The court had always been unpopular, and the oppressive use made of it by Laud caused its abolition by the Long Parliament in 1640 by a statute (16 Car. I, cap. 11). After reciting, "Whereas by colour of some words . . . in the Act (of Supremacy) . . . commissioners have to the great and insufferable wrong and oppression of the King's subjects, used to fine and imprison them, and to exercise other authority not belonging to ecclesiastical jurisdiction . . . and divers other great mischiefs and inconveniences have also ensued to the King's subjects," section 18 of the Act of Supremacy, under which the letters patent constituting the High Commission were issued, was repealed. A further section dealt with the other ecclesiastical courts, depriving them of all power to inflict "any pain, penalty, fine, amercement, imprisonment, or other corporal punishment upon any of the King's subjects," or to administer the *ex officio* oath. Thus after 1640, though heresy was not removed from the list of crimes, there was no court which could inflict any higher punishment than a purely ecclesiastical penalty. After the Restoration all the provisions of this statute, excepting those abolishing the Court of High Commission and the *ex officio* oath, were repealed (13 Car. II, stat. 1, cap. 12), and the power of inflicting physical punishment

[1] *Cal. S. P. Domestic*, 1633–4, p. 538.

was thus restored to the ecclesiastical courts, but some years afterwards, in 1679, it was further abridged by 29 Car. II, cap. 9, which abolished the writ *de Haeretico comburendo*, and all punishment by death in pursuance of ecclesiastical censures," reserving to the ecclesiastical courts only the power to punish atheism, blasphemy, heresy, &c., "by excommunication, deprivation, degradation, and other ecclesiastical censures not extending to death." This is still the law, but there is no record of any prosecution for heresy ever having taken place since the ecclesiastical courts were shorn of their power of inflicting corporal punishment by the Long Parliament in 1640.

The Law of Uniformity.

Such was in outline the law of heresy; it remains now to consider the second impediment to a Jewish resettlement, the Law of Uniformity. The expression Church and State is a common, almost a hackneyed one, and we are apt to forget that there was once a time when no one, who was not an adherent of the Church, could be a citizen of the State; and when severe pains and penalties were incurred by non-attendance at church or by attendance at any religious meeting not sanctioned by the ecclesiastical authorities. Prior to the Reformation the Church had been content with punishing under the name of heretics those who ventured to proclaim doctrines inconsistent with her creed; the zeal engendered by the movement for reform prompted the punishment, though with somewhat milder penalties, of those who neglected or refused to take part in public worship as by law established. The first statutory provision was a very mild one. The Act of Uniformity (1 Eliz. cap. 2) after enacting that the Book of Common Prayer should be used in all churches and ordaining penalties for those who depraved it, provides (sect. 14) that "all and every person inhabiting within this realm, or any other the Queen's Majesty's dominions, shall diligently and faithfully, having no lawful or reasonable excuse to be absent, endeavour themselves to resort to their parish church or chapel accustomed, or upon reasonable let thereof,

to some usual place where common prayer and such service of God shall be used in such time of let, upon every Sunday, and other days ordained and used to be kept as holy days, and then and there to abide orderly and soberly during the time of the common prayer, preaching, or other service of God there to be used and ministered," upon pain of punishment by the censures of the Church and of forfeiting for every offence twelve pence to the use of the poor of the parish. The penalty was only small, but sufficient to cause all except the very wealthy to conform, especially as the law was strictly interpreted. Serjeant Hawkins[1] says of it: "he who misbehaves himself in the church, or misses either morning or evening prayer, or goes away before the whole service is over, is as much within the statute as he who is wholly absent; and he who is absent from his own parish church shall be put to prove where he went to church[2]." It was, however, thought too lenient and was supplemented by an Act to retain the Queen's Majesty's subjects in their due obedience (23 Eliz. cap. 1), sect. 5 of which ordains that every person above the age of sixteen years who does not attend church shall forfeit to the Queen's Majesty twenty pounds for every month's absence. This penalty was in addition to the forfeiture of twelve pence imposed by the Act of Uniformity, and a month was interpreted as a lunar month, so that thirteen penalties might be imposed every year. If the penalty was not paid, the offender was liable under a later statute (29 Eliz. cap. 6, sect. 4) to have all his goods and two-thirds of his lands seized to the use of the crown; one-third of his lands (if he was fortunate enough to be a landowner or a leaseholder) being left him for the maintenance and relief of his family. But even this was not enough.

[1] *Pleas of the Crown*, Bk. I, cap. 10, sect. 4.

[2] It was not till 1704 that Chief Justice Holt decided "that if a man repaired to any other chapel, it would be good excuse for his not coming to his parish church, but then he must plead it." See *Britton* v. *Standish*, Cases Temp. Holt 141 & 3 Salk. 88.

Twelve years later a still more stringent Act (35 Eliz. cap. 1) bearing the same title was passed. Any one who obstinately refused to come to church without any lawful cause, and in addition (1) persuaded any other person to abstain from going to church or receiving the communion administered according to the rites of the Church, or to be present at any unlawful assemblies, conventicles, or meetings, or (2) "either of himself or by the persuasion of any other" willingly joined in or was present at any such assemblies, conventicles, or meetings under colour or pretence of any exercise of religion contrary to that prescribed by the Act of Uniformity, was to be committed to prison until he should conform and make open submission and declaration of his conformity. If he did not conform within three months he was to abjure the realm of England and all the Queen's dominions for ever. If he refused to abjure or after abjuration did not depart out of the realm, he was to be adjudged a felon and suffer as in the case of felony (i. e. death and forfeiture of lands, goods, and chattels), without benefit of clergy.

Recusants.

Persons neglecting to come to church were called Recusants; and if they absented themselves because they were Papists, Popish Recusants[1]. This latter class was subject to still further disabilities. In Elizabeth's reign they were not allowed to remove more than five miles from home without licence (35 Eliz. cap. 2). The alarm which succeeded the discovery of Gunpowder Plot—an event making so great an impression on the popular mind that its anniversary is still celebrated with more public enthusiasm than any other event in our history, not excepting the destruction of the Spanish Armada or the battle of Waterloo—caused the enactment of still more stringent measures. These were the Act for the better discovering and repressing of popish recusants (3 Jac. I, cap. 4) and the Act to prevent and avoid dangers which grow by popish recu-

[1] The term Popish Recusants was afterwards defined by statute, so as to include many persons who were not Roman Catholics.

sants (3 Jac. I, cap. 5). As many of the provisions of these Acts might not have applied to Jews, it is unnecessary to enter into them here. One provision, however, which was undoubtedly not confined to Papists, cannot be passed over. By sect. 13 of the former Act "for the better trial how his Majesty's subjects stand affected in point of their loyalty and due obedience," all persons over the age of eighteen who had been convicted or even merely indicted of any recusancy for not attending divine service, or who had not received the sacrament twice within the year might be compelled to take an oath, afterwards known as the oath of allegiance, the terms of which are set out in sect. 15. They are framed with the intention of being obnoxious to Papists, and expressly renounce and deny any authority to the Pope, so that many Roman Catholics who were ready to take the oath prescribed by the Act of Supremacy (1 Eliz. cap. 1, sect. 19) found themselves unable to take the new oath, the last clause of which must have been unacceptable to a religious Jew. It reads as follows: "And all these things I do plainly and sincerely acknowledge and swear, according to these express words by me spoken, and according to the plain and common sense and understanding of the same words without any equivocation or mental evasion, or secret reservation whatsoever: and I do make this recognition and acknowledgment heartily, willingly, and truly, *upon the true faith of a Christian*, So help me God." The oath itself was abolished in 1688 by the Bill of Rights (1 W. & M., sess. 2, cap. 1, sect. 3); but the final words, now for the first time introduced, were retained in other forms of oaths and declarations and, as will be hereafter shown, for a long time proved an insurmountable obstacle to the Jews in their struggle for the acquisition of political rights[1]. The Acts contain other sections also which were not confined to Popish recusants;

[1] Four years afterwards provision was made for more effectually administering this oath to persons neither indicted nor convicted of recusancy. See 7 Jac. I, cap. 6.

e. g., sects. 8 and 11 of the former enable the crown to refuse the penalty of twenty pounds a month for not attending church imposed by the statute of Elizabeth, and to seize and retain two-thirds of all the lands belonging to the offender, even although no default had been made in the payment of the penalty or the amount had been actually tendered. And by sects. 3 to 5 of the latter all persons with certain exceptions, who had not repaired to church for the space of three months, were ordered to depart from the city of London and ten miles compass of the same ; and by sect. 8 of the same Act convicted recusants were disabled from holding legal, military, or naval offices, and from practising the professions of the law and medicine. Moreover, to prevent evasion of these penalties and disabilities by merely formal attendance at church, it was enacted that a recusant who conformed and repaired to church should also be required to take the sacrament of the Lord's Supper once at least every year.

Legal position of the Jews at the beginning of Charles I's reign.

Such was the legislation against recusants, which was not finally repealed until the middle of the last century [1]. We are now able to sum up the legal position in which Jews, in the early years of Charles I's reign, when they undoubtedly began to settle here, would find themselves. There was no law to prevent their coming here. If the banishment in 1290 had been effected by royal proclamation, the force of that proclamation had long been spent ; if on the other hand it had been by Act of Parliament, as many persons at that time believed, the Act itself had long been lost, and any Jew for whose expulsion legal process might be brought could challenge his adversary to produce the Act. If this initial difficulty had been got over and the court had been induced by reasoning similar to Prynne's that there must have been such an Act of Parliament and that it was lost, then it would remain to

[1] 7 & 8 Vict. cap. 102 repealed most of the penal enactments so far as Roman Catholics were concerned ; 9 & 10 Vict. cap. 59 repealed the remaining penal enactments, including those against Jews.

consider what effect that would have upon Jews coming to England in the reign of King Charles. The first precedent cited by Prynne is the Act banishing the Despensers, and it would have been necessary to assume, as Prynne does, that the Act banishing the Jews was in similar terms. The enacting words of that statute are as follows: "Wherefore we Peers of the Land . . . do award that Sir Hugh le Despenser the Son and Sir Hugh le Despenser the Father, be disherited for ever . . . and that they be utterly exiled out of the land of England, without returning at any time, unless it be by the Assent of our Lord the King and by the Assent of the Prelates, Earls and Barons, and that in Parliament duly summoned . . . and if they do return, then be it done unto them, as enemies of the King and of the Kingdom[1]." Substitute the words "Jews in England" for the words "Sir Hugh le Despenser the Son and Sir Hugh le Despenser the Father" and it is seen at once that the Act would apply only to the persons actually banished, for there are no words to include heirs, issue, or children; but even if such words were embodied in the Act, it would have been quite impossible to prove that a Spanish Jew living in the seventeenth century was an heir, descendant, or in any wise connected with the English Jews, all of them of German origin, of the thirteenth century. The residence of Jews in England was therefore lawful, but they would of course be subject to all the laws which bound aliens living here; though they would not be liable to the disabilities imposed on the Judaei by the legislation of Henry III and Edward I, because the special status of serfdom or villenage to which those disabilities had been attached, though not legally abolished, had practically become obsolete. On the other hand, if they attempted to practise their religion they were liable to be charged with heresy in the ecclesiastical courts or to be summoned and persecuted by the Court of High Commission; in any case the common law would compel them to

[1] *Statutes of the Realm*, vol. I, p. 184.

regularly take part in the services of a church, which they believed to be idolatrous. If they neglected to attend they were subject to severe penalties, and if in addition they took part in a Jewish service they could be made to abjure the realm, and should they still remain here they were guilty of felony and denied all benefit of clergy. Thus the real impediments to a Jewish settlement were the impossibility of setting up a Jewish synagogue and the necessity of taking part in the religion of the established church. The first of these obstacles was not removed until the reign of Charles II; we will now explain how the second was obviated in the time of that king's father.

Treaty with Spain, 1630. Spanish crypto-Jews.

Before the commencement of the seventeenth century, it had become customary for the monarchs of Europe to maintain legations in each other's capitals, and these legations were, by the principles of international law, which were even at this time beginning to be recognized, regarded as exterritorial—i.e. as not subject to the ordinary law of the land. Accordingly the law of heresy and the statutes against recusants would not apply to persons attached to any foreign embassy, but they would apply to all other foreigners coming to this country. Therefore on the marriage of Charles I with Henrietta Maria elaborate provision was made by treaty for the religion of the queen and her suite. However, in the treaty made with Spain in the year 1630 a clause was inserted which was interpreted as entitling all Spanish subjects, though not belonging to the embassy, to exemption from the penal laws against recusants. In express words the King of Spain undertook that subjects of the King of England who might be in his dominions for the purposes of commerce should not suffer any molestation or disturbance on account of their religion, provided that they gave no occasion for scandal. No similar promise was made by the King of England in respect of Spanish merchants, but the reason for this was that there were very few likely to remain here for more than one month and so render them-

selves liable to the laws against recusants, and it was well understood that the promise was reciprocal and that it would not be fulfilled unless a like measure of toleration was extended to Spanish subjects in England[1]. It was shortly after the signature of this treaty that a few Jews ventured to permanently settle in England, but they came not as Jews but as Spaniards, and sheltering themselves under the protection of the treaty were able to avoid taking part in the services of the English church. They were crypto-Jews and thought by all their neighbours to be Catholics, and no doubt occasionally attended mass at the ambassador's chapel, in order to ingratiate themselves with the embassy. Some had fled from Spain through fear of the Inquisition, but there is no evidence of any kind that they ever attempted to practise the Jewish religion here, and as it was necessary to keep on friendly terms with the representative of the Catholic king they were not likely to do anything to forfeit his protection. Among the earliest of these new comers was Antonio Fernandez Carvajal; he must have arrived here in or before the year 1635, long before the Great Rebellion commenced, for in the letters of denization which were granted to him by Cromwell on Aug. 17, 1655, he is described as having "for the space of twentie yeares and upwards

[1] The treaty is printed in Rymer's *Foedera*. The words of clause 19 are: "Et quia iura commercii quae ex pace consequuntur infructuosa reddi non debent, prout redderentur si subditis Serenissimi Regis Angliae dum eunt et redeunt ad Regna et Dominia dicti Serenissimi Regis Hispaniarum, et ibi ex causa commercii, vel negotii moram trahunt, eis molestia inferatur ex causa conscientiae, Ideo ut commercium sit tutum et securum tam in terra quam in mari, dictus Serenissimus Rex Hispaniarum curabit et providebit, ne ex praedicta causa conscientiae contra iura commercii molestentur et inquietentur, ubi scandalum alii non dederint." *Foedera*, vol. VIII. pt. 3. p. 143 (edition of 1742). In the treaty of 1667, which was renewed by the treaty of Versailles in 1783, the same clause occurs, but the reciprocal clause is expressed, "and the said King of Great Britain shall likewise provide, for the same reasons, that the subjects of the King of Spain shall not be molested or disturbed for their conscience against the laws of commerce, so long as they give no public scandal or offence." Hertslet's *Collection of Treaties*, vol. II, p. 152.

been an Inhabitant in this nation." When he had been here for some years he with other merchant strangers was prosecuted as a recusant, but the English merchants who had factors in Spain petitioned the House of Lords to stay the proceedings on the ground that the result of a conviction would be that their own factors would be similarly treated in Spain and thereby be compelled either to forsake their religion or abandon the country, which would be a matter of great concernment, as there were above one hundred English subjects resident in Spain for every Spaniard resident here. The petition appears to have been granted and the proceedings stayed [1]. Whether the other merchants attacked at the same time as Carvajal were also Jews we do not know, but we do know from the depositions in the Robles case that there were at this time several other Jews in London who were or professed to be Spaniards and therefore obtained immunity from the penalties imposed upon recusants. It is important not to exaggerate this indulgence; it did not extend to the toleration of any sort of Jewish worship and it was itself withdrawn by the outbreak of the war with Spain in 1656.

This position could not have been satisfactory to the Jewish communities abroad. If they knew of the existence of and held communication with the crypto-Jews here, they must have seen that the situation of their brethren in England was little if at all better than that of the Marranos in Spain; they were bound to take part week by week in the idolatrous worship of the Protestant church or else to obtain the protection of the Spanish embassy, as the price of which they would have to be occasionally present at the no less objectionable Catholic mass, and furthermore to completely disguise their Jewish faith even to the extent of refraining from entering into the covenant of Abraham.

[1] For the petition see *Lords' Journals*, vol. VII, p. 141. It was presented Jan. 16, 164⅗. For Carvajal see "The First English Jew," by Lucien Wolf, *Trans. Jewish Hist. Soc.*, vol. II, pp. 14–46.

In neither case could they meet for worship according to Jewish rites. The establishment of a synagogue or the organization of a community was impossible, and even private prayers could only be indulged in under the cover of the strictest secrecy.

The Great Rebellion. Ascendency of the Independents.

At length a brighter prospect seemed to open; the Great Rebellion had broken out and proved successful, and the Protestant Dissenters who had formerly inveighed against the persecution of the church and advocated universal toleration were invested with the powers of government. And yet in the moment of their triumph they forgot or repudiated the precepts and maxims which had been so dear to them in the hour of persecution. True it is that the law against heresy was practically repealed by the abolition of the Court of High Commission and the power of temporal punishment formerly exercised by the ecclesiastical courts, but the Parliament claimed the right to itself take cognizance of offences against religion, and in the assertion of this claim, which was not abandoned until the Restoration, inflicted penalties even more severe than those formerly imposed by the Court of High Commission[1]. It was only with exceptional cases that it could itself deal, and accordingly in May, 1648, it made an Ordinance for punishing Blasphemies and Heresies. The ordinance enumerates eight distinct heresies or errors (including, for example, maintaining that Jesus Christ is not the Son of God and that the New Testament is not the word of God), and provides that persons found guilty of any of them, unless they recant and abjure their errors, shall suffer the pains of death as in case of felony, without benefit of clergy; if they recant they are to be imprisoned until they find sureties against a repetition of the offence, but if they repeat the offence after having recanted they are to suffer death as in case of felony without benefit of

[1] See the case of Paul Best, who had asserted that Christ was merely and properly a man (Goodwin, II, pp. 252 seq.), and James Nayler (5 *State Trials*, 801).

clergy. The ordinance also enumerates other errors, which are to be visited with less severe penalties [1]. The laws against recusants were not interfered with, but the church services at which attendance was compulsory were to be conducted in accordance with the new Service-book, called the Directory, which had recently been framed by the Westminster Divines; and two ordinances were passed, one in March, 1645, providing that "the Book of Common Prayer shall not be henceforth used, but the Directory for Publique Worship," and the other on the 23rd of August of the same year ordering "the Directorie to be put in execution with penalties for using the book of Common Prayer [2]." The penalties were five pounds for the first offence, ten pounds for the second offence, and for the third offence "one whole year's imprisonment without bail or mainprize." These ordinances gave great satisfaction to the Presbyterians who possessed a majority in the Long Parliament, and who, having destroyed the power of the church were eager to establish their own form of worship and invest themselves with all the powers of the church they had supplanted, including the right to persecute all who held religious opinions different from their own. But this the Independents, who besides having a strong minority in the House, had the preponderating voice in the council of the army, which in those troublous times really governed the land, were bound to dispute. After a prolonged struggle the Independents gained the upper hand, and on December 6, 1648, succeeded with the help of the army in excluding their Presbyterian opponents from all share in the deliberations of the Parliament and the government of the nation. Again the party which had stood for toleration was successful, and the Jews who had long cast anxious eyes upon the growing commerce of England and desired to share it, were not slow to take advantage of so favourable an opportunity. The Council of Mechanics at

[1] Scobell, part 1, p. 149.

[2] Ibid., part 2, pp. 75 and 97.

Whitehall had at the end of December voted a toleration of all religions whatsoever, "not excepting Turkes nor Papists nor Jews[1]." A petition on their behalf was prepared by the Jews of Amsterdam; it was in the name of Johanna Cartwright a widow, and Ebenezer her son, freeborn of England, and resident in the city of Amsterdam, and prayed that the Statute of Banishment made against the Jews might be repealed and that they under the Christian banner of charity and brotherly love, might "be again received and permitted to trade and dwell in this Land as now they do in the Netherlands." The petition was presented to the General Council of the Officers of the Army, under the command of Lord Fairfax, at Whitehall on January 5, $164\frac{8}{9}$, and favourably received with a promise to take it into speedy consideration "when the present more public affairs" were dispatched[2]. The present more public affairs were the trial and execution of the king and the settlement of the government, and proved to be of such momentous concern that the petition of the Jews was completely overlooked; at least nothing was done upon it nor was the law altered or relaxed in their favour. And yet a belief was spread abroad that the petition had been granted. A circular was published by the disappointed and defeated Presbyterians entitled "the last damnable Designe of Cromwell and Ireton and their Junto or Caball," in which it is stated that "their real designe is to plunder and disarme the City of London and all the country round about . . . and so sell it (the plunder) in bulk to the Jews,

Petition by the Jews of Amsterdam, $164\frac{8}{9}$.

[1] Pragmaticus, Dec. 19–26. The Council of War had also on Christmas Day voted "a Toleration of all religions." *History of the Independency*, part 2, p. 50.

[2] The petition was printed and there is a copy of it in the British Museum, King's Pamphlets, E 557. Art. 17, and is reprinted in Hag., *Cons. Cases*, vol. I, Ap. No. 1. For the whole transaction see the *Clarke Papers*, vol. II, p. 172; *History of the Independency*, part 2, pp. 60 and 83; and "A Perfect Diurnall of some passages in Parliament and the daily proceedings of the Army under His Excellency the Lord Fairfax, from Munday the 1 of Janu. till Munday the 8 of Janu. 1648."

whom they have lately admitted to set up their banks and magazines of Trade amongst us contrary to an Act of Parliament for their banishment[1]." Nor was this belief confined to the political opponents of the dominant faction here, for in the collection of original letters found among the Duke of Ormonde's papers is to be found the following:—

"Rouen, March $\frac{1}{2}\frac{7}{7}$, $164\frac{8}{9}$.

"This morning I happened to have some discourse with a Jew that spake English, and asking him how he liked the Parliament and Army of England, now they had revoked the Laws that were made against the Jews; he told me, that nevertheless he thought that there were no such villains in the world as they are, and believed that none of his Religion would ever adventure themselves among such bloody traitors as had murdered their own King[2]."

But yet no one at the present time would seriously argue that the readmission of the Jews into England dates from January, 1649, nor should we give more weight to similar expressions which seem to indicate a successful issue to the negotiations conducted by Menasseh Ben Israel some six or seven years later, which in the end proved equally abortive. The ascendency of the Independents lasted till the death of Cromwell in 1658, but during the whole of it, the law was in no way altered to the advantage of the Jews. True, a milder ordinance was passed for the punishment of atheistical, blasphemous and execrable opinions; as for instance maintaining that there is neither heaven nor hell, neither salvation nor damnation, the penalty being six months imprisonment for the first offence and banishment for the second, and if any one returned after being banished he was to suffer as in case of felony without benefit of clergy[3]. This ordinance, cruel as it is, is milder than the one passed by the Presbyterians in May, 1648,

[1] *History of the Independency* [4to, 1649], at p. 61.

[2] Ormonde's *Letters*, vol. I, p. 233.

[3] See the ordinance of Aug., 1650, cap. 22, given in Scobell, II, p. 124.

for the extreme penalty could only be inflicted in the case of a second offence, but the earlier ordinance was not repealed, and as the offences enumerated by the two enactments were different, both were technically in force at the same time. The advocates of toleration throughout the period of their power showed no disposition to abandon the weapons of persecution:

"Et qui nolunt occidere quenquam
Posse volunt"[1].

It may be said on their behalf that the earlier and more cruel ordinance was never put into execution by them, but on the other hand there is no record of its having been enforced by the Presbyterians either, and the later ordinance was undoubtedly acted upon; the proceedings against George Fox, the Quaker, being a well-known instance[2].

Modification of the laws against recusancy.

Though the Independents did not repeal the law relating to blasphemy, they found it necessary to materially amend the laws against recusants. In spite of having obtained the supreme power, they formed, if numbers only were counted, a small if not insignificant minority of the general population. They had as strong objections to the new Directory as to the old Book of Common Prayer, nor could they hope to establish any form of worship which should be both consonant to their own religious ideas and acquiesced in by the other rival sects. Accordingly, shortly after the victory of Dunbar the Parliament passed an Act for the repeal of several clauses in Statutes imposing penalties for not coming to church. It recites that "divers religious and peaceable people, well-affected to the prosperity of the Commonwealth, have not only been molested and imprisoned, but also brought into danger of abjuring their country, or in case of return to suffer death as felons, to the great disquiet and utter ruin of such good and godly people, and to the detriment of the Commonwealth," and repeals all clauses of the Act of Uniformity (1 Eliz. cap. 2),

[1] Juv. *Sat.* X, 96. [2] Goodwin, vol. IV, p. 309.

and the Acts for retaining the Queen's subjects in their due obedience (35 Eliz. cap. 1, and 23 Eliz. cap. 1), and all clauses in any other Act whereby any penalty is imposed on any person whatsoever, for not repairing to their respective parish churches. But the exemption from penalties was subject to this proviso, that "to the end that no profane or licentious persons may take occasion . . . to neglect the performance of religious duties . . . all and every person and persons within this Commonwealth . . . shall (having no reasonable excuse for their absence) upon every Lord's day . . . diligently resort to some public place where the service and worship of God is exercised, or shall be present at some other place in the practice of some religious duty, either of prayer, preaching, reading, or expounding the scriptures or conferring upon the same[1]." Every person not so attending was to be deemed to be an offender against the law and proceeded against accordingly. This proviso would prevent any real measure of relief to the Jews, for attendance at a synagogue, if there had been one in existence, would assuredly not have been held to be a compliance with the Act. Should there be any doubt upon this point, it is cleared away by the religious clauses of the Instrument of Government, the document under which Oliver claimed to exercise his power as Lord Protector. The terms of the Instrument were finally settled before December 16, 1653, on which date it came into force. The clauses relating to religion are Articles 35, 36, and 37, and provide that the Christian religion shall be publicly professed, but that to this public profession none shall be compelled by penalties or otherwise, and all who professed faith in God by Jesus Christ (though differing from the doctrine publicly held forth) should be protected in the profession and exercise of their religion "so as they abuse not this liberty to the civil injury of others and to the actual disturbance of the public peace on their parts, provided this liberty be not extended to Popery or Prelacy,

[1] Ordinance of Sept. 27, 1650; Scobell, II, p. 131.

nor to such as under the profession of Christ, hold forth and practise licentiousness[1]."

Freedom of worship not extended to all Christian sects.

If one thing is certain among the doubts occasioned by the hasty and manifold changes of law which took place during this revolutionary period, it is that freedom of worship was not extended even to all Christian sects; indeed, the majority, as events afterwards proved, were expressly excluded from protection by the last recited article, and no form of worship not in accordance with Christian dogma was at any time legal or authorized throughout the whole period.

Continuation of the negotiations with Jews of Amsterdam.

Nevertheless, the Jews, encouraged by the reception their overtures had met with in the early part of 1649, had not given up their hopes. The Navigation Act which became law on October 9, 1651[2], caused such friction between England and the Dutch against whose carrying trade it was principally directed, that war between the two nations became almost inevitable, and actually broke out. While the war lasted the negotiations which had been carried on from Amsterdam were naturally suspended. In the month of April, 1654, peace was again proclaimed, and the negotiations were almost immediately resumed. Manuel Martinez Dormido, a member of the well-known family of the Abarbanels, arrived in London early in September, and presented to the Protector two petitions for the readmission of the Jews. These were in due course recommended to the speedy consideration of the Council, but they met with the reception which throughout the interregnum was accorded to all attempts to relax the law in favour of the Jews; the Council did not see its way to make any order in the matter[3]. But the cause was not yet hopeless; in the October of the year following, Menasseh ben Israel, brother-

Menasseh ben Israel.

[1] Gardiner's *Constitutional Documents*, p. 324.

[2] Scobell, II, p. 176.

[3] See *Cal. State Papers*, 1654, pp. 393 and 407; Goodwin, IV, p. 47, note; *Trans. Jewish Hist. Soc.*, vol. III, where the text of the petitions is given at pp. 88–93.

in-law to Dormido, and a learned Rabbi, came from Amsterdam to London, and was hospitably received by the Protector; who was willing to admit the Jews and even tolerate their worship, if conducted privately and without scandal, but who was at the same time determined not to risk a popular tumult which might not improbably break out if protection was extended to a strange religion without the previous sanction and approbation of the leaders of the people. It was with this view that a conference was summoned to meet at Whitehall to discuss the question. So much has recently been written about the conference and the events which led to it, that it will be sufficient here to extract from the old Parliamentary History the Narrative published by order of Cromwell and his Council[1].

The Whitehall Conference, 1655.

"Whitehall, December 4.

"Divers eminent Ministers of the Nation, having been called hither by Letter from the Lord Protector, were present with his Highness and the Council in the Council-Chamber; when the following Proposals, made by certain Jews, of whom Rabbi Menasseh Ben Israel, of Amsterdam, was the Chief, were read to them.

"'These are the Graces and Favours which, in the Name of my Hebrew Nation, I Menasseh Ben Israel do request of your Most Serene Highness, whom God make prosperous, and give happy Success to, in all your Enterprises, as your humble Servant doth wish and desire.

"'1. The first Thing I desire of your Highness is, That our Hebrew Nation may be received and admitted into this puissant Commonwealth, under the Protection and Safeguard of your Highness even as the Natives themselves. And, for greater Security in Time to come, I do supplicate your Highness to cause an Oath to be given (if you shall think it fit) to all the Heads and Generals of Arms to defend us upon all Occasions.

[1] Printed by Henry Hills, printer to His Highness the Lord Protector. *Parl. Hist.*, vol. XX, p. 474.

"'2. That it will please your Highness to allow us public Synagogues, not only in England, but also in all other Places under the Power of your Highness; and to observe in all Things our Religion, as we ought.

"'3. That we may have a Place or Coemitery, out of the Town, to bury our Dead, without being troubled by any.

"'4. That we may be permitted to traffic freely in all Sorts of Merchandise, as others.

"'5. That (to the end those who shall come may be for the utility of the People of this Nation, and may live without bringing Prejudice to any, and not give Offence) your Most Serene Highness will make Choice of a Person of Quality, to inform himself of and receive the Passports of those who shall come in; who, upon their Arrival, shall certify him thereof, and oblige themselves, by Oath, to maintain Fealty to your Highness in this Land.

"'6. And (to the Intent they may not be troublesome to the Judges of the Land, touching the Contests and Differences that may arise betwixt those of our Nation) that your Most Serene Highness will give License to the Head of the Synagogue, to take with him two Almoners of his Nation to accord and determine all the Differences and Process, conformable to the Mosaic Law; with Liberty, nevertheless, to appeal from their Sentence to the Civil Judges; the Sum wherein the Parties shall be condemned being first deposited.

"'7. That in case there have been any Laws against our Jewish Nation, they may, in the first Place and before all Things, be revoked; to the end that, by this Means, we may remain with the greater Security under the Safeguard and Protection of your Most Serene Highness.

"'Which things your Most Serene Highness granting to us, we shall always remain most affectionately obliged to pray to God for the Prosperity of your Highness, and of your illustrious and sage Council, that it will please him to give happy Success to all the undertakings of your Most Serene Highness. Amen.'

"The Ministers having heard these Proposals read, desired Time to consider of them, and the next Day was spent in Prayer and Fasting.

"*Dec.* 7. This Day, in the Afternoon, a Conference was held with the Ministers about these Proposals, in the Presence of his Highness the Lord Protector, the Lord President Lawrence, Lord Lambert, Lord Fiennes, and divers more of the Council, with the Lord Chief Justice Glynn, and the Lord Chief Baron Steel. Of the Ministers there were Dr. Thomas Goodwin, Dr. Wilkinson, Dr. Tuckney, Mr. Manton, Mr. Nye, Mr. Bridge, and many others; but nothing being concluded on, another Conference was appointed to be held on the next Wednesday. Accordingly,

"*Dec.* 12. The Conference was renewed in a Withdrawing Room in the Presence of the Lord Protector, where a Committee of the Council were met by the greatest Part of the Ministers and other Persons, approved by his Highness to take the said Proposals into Consideration; but nothing then resolved upon.

"*Dec.* 14. There was another Conference on the same Subject. And,

"*Dec.* 18. The Committee broke up without coming to any Resolution or even a further Adjournment.'

"The Narrative concludes with this Remark, 'That his Highness, at these several Meetings, fully heard the Opinions of the Ministers touching the said Proposals; expressing himself thereupon with Indifference and Moderation, as one that desired only to obtain Satisfaction in a Matter of so high and religious a Concernment; there being many glorious Promises recorded in Holy Scripture, concerning the Calling and Convention of the Jews to the Faith of Christ. But the Reason why nothing was concluded upon was, because his Highness proceeded in this, as in all other Affairs, with good Advice and mature Deliberation.'"

Result of the Conference.

Thus the famous Conference resulted, like all the attempts made during the interregnum, in nothing being done and no alteration in the law being made; Cromwell's good-will was not proof against the prejudice which was displayed at the Conference and which was rampant among the mob outside. Nor did the Lord Protector, actuated as he was at this time by the motives of the astute politician rather than by the feelings of the religious enthusiast, care to press the cause of religious toleration in the teeth of popular opposition; and yet he did not give the petitioners a formal dismissal. And so Rabbi Menasseh remained in London, but with far different hopes to those he cherished on his first arrival. On March 24 of the following year he again took part with six other Jews in presenting a petition to the Protector. The boons prayed for by the petitioners were now very small; they were two only, (1) protection in writing for meeting privately in their own houses for purposes of devotion; (2) a license to bury their dead in a convenient place without the city. But even this petition was not granted. It was referred to the consideration of the Council and no answer was ever returned to it. A few days later, on April 10, Menasseh published his *Vindiciae Iudaeorum*, his last effort to gain the cause he had come to plead. Speaking of the Conference he says: "Mens judgements and sentences were different. Insomuch, that as yet, we have had no finall determination from his Serene Highnesse. Wherefore those few Jewes that were here, despairing of our expected successe, departed hence. And others who desired to come hither, have quitted their hopes, and betaken themselves some to Italy, some to Geneva, where that Commonwealth hath at this time most freely granted them many and great priviledges[1]." But Menasseh, though his *Vindiciae* effected nothing, though no response came to his second petition with its very humble prayer, still

Menasseh's second petition, March, 165⅔.

[1] *Vindiciae Iudaeorum*, the seventh section.

stayed behind at his post, hoping against hope. In September, 1657, his son Samuel died in his house, and the pious father having solemnly promised to take his mortal remains to Holland and lay them to rest in consecrated soil there, "at length with his heart ever broken with griefe on losing heer his only sonne and his presious time with all his hopes in this iland he got away with so much breath as lasted, till he came to Midleburg and then he dyed[1]." His mission had proved an utter failure.

Departure and death of Menasseh.

[1] Petition of John Sadler to Richard Cromwell (S. P. Dom. Inter., cc. 8), and Petition from Menasseh to Oliver, Sept. 17, 1657 (S. P. Dom. Inter., clvi. 89), both printed in Wolf's *Menasseh Ben Israel's Mission to Oliver Cromwell*, p. lxxxvii.

II.

Failure of Menasseh's mission.

Menasseh Ben Israel's mission had failed. The Conference summoned to consider his proposals had broken up without coming to any resolution; the petition presented in the following spring had received no answer, and at length, after waiting two years, the great Rabbi had returned to his home and friends, giving up the cause for lost. But the publicity given to the mission and the hopes founded upon it were such that many undoubtedly believed that it had met with some measure of success. There are accordingly some few references in contemporary literature to favours conferred upon the Jews by Cromwell. It is probable that all of these refer to the Conference at Whitehall in December, 1655, and there is little doubt that, owing to the attitude that Cromwell had adopted towards Menasseh both before and at the Conference, the impression had got abroad that special privileges had been formally accorded to the Jews. It was to officially contradict this widespread impression that the narrative set out at full length in the last article was published by order of Cromwell and his Council. It would serve no useful purpose to enumerate or comment on all the statements made by the writers of the period, but it will be sufficient to mention the most explicit of them all. John Evelyn writes in his *Memoirs*, December 14, 1655, "Now were the Jews admitted[1]." This must allude to the Conference, for if we turn to the official narrative we find that this was

[1] Evelyn's *Memoirs*, vol. I, p. 288 (1st edition).

the day of the penultimate meeting of the Conference, but we also find that the diarist's statement is untrue, and that no resolution on this or any other point raised at the Conference was ever reached. Nor can there be any reason for casting doubt upon the statement in the official narrative, for it is amply corroborated by Menasseh himself in his *Vindiciae Iudaeorum*[1]. In fact the negotiations of 1655 to 1656 had resulted in precisely the same way as those of seven years earlier, and the statements made in regard to them are entitled to no more weight than those which have already been referred to in dealing with the earlier period. It is, moreover, somewhat remarkable that the learned Dr. Haggard[2] omits all mention of Menasseh and the Conference in his concise but accurate account of this subject. He does, however, allude to the petition of 1648, and it may well be that he regarded Menasseh's mission and the earlier petition as really being only one continuous effort spread over a lengthy period; if such was his view it seems to have been shared by Menasseh himself, who, writing on April 10, 1656, says: "For seven yeares on this behalf, I have endeavoured, and solicited it" (namely an entrance into this Island for the Jews), "by letters, and other means, without any intervall[3]." In any case it would at the present time be almost universally admitted that Dr. Haggard's words, "The question was much agitated, but nothing was done," apply with equal truth to the earlier petition and the great Rabbi's mission seven years later.

Cromwell's Toleration.

During our own and our fathers' times a great change has taken place in the opinions men have formed of Cromwell's character and his place in the history of his country. It was at one time the fashion to write him down a self-seeking hypocrite; but thanks to the powerful advocacy of Thomas Carlyle and other writers contemporary with and subsequent to Carlyle, he has become a great

[1] See the seventh section.

[2] *Cons. Cas.*, vol. I, p. 216.

[3] *Vindiciae Iudaeorum*, sec. 7.

statesman, nay, a hero. In 1841, when this change of view was still in the process of birth, Carlyle wrote of Cromwell: "His dead body was hung in chains; his 'place in History' —place in History, forsooth—has been a place of ignominy, accusation, blackness and disgrace; and here this day who knows if it is not rash in me to be among the first that ever ventured to pronounce him not a knave and liar, but a genuinely honest man[1]?" And so in the course of the apotheosis of the great Oliver, his virtue as an upholder of Religious Toleration has been much dilated upon; and his conduct towards the Jews has been selected as one instance of it. But it should not be forgotten that by the men of his own time Toleration, in those who held the reins of government, was regarded as a vice rather than a virtue; and accordingly it was not his supporters, but his political opponents, such as Walker, Evelyn, and Burnet, who laid most stress on the favours he was alleged to have shown to the Jews. Before he had risen to supreme power, he had been a staunch upholder of liberty of conscience, but once he had become head of the state he was too wise to attempt to carry out measures which he knew would create violent opposition among those on whose support his influence depended. As he himself said: "This hath been one of the vanities of our contest. Every sect saith, 'Oh give me liberty!' but give it him, and to his power he will not yield it to anybody else[2]." Accordingly, when the time for its actual application came, Cromwell was constrained to allow liberty of conscience only within the very narrowest limits; for instance, in dealing with the Irish Catholics he did not force them to attend Protestant churches, but he refused to allow them to hold public worship according to their own rites. "I meddle not with any man's conscience," he wrote to the Governor of Ross; "but if by liberty of conscience you mean a liberty to exercise the mass, I judge it best to exercise plain dealing

[1] Carlyle, on Heroes, p. 335.

[2] *Oliver Cromwell*, by Charles Firth, p. 306.

and to let you know, where the Parliament of England have power that will not be allowed of[1]." As head of the executive he might forbear to rigidly enforce the laws making attendance at church compulsory, but there is no reliable evidence that he at any time allowed forms of worship contrary to the Protestant religion, and therefore, in breach of the law of the land, to be publicly celebrated.

Theory that a 'tolerance' was granted to the Jews by Cromwell in February, 1658.

Our English historians have taken Cromwell's hospitable treatment of Menasseh and his summoning of the Whitehall Conference as examples of his toleration, but all admit that in this instance no practical effect was given to it. Some few writers assert that, though the Conference was a failure, the Protector subsequently formally gave the Jews a legal right of settlement in the country, and permitted them to establish a synagogue here. A statement to this effect was made by Godwin[2], and of recent years much has been written by Jewish writers, and especially by Mr. Lucien Wolf, attempting to prove this statement. Some of the last-mentioned writer's theories are so widely known and have been so skilfully put forward as to call for some comment here. The first of these theories is to the effect that a "tolerance" in the shape of a "public assurance of protection" was granted to the Jews by Cromwell on February 4, 1658. The authority for this is a passage in Burton's *Diary*, under the above-mentioned date, which reads as follows: "The Jews, those able and general intelligencers, whose intercourse with the Continent Cromwell had before turned to a profitable account, he now conciliated by a seasonable benefaction to their principal agent resident in England[3]." The authorship of Burton's *Diary* is very doubtful, nor is the work, especially those parts of it which are not reports of speeches supposed to have been taken down in the House

[1] *Oliver Cromwell*, by Charles Firth, p. 267.

[2] *History of the Commonwealth*, vol. IV, c. xvii, p. 250.

[3] Burton's *Diary*, vol. II, p. 471.

of Commons, of any great authority. Moreover, to the ordinary reader it seems hardly possible that the words used can be brought to bear the interpretation which is thus sought to be placed upon them. They point only to some personal favour, such as a trade licence or money grant, conferred on an individual; not to a public declaration in favour of a religious body—a matter which would have been considered of great political and constitutional importance, and which would not have been described in language of this kind. Mr. Wolf, however, says of it: "The precise terms of this grant, which was doubtless oral, have not been preserved. But as it was preceded by the endenization of Carvajal, in defiance of the recommendation of the Council that the Jews should only be permitted the standing of ordinary aliens, and as it was succeeded by the public celebration of the Feast of Tabernacles, we may assume that it was a kind of informal *fays ce que voudras*, the Protector relying on the tried discretion of the Jews [1]." This passage contains two mistakes; in the first place, if the Council even did make a recommendation, about which more will be said hereafter, Carvajal's endenization was not in defiance of it, because the letters patent were granted to Carvajal on August 17, 1655 [2]: whereas the petition of Menasseh Ben Israel, in answer to which the alleged recommendation of the Council is supposed to have been made, was not presented until October in that year. In the second place, this event, whatever its nature, was not succeeded by the public celebration of the Feast of Tabernacles. The authority for this statement is a passage in a letter by Mr. Jo. Greenhalgh, dated April 22, 1662, in which he says, after describing a visit to the Jewish Synagogue, that he had been told that "one year in Oliver's time they did build booths on the other side of Thames, and kept the Feast of Tabernacles in them." Even if such evidence is accepted implicitly, the celebration

[1] *The Resettlement of the Jews in England*, by Lucien Wolf, p. 12.

[2] *Transactions of the Jewish Historical Society*, vol. II, p. 46.

mentioned could not have taken place after February 4, 1658, for Cromwell died on September 3 following—a considerable time before the date for celebrating the Feast of Tabernacles had come round[1]. Mr. Wolf further supports his theory by a reference to Thomas Violet's Petition against the Jews presented to the King and Houses of Parliament in December, 1660. On turning to the document cited we find that the writer is speaking of Menasseh's Petition and the Whitehall Conference; his words are: "Upon several days hearing, Cromwel and his Council did give a Toleration and Dispensation to a great number of Jewes to come and live here in London," &c.[2] The statement, whether we regard it as true or untrue, is seen at once on perusing the context beyond all question to refer to the events of December, 1655, and can have no bearing whatsoever upon an alleged grant of Toleration in February, 1658, more than two years afterwards.

The theory itself rests upon no sufficient evidence, and the statements which are put forward as corroborating it are either wholly irrelevant or absolutely inconsistent with it; the excuse for dealing with it at such length must be that for a number of years a learned society claiming an important place in the Jewish community has held a public dinner in the early days of February to celebrate what it has been pleased to call "Resettlement Day." The dinner was announced in 1900, but not held, owing to the death of Queen Victoria; it has not since been revived, possibly because the organizers have discovered the futility of attempting to create an anniversary for which there is no historical justification.

Theory that the

The next theory is, that though the Conference effected

[1] If this celebration ever took place, it would probably be in the autumn of 1655, when the question of readmission had not yet been discussed by the Whitehall Conference and was therefore still *sub judice*. If it was before Menasseh had completed his journey to London, the building of the booths on the other side of Thames would be explained.

[2] Violet's Petition against the Jews, p. 2.

Committee of the Council of State reported in favour of admitting the Jews.

nothing, the Committee of the Council of State which had been appointed to consider Menasseh's Petition, subsequently reported in favour of admitting the Jews, subject to certain limitations and restrictions. There is no sufficient evidence that such a report was ever made. It is certain that there was no formal report, for there is no notice of one in the Council Order Book. There is, however, an unsigned paper in the state archives, which Dr. Gardiner regards as a resolution agreed on by the Committee but never presented to the Council, but which Mr. Neal calls a report of the answers *pro* and *con*, given in the Council when the question was debated. From a careful perusal of the document, the latter seems to me the better view, and it is here subjoined as read in that light, the words in brackets not being in the original. [Proposal] "That the Jews deservinge it may be admitted into this nation to trade and trafficke and dwel amongst us as providence shall give occasion."

[The answer of those that were against it, was, that they could not think it lawful, for the reasons marked with Arabic numerals. Those who were of a contrary opinion said] "That as to poynt of conscience we judge lawfull for the magistrate to admit in case such materiall and weighty considerations as hereafter follow be provided for, about which till we are satisfyed we cannot but in conscience suspend our resolution in this case.

"1. That the motives and grounds upon which Menasseh Ben Israel in behalfe of the rest of his Nation in his booke lately printed in this English tongue desireth their admission in this commonwealth are such as we conceive to be very sinfull for this or any Christian state to receave them upon.

"2. That the danger of seducinge the people of this nation by their admission in matters of religion is very great.

"3. That their havinge of synagogues or any publicke meetings for the exercise of their worship or religion is

not only evill in itselfe, but likewise very scandalous to other Christian churches.

"4. That their customes and practises concerning marriage and divorce are unlawfull and will be of very evill example amongst us.

"5. That principles of not makinge concience of oathes made and injuryes done to Christians in life, chastity, goods or good name have bin very notoriously charged upon them by valuable testimony.

"6. That great prejudice is like to arise to the natives of this commonwealth in matter of trade, which besides other dangers here mentioned we find very commonly suggested by the inhabitants of the city of London.

"7. We humbly represent [that they should not be admitted for the above reasons: others represented that they might be admitted subject to the following limitations]

"I. That they be not admitted to have any publicke Judicatoryes, whether civill or ecclesiasticall, which were to grant them terms beyond the condition of strangers.

"II. That they be not admitted eyther to speake or doe anythinge to the defamation or dishonour of the name of our Lord Jesus Christ or of the Christian religion.

"III. That they be not permitted to doe any worke or anythinge to the prophanation of the Lord's Day or Christian Sabbath.

"IV. That they be not admitted to have Christians to dwell with them as their servants.

"V. That they bear no publicke office nor trust in this commonwealth.

"VI. That they be not allowed to print anything which in the least opposeth the Christian religion in our language.

"VII. That so farre as may be they be not suffered to discourage any of their owne from usinge or applyinge themselves to any which may tend to convince them of their error and turn them to Christianity. And that some

severe penalty be imposed upon them who shall apostatize from Christianity to Iudaisme[1]."

Except as showing the ideas current at the time, the document is of little importance; this cannot be doubted if it is a mere report of the arguments used in the Council or Committee, and even if it is a report, intended to be presented to the Council but never in fact placed before that body, it would not be entitled to any great weight as a constitutional document. Nor would its weight be materially increased if, as there is no reason to believe, it had actually been adopted by the Council of State because the recommendation in favour of the Jews was conditional upon certain matters being first provided for and no such provision was ever during the whole existence of the Commonwealth Government made or attempted to be made either by the legislature or the executive[2]."

Theory as to the return of the Jews, founded on the proceedings against Antonio Robles (March–May, 1656).

Let us now turn to a third theory. It is that, though it cannot be proved that any formal concession was publicly made to the Jews, yet the circumstances accompanying the proceedings taken against one Antonio Robles show that the demands made by the Jews had by some secret arrangement been practically granted. To test this theory the proceedings known as the Robles case must be briefly examined. In the spring of 1656 England was at war with Spain, and in accordance with the custom of those times a proclamation had been issued for the seizure of the property of all subjects of the king of Spain that could be found either on the high seas or in the territory of the Commonwealth. In virtue of this proclamation

[1] *State Papers*, Interregnum, ci, No. 118; *Calendar*, do.; *Domestic*, p. 15; Neal's *History of the Puritans*, vol. IV, pp. 141, 142 (ed. of 1738). Gardiner's *History of the Commonwealth*, vol. III, p. 219 n.; Wolf's *Resettlement*, p. 16; and *Menasseh Ben Israel*, pp. xlv, liv, lv.

[2] If the document itself is looked at, its precise date is of little importance. Mrs. Everett Green, in the *Calendar of State Papers*, places it about November 13, 1655, and Mr. Wolf's note on p. lv of his *Menasseh Ben Israel* seems not to be justified, especially as he himself gives its date as November 13 in his *Resettlement of the Jews*, p. 11.

an information was laid on March 14, $165\frac{5}{6}$, against Don Antonio Rodrigues Robles, a Spaniard, living in Duke's Place, on the ground that he had lately received a large cargo of wine from the Canaries, and had laden a second ship with woollen goods which he was about to dispatch thither. An order was accordingly made for the arrest and seizure of the said ships and a search of Robles's house, goods and papers. The order was at once executed, and thereupon Robles addressed a petition to the Protector. He stated that he was a Portuguese born and of the Hebrew nation, and hoped that he might partake of the laws and privileges granted to all merchant strangers the rather that he had resided here many years and paid many thousand pounds for customs, and in all things submitted to the laws of this nation. If any accusation were brought against him he asked to be permitted to answer it legally, and prayed that his goods and papers might be restored to him upon sufficient bail being given to answer the charges made against him. The petition was referred to the consideration of the Council, at whose orders a formal inquiry was held and evidence taken by the Commissioners for the Admiralty and Navy.

According to Robles's own account, which was corroborated by the evidence of several of the principal foreign merchants living in London, he was born in the kingdom of Portugal in a town called Fundao, and his family by reason of being Jews had been forced to fly from Portugal to Spain, where they were persecuted by the Inquisition, and some were tortured to death, some burnt, and others sent to the galleys, but Robles himself by God's great mercy fled to the Canary Islands, and by the help of a kinsman, who was treasurer under the king of Spain, acquired some estate, which he could not long enjoy; for, having been advised that orders had been sent by the Inquisition to apprehend him as a Jew, he came to England, where he remained some years; but he afterwards went back to the Canaries, where he recovered a portion of his

property and returned with it to England, where he had lived for the last four years. He confessed that he had attended mass at the Spanish Ambassador's house in London, and that he was not circumcised. Not only was this evidence supported by Robles's friends, but it was hardly impugned by those who had given information against him—namely, John Baptista de Dunnington, a merchant and factor, and Francis Knevett, a clerk and notary of Doctors Commons. The former at his examination said that he had served Robles for eight years, having left his family six months before. That Robles was reputed by some a Portugal, by some a Spaniard; that his wife came out of Portugal, and spoke a little Spanish. That he heard he was lately turned a Jew, having formerly professed himself a Catholic. When he first came to live with Robles he took him to be a Spaniard. That Robles changed his name when he went to the Canaries (from Fererino to Robles), where the deponent had lived with him about a year. That the treasurer there was cousin to Robles, called Duarto an Rigij (Henriques), who rented the office under the king of Spain, and was then in England, being with his family turned Jews. On further examination, being asked specifically whether Robles was a Spaniard, he said: "I answer that I cannot positively say whether he be or not, for I have heard several reports of him; some saying he was a Spaniard and others saying he was a Portugal; but which to believe, I cannot tell. But I did always take him to be a Spaniard."

Knevett, who had apparently been very bitter against Robles as being a Jew dog, and had desired Dunnington to swear against him, did not, when himself examined, give very damaging evidence. He said that he believed Robles "to be a Jew, not a Spaniard; though living in the Canaries he lived as a subject of the king of Spain. That he is a kinsman to one Duarto en Rigis (Henriques) who was treasurer in the Canaries, but is now in England, and lately told the deponent that the king of Spain had seized

his estate in his Dominions on the account of his being a Jew."

In this state of the evidence the Commissioners reported to the Council on May 14, that they did not find any convincing evidence to clear up either the nation or religion of the petitioner. Some affirming him to be a Jew born at "ffundam" in Portugal, which they tender to testify upon oath; others who have known him long, that they always esteemed him a Spaniard, though their testimony seem not so positive as the other; but all agree that "both in the Canaries, where he was employed under one of the farmers of the king's revenue, and in England he hath professed himself a Romanist, having frequented the mass till about six months since, which with the consideration that he is yet uncircumcised induceth us to conceive he is either no Jew or one that walks under loose principles very different from others of that profession." However, upon the whole they were unable to return any satisfying opinion upon the business, but humbly submitted the same to the Council's determination.

After hearing the report read, the Council, as might have been foreseen, on May 16 ordered that the seizures should be forthwith discharged, and that Robles should be at liberty to dispose of his goods and papers notwithstanding the warrants issued against them [1].

The true bearing of the Robles case.

The case is undoubtedly of great interest as showing the position of the Jews here at the time of the failure of Menasseh's mission, but it in no way points to any legal recognition having been accorded to them. Robles's property was only liable to seizure and confiscation if he was a subject of the king of Spain. As soon as the informa-

[1] *State Papers, Domestic*, Interregnum, vol. CXXV, 38. i. 76, p. 604. i. 112, p. 289. Do. CXXVI, Council, Day's Proceedings, No. 18. Do. i. 77, p. 38. Do. CXXVI, 66. Nos. 11, 12, 13, 67, 67 i, 67 ii. Do. 105, 105 i–xi. i. 77, pp. 44, 78. Do. CXXVII, 21. Do. Council, Day's Proceedings, Nos. 19, 40. The most important of these documents are printed at length in Mr. Wolf's valuable Appendix to his *Crypto-Jews under the Commonwealth*, *Transactions Jewish Historical Society*, vol. I, p. 77 seq.

tion was laid against him he was ready with his answer, "I am no Spaniard, but was born in Portugal, and am of Jewish parentage." The main difficulty was to explain how it was that he traded with and had property in the Canaries, and had lived there for some time. This question was put to the witnesses examined by the Commissioners, and answered in the words of one of them, that "the Portugals who took part with the king of Spain were free to live in his territories." The plea of Judaism seems to have been set up to show why the defendant had left Portugal and afterwards the Canaries. Whether successful or not, it could entail no injury here; for, as has been already shown, the mere fact of being of Jewish birth or religion was no crime provided that the laws against Recusants were complied with, and no part was taken in a religious service which contradicted or impugned the accepted doctrines of Christianity. In any case this plea the Commissioners, who were the judges of the fact, found not proven, conceiving the defendant either to be no Jew, or very different from others of that profession: so that if he had relied on that plea alone he must have failed. He was successful because it had not been satisfactorily proved that he was a Spaniard, and the Council rightly acted upon the ancient maxim of the English law, that the burden of proof is upon those who desire to exact a forfeiture. We thus see that, months after the holding of the Whitehall Conference, the position of the Jews remained exactly the same as it had been in the time of Charles I. We see from the evidence that Robles had been settled here before the Commonwealth had been established, and some of the Crypto-Jews had been settled here even longer. Moreover no change took place in the condition of the Jews until after the Restoration. Robles, it was proved by Dunnington, "always kept his moneys at a goldsmith's, whose name is Mr. Backwell, who received it and paid it out according to his order"; and the Jews of the Restoration still kept their banking accounts at Mr. Alderman Back-

well's[1]. He is also found residing in the same house in Duke's Place in the year of King Charles's return[2]. He could not continue to attend mass at the Spanish Ambassador's, for such services would not be held after the outbreak of the Spanish War; but he and his friends if they did not belong to the six Jewish families to which Cromwell is said to have[3] given special privileges, would probably occasionally attend at some Protestant place of worship in order to make sure of escaping the pains and penalties of the Acts against Recusants[4].

Theory that Cromwell gave a special authorization to John Sadler to build a Synagogue.

Yet another theory claims attention; it is that Cromwell as Protector gave to John Sadler "a special authorization" to build a synagogue[5]. The authority for this statement is a passage in the account of John Sadler in the Birch Manuscripts. The account is an ordinary biographical notice, with the facts apparently stated in chronological order, which was furnished to the writer as late as the year 1738 by Sadler's grandson, Thomas Sadler, who was not alive at the time, and could have no knowledge of the facts except by hearsay. The words are "By his interest it was that the Jews obtained the Privilege to build for themselves a Synagogue in London." The words immediately preceding are "He was in high favour with Oliver Cromwell, who by his letter from Cork invited him to take upon him the office of Chief Justice of Mounster, in Ireland, with a salary of one thousand pounds per annum, which he excused himself from accepting." The letter from Cork,

[1] Wolf's *Jewry of the Restoration*, p. 11.

[2] And apparently still in the house of his kinsman, Duarte Henriques, see the Mendez da Costa lists now printed in Wolf's *Jewry of the Restoration*, p. 4. Mr. Wolf is evidently right in fixing the date of these as 1660, but his theory that they were the work of reformers attempting to procure the re-expulsion of the Jews does not seem very probable. The traditional view that they are lists of persons made out preparatory to the regular organization of a community seems better.

[3] The Question whether a Jew, &c., p. 36; and see the Petition of the Jews to the House of Commons against the special tax proposed to be laid upon them in 1689.

[4] See the Ordinance of September 27, 1650, already quoted.

[5] Wolf's *Jewry of the Restoration*, p. 6; and his *Menasseh*, p. lviii.

which appears on another folio, was dated December 1, 1649. The words immediately following are "August 31, 1650, he was constituted Master of Magdalen College in Cambridge[1]." The writer is ostensibly alluding to a grant made at the end of 1649 or at the beginning of 1650, but we know from the facts, which are now so well established as to be incontrovertible, that no such grant could then have been made. But, it may be said, there is no need to take the words in connexion with their context, and we may assume that they indicate a privilege granted not in 1650, but in 1656. This is a somewhat large assumption to make upon the authority of a writer who had been supplied with information more than eighty years after the event by one who could not have been personally cognizant of the facts; nor is it much less at variance with the known sequence of events and possibilities of the case. It is admitted that the privilege was never made use of by the Jews; no document conferring it has ever been discovered; by the constitution then existing, which Cromwell was not in the habit of disregarding except for the purpose of securing some great political advantage, the Protector had no power to make such a grant, and finally, if it had ever been made, it is unaccountable that John Sadler himself in his petition on behalf of Menasseh Ben Israel's widow, addressed to Richard Cromwell, who had succeeded his father as Lord Protector, though he speaks of his own efforts on behalf of the Jews, omits altogether to mention it[2]. It seems impos-

[1] Birch MSS. 4,223, fo. 165, 166.

[2] "To his Highness the Lord Protector the humble Petition of John Sadler Sheweth that although your petitioner being often pressed to present petitions in behalf of the Jewes, did rather dissuade their coming hither, yet by some letters of your late royall father and others of note in this nation some of their synagogs were encouraged to send hither one of their chief rabbines, Menasseh Ben Israel, for admittance & some freedome of trade in some of these ilands. And when he had stayed here so long that he was allmost ashamed to return to those that sent him or to exact their maintenance here where they found so little success after so many hopes, it pleased his Highness & the Council to settle on the said Menasseh a pension of £100 a year," &c. (*S. P. Dom. Interregnum,*

sible to come to any other conclusion than that the alleged grant was never made.

Theory founded on the antiquity of the Spanish and Portuguese cemetery at Mile End.

The last of these theories with which it is necessary to deal is that a favourable answer was given to the petition mentioned at the end of the last article, which was presented on March 24, 1656, praying for protection in writing for meeting privately for purposes of worship, and for leave to establish a cemetery for the burial of the dead. It is certain that no document purporting to confer these rights has ever been discovered, but it is suggested that such a document may have been given to the petitioners and subsequently lost or destroyed by them. The motive for destroying it is not very apparent, but it is said that the Jews, after the Restoration, were afraid to acknowledge the receipt of any benefit from the late Usurper; if this were so, they showed a great lack of that far-sighted shrewdness which has usually characterized their actions. To have possession of a grant from Oliver was no crime after his régime had come to an end, and it is remarkable that after the Revolution, when their rights and privileges were under discussion, no such grant was ever referred to, although at that time there would be no more prejudice against those who had received benefits from Cromwell than against those whose religious privileges depended upon the favour of the kings of the exiled house [1]. Moreover the fact of wilful destruction or voluntary loss would not explain the total disappearance of all traces of the document, if it had ever existed; for, besides the formal answer given to the petitioners, a copy of a document of this kind would have been taken and kept among the public records along with the petition which is still preserved there. No copy is to be found there, and there is no reason to differ from Dr. Gardiner's statement of the result of the reference of this petition to the Council—"As

ch. viii). The whole petition is printed in Wolf's *Menasseh Ben Israel*, p. lxxxvii.

[1] See the case of the Jews stated, 1689.

might have been expected, it met with no response. Even if that body had been more favourably disposed towards the Jews than was the case, it was hardly likely to commit itself by a formal order to the effect that the existing law should not be carried into effect[1]." There is, however, strong evidence, amounting almost to positive proof, that a Jewish cemetery was established about this time at Mile End. There is still in the possession of the congregation of Spanish and Portuguese Jews in London the counterpart of a lease dated April 13, 1670, of land at Mile End, which has undoubtedly been used as a cemetery since that time. It recites the surrender of a lease "for fourteen years of the same land granted in February, $165\frac{6}{7}$, by John Tuffenell and another to Anthony Fernandez Carvayall and Simon de Caceres." As the lease was surrendered it would in the ordinary course be given up to the grantors and cancelled or destroyed by them, so that there is little hope of finding it now[2]. The lease of 1670 certainly does not, and that of 1656 probably did not mention the purpose for which the land was granted; nor is it likely that any separate deed of trust was drawn up, for such a deed would have been valueless, inasmuch as a trust of this nature would not have been enforceable at this time or for long afterwards. Of the joint lessees Carvajal had received letters of denization; De Caceres was still an alien, and consequently incapable of holding any estate in land other than a lease of premises for the residence of himself or his servants, or the purpose of any business, trade, or manufacture carried on by him[3]. On the death of Carvajal, in

[1] Gardiner's *History of the Commonwealth*, vol. III, p. 222.

[2] Mr. Godwin, writing in the year 1828, says: "I applied to the Rulers of the Spanish and Portuguese Synagogue in Bevis Marks, and by their permission Mr. Almosnino, their secretary, obligingly went over with me some of their oldest records. Among them I found an account of a lease of a piece of ground in the parish of Stepney, granted them in February $165\frac{6}{7}$, for a burying-ground." It is probable that he is referring to the lease of 1670, which mentions an older lease granted in 1656 (*History of the Commonwealth*, vol. IV, p. 250).

[3] "But as to a lease for yeares, there is a diversitie between a lease for

November, 1659, the lease would vest by right of survivorship in De Caceres alone, so that if the land had been openly used as a cemetery, or for any other purpose than that of trade or habitation, it could, and it may be safely asserted would, have been claimed by the Commonwealth or, after the Restoration, by the Crown, nor could the claim have been successfully resisted.

The old book of records of interments in the possession of the Spanish and Portuguese Congregation in Bevis Marks shows that four burials took place between the years 1657 and 1660, but these interments must have been conducted with great privacy and, if they were accompanied by any religious ceremony, with the strictest secrecy. At this period, except in the case of Recusants, there was no law prohibiting the burial of the dead in a private garden[1]; but such an interment, if attended by ceremonies unknown to and inconsistent with the doctrines of Christianity, would have immediately provoked a criminal prosecution. There being no record of any such prosecution, it may safely be affirmed

yeares of a house for the habitation of a merchant stranger being an alien, whose king is in league with ours, and a lease for yeares of lands, meadows, pastures, woods and the like. For if he take a lease for yeares of lands, meadows, &c., upon office found, the king shall have it. But of a house for habitation he may take a lease for years as incident to commerce ; for without habitation he cannot merchandize or trade. But if he depart, or relinquish the realme, the king shall have the lease. So it is if he die possessed thereof, neither his executors nor administrators shall have it, but the king; for he had it only for habitation as necessary to his trade or traffique, and not for the benefit of his executor or administrator" (*Co. Litt.* 26). No amendment of the law was made until 1844, when the right of holding lands was extended to all aliens, whether merchants or not, but it was still limited to lands held for the purpose of residence or occupation by the alien or his servants, or for the purpose of any business, trade, or manufacture, and to terms not exceeding twenty-one years (6 & 7 Vict., cap. 66, sec. 5). It was not until 1870 that the unrestricted right of holding lands was conferred upon aliens (see 33 Vict., cap. 14, sec. 2). As to the old law, see the case of Fish *v.* Klein (1817), 2 Mer. 431.

[1] For the law relating to the disposition of dead bodies, see the judgments of Lord Stowell in Gilbert *v.* Buzzard and Boyer (1821), 2 Hag. *Cons.* 333; and Stephen (J.) in The Queen *v.* Price (1884), 12 Q. B. D. 247.

that if the Jewish burial service was performed at all its performance was successfully concealed. It is also manifest that this mode of interment did not satisfy the religious scruples of the more observant Jews. In September, 1657, Menasseh Ben Israel's son died in his house in London, and the pious father determined, notwithstanding the greatness of the expense and the narrowness of his means, to transport the body to Holland. To enable him to do this he petitioned the Protector to commute the pension of £100 which had recently been granted him for an immediate payment of £300: the petition was not granted in full, for it was finally arranged that the pension should be resigned and a new grant of £200 be made. Menasseh was ultimately enabled to make the journey without receiving the grant[1], but the transaction shows that the right of burial with Jewish religious ceremonies had not

[1] *S. P. Dom.* Interregnum, cxlvi. 89, and cc. 8, printed in Wolf's *Menasseh Ben Israel* at p. lxxxvii. Mr. Wolf does not do Cromwell justice in regard to the payment of this pension. He says: "Unfortunately this pension was never paid, and Menasseh became overwhelmed with cares" (*Menasseh Ben Israel*, p. lxix). The pension was granted on March 23, 165$\frac{6}{7}$, and enrolled on May 21, 1657: "Manasseth Ben Israel, a pencon of 100^{li} per annum, payable quarterly and commencing from the 20th day of February, 1656[–7]" (see the Fifth Report of the Deputy Keeper of Public Records, App. II, p. 263). Before Menasseh's departure, in the autumn of 1657, only two quarterly payments of £25 each would be due, and there is ample evidence that two such payments were made, one before September 29, 1657, and one after that date. It was probably this last payment which enabled Menasseh to make his way to Middelburg. It was not suggested by Menasseh's friends that the pension was not paid; what Sadler says in his petition to Richard Cromwell is "that at length he submitted to resign his former pension for a new grant of £200 to be presently paid as the councill ordered. But notwithstanding his stay & expense in procuring several seales, he never gott one penny of the said £200." It may be that Sadler was misinformed about the seals being actually procured, at any rate they are not extant now; and if they were ever granted the financial advisers of the Protector may have thought that as Menasseh died almost directly after the commutation of the pension, and before another quarter's allowance had fallen due, there was no moral obligation to pay his widow the promised grant of £200. For the two payments of £25 each, see the Eighth Report of the Hist. MSS. Comm., Part I, App. pp. 94b and 95a.

been granted, and that the establishment of a Jewish cemetery was unknown to the authorities. Otherwise the answer to Menasseh's petition would have been, You can bury your son here, and there is, therefore, no occasion to commute your pension: this would seem to dispose of the theory that a favourable answer was given to Menasseh's petition of March, 1656. As we have already stated, the petition was a very modest one; it did not ask for the right of public worship or the formation of a synagogue, but merely permission to meet privately for the purposes of devotion at the petitioners' own houses; nor, on the other hand, did it ask for the establishment or consecration of a cemetery, but merely for a licence to bury the dead in a convenient place outside the city "with the Proprietor's leave." The Jews in England were at this time classed with Popish Recusants, and therefore such a licence was necessary, for the Act to prevent and avoid dangers which may grow by Popish Recusants (3 Jas. I, c. 5, s. 15) imposed a penalty of twenty pounds upon persons causing a Popish Recusant to be buried in any place other than in the church or churchyard, according to the ecclesiastical laws of the realm. The request was merely to exercise a right which, had it not been for the statute, could not have been denied. However, since the outbreak of the war with Spain and the decision of the Robles case, the Jews here no longer lived as Spanish subjects in close touch with the Embassy and regularly attending the mass held there; accordingly they may have been no longer considered as Popish Recusants, and so liable to the penalties of the statute. As stated above, they probably at this time attended some Protestant place of worship. And so if they buried their dead in private ground without any religious ceremony they did nothing illegal, and if Jewish religious rites were performed, the strictest secrecy was observed. When all the circumstances are taken into consideration, it can hardly be maintained that the fact that a few Jews were buried in a garden at Mile End without

any publicity, and probably without any previous consecration of the ground, is any proof that any legal protection had been accorded to those professing the Jewish religion[1].

[1] For the facts concerning the first Jewish cemetery at Mile End, see an article by Mr. Israel Davis in the *Jewish Chronicle* of November 26, 1880. Some interesting letters on the subject appeared in the same periodical during the month of October, 1901.

III.

We must now turn from the pursuit of theories which, however interesting, are either insufficiently supported by evidence or demonstrably false, and attempt to sum up what Cromwell actually did. It is clear that at one time he had been inclined to concede some legal protection to the Jews, and had accorded Menasseh both sympathy and encouragement; but the popular storm which the public discussion of the proposals had raised convinced him of the folly of trying to carry into actual operation any plan that he may have formed. Accordingly, after the Conference he never made any such attempt, and actually expressed himself as opposed to the resettlement of the Jews. "I had almost forgot," writes Colonel Whitley from Calais to Sir Edward Nicholas on Jan. $\frac{14}{24}$, $165\frac{5}{6}$, the month after the Conference had broken up, "that Cromwell says it is an ungodly thing to introduce the Jews; but, if he refuse them, it is because they refuse to purchase it at the sum desired unless they may have the authority of a parliament for their being there with safety[1]." The finances of the Commonwealth were at this time at a low ebb, and the Royalist newswriter, in repeating the statement made by Cromwell, cannot help, having regard to his previous conduct, reflecting that it was not sincere, and that privileges might yet be granted if the Jews were willing to pay a sufficiently heavy price for them. But such privileges could only have been validly granted by legislation,

Cromwell's attitude to the Jews.

[1] *The Nicholas Papers*, vol. III, p. 255.

and the Jews, with that prudent caution which they are credited with generally displaying in money matters, very wisely refused to pay for a boon which could only be securely granted under the guarantee of an Act of Parliament, when the Protector had not the courage to introduce a bill which, even if backed by his great influence, would have stood little chance of ever becoming law. At any rate, Cromwell did nothing, and the position of the Jews remained throughout his régime the same as it had been in the time of Charles I. They were liable to severe penalties if they did not attend an authorized, that is, a Christian, place of worship, and they were precluded from holding any Jewish religious service. Jewish rites may, indeed, have been privately practised, but it is evident that the strictest secrecy was observed. It is true that there were still Jews in England, as there had been in the time of the late king, but they outwardly conformed to the laws of the land, or at any rate they were careful to commit no open or flagrant breach of them. Some few of them had rendered the Protector services, especially in his expeditions to the Indies and his war with Spain, so that their presence here was well known to him. As the law then stood he might have ordered their withdrawal, but so long as they created no trouble or disturbance he was willing that they should remain. As Mr. Carteret Webb, writing it is true nearly a century after the events, but at the same time entrusted by the oldest Jewish community in London with the advocacy of their cause, and having knowledge of the traditions of the English Jews and access to all their documents, says, "Nothing more was done by Cromwell than the conniving at Alvaro da Costa and five other Jew families living in England[1]." This statement of comparatively late date is amply corroborated by *The case of the Jews stated*, which was drawn up in opposition to the very serious attempt to levy a special tax upon the Jews, shortly after the deposition of James II, the

The legal position of the Jews under Cromwell the same as under Charles I.

[1] The question whether, &c., p. 36.

opening words of which it will not be out of place to cite here:—"That about the Year 1654 there came Six Jew Families into this Kingdom, which have (since King Charles the Second's Restauration) been increased to the Number of between Three and Fourscore Families."

Cromwell did not grant and had no power to grant special privileges to the Jews in respect of their religion.

To this then all the statements about Cromwell's protection of the Jews amount, that he knowingly allowed some half-dozen families to remain in the country, even utilizing their services for the purpose of carrying out his political aims. The only favour granted was that he did not, as head of the executive, put in force the power at that time claimed by the executive of expelling foreigners[1] who might choose to come and reside here. If this can be called a resettlement he may be said to have connived at it, but if a resettlement implies, as it is in common parlance supposed to imply, the creation of some communal organization, the foundation of a synagogue, and the open worship of God according to Jewish rites, there is no reliable evidence that Cromwell ever encouraged, or even connived at, or permitted it. If he had, as is sometimes suggested, granted the Jews a charter or other document conferring special privileges upon them in respect of their religion; the charter would have been absolutely void even during the Protector's lifetime, and certainly could have been of no avail after his death. For Cromwell was a constitutional monarch; his powers, especially in religious matters, were strictly defined and circumscribed by written constitutions, the Instrument of Government from December 16, 1653, to May 25, 1657, the Humble Petition and Advice from the latter date till the day of his death. Neither of these permitted any sort of toleration or religious liberty to be

[1] Subject no doubt to the provisions of clause 30 of Magna Charta. It is said that the last time when the right was exercised on a large scale was by Elizabeth in 1575, but it was claimed by the Crown till the Revolution (see the argument of Sir Robert Sawyer, Attorney-General, in the East India Company *v.* Sandys, and Howell's *State Trials*, 457 sqq.), and there is some doubt whether it is even now abolished (see Musgrove *v.* Chun Teeong Toy, L. R. [1891], A. C. 272).

extended to any persons professing doctrines contrary to Christianity, and the Protector had no power under either to alter or interfere with the religious settlement thereby established. Therefore even assuming—and the assumption must be made not only without any evidence, but in contradiction to all the known facts—that a charter of some kind was given, but has been accidentally lost or purposely destroyed, from a legal and historical point of view the Jews could not be said to owe their re-establishment to Cromwell, not merely because he was a usurper, and in consequence all his acts, unless confirmed by a subsequent sovereign, were void, but because he had never at any time arrogated to himself the right of introducing any strange religion, or mitigating the law in favour of its adherents.

Position at the time of Cromwell's death. Previous intrigues of the Jews in Holland with the Royalists.

This was the situation of the Jews in the early days of September, 1658; it was almost precisely the same as it had been ten years before, save that the hopes which were then formed had been disappointed, and succour was no longer expected from the statesman whose tolerant words, however sincerely spoken, had not been followed by any measure of relief. And thus it was that the news that "the powerful devil is dead," brought hope and comfort to the Jews, both here and abroad, as well as to the exiled monarch. Even before Menasseh's mission the assistance of the important congregation of Amsterdam had been sought by the Royalists, as is made manifest by the following extract from a letter of Sir Marmaduke Langdale to Sir Edward Nicholas, the Secretary of State of the fugitive king, written at Brussels on September 20, 1655: "For that clause of Mr. Overton's letter which mentions the Jews, it proceeded from some discourses I had with Mr. Brokes [Saxby] about them, who seemed much to favour them as necessary to a kingdom, and I believe their tenets do not much differ. I desired Mr. Overton to sound their intentions by some of his party in Holland. I am very sorry they agree with Cromwell. The Jews are

considerable all the world over, and the great masters of money. If his Majesty could either have them or divert them from Cromwell, it were a very good service. I heard of this three years agone, but hoped the Jews that understand the interest of all the princes in the world, had been too wise to adventure themselves and estates under Cromwell, where they may by his death or other alteration in that kingdom run the hazard of an absolute ruin: but they hate monarchy and are angry for the patent that was granted by King James to my Lord of Suffolk for the discovery of them, which made most of the ablest of them fly out of England [1]."

Menasseh's failure made the Jews of Holland incline to CharlesII.

At this time the hopes of the Jews centred in Cromwell's

[1] *The Nicholas Papers*, vol. III, p. 51. It is evident that the Jews of the Low Countries had at this time great expectations from Cromwell's readiness to receive Menasseh's mission, preparations for which were far advanced. The letter here referred to was enclosed in the dispatch recited in the text, and was dated Delf, 13 Sept. 55, by Richard Overton to Sir Marm. Langdale. The material passage is: "I made inquiry into the condition of the Jewes, soe farr as was necessary. I find they are in conjunction with Cromwell; some of their Rabbies are learning English on purpose to live in England and must go speedily over. They have their meetings at London, and those Rabbies are to be sent thither for y^t purpose, soe y^t I am very glad I dealt with them by proxe; not one of them knowes anything of me or what my intentions were. Had they, Cromwell should have known it."—*The Nicholas Papers*, vol. III, p. 44. The reference to the patent granted by King James to my Lord of Suffolk is not very clear. Thomas Howard was created Earl of Suffolk on July 21, 1603, at which time he was Lord Chamberlain of the Royal Household; on July 11, 1614, he was appointed Lord High Treasurer, but in the autumn of 1618 he was accused of extortion and dismissed. I have been unable to find any patent or commission directed against the Jews alone, but on September 5, 1604, the Earl of Suffolk was appointed one of several commissioners for the execution of the laws against Jesuits, seminary priests, or other religious persons "being corrupted and brought up seditiously beyond the seas or elsewhere," and authorizing their banishment; and on June 23, 1618, he was appointed a member of a similar commission (see *Calendar of State Papers, Domestic*, 1603–10, p. 148, and id. 1611–18, p. 547. The first commission is printed at length in Rymer's *Foedera*, vol. XVI, p. 597). It is probably one of these commissions that is referred to. In any case the passage corroborates the view expressed in the preceding article that the unbroken residence of Jews in England dates from the first years of Charles I and not earlier.

professions of universal toleration, and had been raised to fever heat by the invitation extended to Menasseh and his followers. But these hopes were destined to bitter disappointment. Before the year had ended, the Conference had been held, but nothing had come of it; the humble petition presented in the following spring remained unanswered, and though Menasseh still stayed in England his companions had departed to their homes abroad, despairing of success. And so the Jews in Holland now turned to the exiled Charles, peradventure they might obtain from him, in the event of his ever being restored to his kingdom, the boon which had been refused them by the all-powerful Protector. Little more than a year after they had been found so unapproachable by Sir Marmaduke Langdale and Mr. Overton, the failure of Menasseh's mission having occurred in the interval, the negotiations between the Jews and the king were complete, as may be seen from the copy of a commission of King Charles II, dated September 24, 1656, at the Court at Bruges, addressed to Lieutenant-General Middleton, to treat with the Jews of Amsterdam: "That whereas the Lieutenant-General had represented to his Majesty their good affection, and that they had assured the Lieutenant-General, that the application which had been lately made to Cromwell on their behalf by some persons of their Nation, had been and was absolutely without their consent, the Lieutenant-General is impower'd to treat with them, that if in that conjunction they shall be ready to assist by any contribution of money, arms, or ammunition; they shall find when God shall restore his Majesty, that he would extend that protection to them, which they could reasonably expect, and abate that rigour of the Law, which was against them in his several Dominions, and repay them [1]." Charles was at this time in Flanders, contem-

Commission to Lt.-Gen. Middleton to treat with them.

[1] *Brit. Mus. Add. MSS.* 4,106, fol. 253. This paper, says Dean Tucker, was found among the original papers of Sir Edward Nicholas, Secretary of State to Kings Charles I and II, and was communicated to him by a friend. Second letter to a friend concerning Naturalization, p. 29, published in 1753.

plating an expedition against England with the assistance of Spain, and being almost penniless the financial assistance that might be obtained from the Jews was of considerable importance to him. Such assistance he received, and he afterwards, as will be seen, scrupulously carried out the pledge, on the faith of which it had been rendered. But for the time being the prospect for resettlement was not a bright one. Charles was not ready to start until early in 1658, but on March 1 of that year English frigates destroyed his ships at Ostend, and after the battle of the Dunes on June 8, all hope of help from Spain was gone, and the expedition had to be abandoned. The restoration of the king, and the fulfilment of his promise to the Jews, which depended upon it, seemed hopeless, when the news of Cromwell's death, less than three months later, made the first of these events almost certain, though a period of more than a year and a half was to elapse before the king came to his own again.

Their hopes destroyed by the battle of the Dunes.

In this interval no great change can be proved to have taken place in the condition of the Jews here, but the reins of government had become slacker, and the laws of intolerance, though unaltered, were less uniformly enforced. Moreover, as time went on, it became more and more certain that the monarchy would be restored, and the king's promise of protection, as well as his well-known tolerant views in matters of religion, filled with encouragement those who were here, and induced others to join them. Some of them, it is plain, did not think the situation sufficiently secure to bring over their wives and families with them, for the Petition to the King in Council, presented some six months after the Restoration by the Lord Mayor and Aldermen of the City of London, complains of the competition in the export trade of strangers, "both Christians and Jewes, who live here obscurely, free from family expences and charge of Public offices." The same petition also indicates their growing numbers by comparing them to a swarm of locusts "Who are *now daily* multiplied

Interval between the death of Cromwell and the Restoration. Increase in the number of the Jews here.

by the accession of whole families of them from all parts (as if your Majesty's dominions were condemned to be the sink into which the sewer of Mankind should be emptied for a plague to your subjects)[1]." The other petitions presented at the same time also testify to this increase in the numbers of the Jews.

First mention of a Jewish synagogue in England.

There is moreover some, though it must be admitted weak, evidence that a synagogue was established at this time. It was of course a secret, and in no sense a public building. The authority for this statement is a scurrilous pamphlet, entitled *The Great Trappaner of England Discovered*, written for the purpose of vilifying one Thomas Violet, a goldsmith and Alderman of the City of London, who at this time was taking a leading part in opposing a Jewish resettlement. The tract was apparently written in March, $16\frac{59}{60}$, and, in spite of its violent and exaggerated language, has been thought worthy of preservation among the public records. The anonymous writer describes an attempt by Violet to ruin all the Jews and procure their banishment and the confiscation of their property, half of which was to be distributed among the conspirators as their reward, by means of a plot, the object of which seems to have been to hand over a quantity of spurious foreign coins to the Jews, and then charge them with coining or procuring these counterfeit pieces. The writer says that when he discovered Violet's designs he melted down the coins again, and so the plot came to nothing. It is only incidentally that the synagogue is mentioned. The commencement of the plot is described as follows: "This Deponent saith that in the beginning of last Spring" (apparently the spring of 1659), "Tho. Violet Goldsmith came to this Deponent, and told him this Deponent, that the said Thomas Violet knew of a way that might make him the said Deponent for ever, and so desired the said Deponent to go along with him, the said Tho. Violet, into Duke's Place, whereupon the said Deponent went along with the said Tho. Violet into the

[1] *Remembrancia*, vol. IX, p. 44.

place before mentioned, and was by him the said Tho. Violet brought *into the Synagogue of the Jewes, in the place aforesaid,* and spake with one Mr. Moses their High-priest that year and other Jewes; and this Deponent saith further, that the said Tho. Violet told the Jewes, this deponent was a fit man to do them service in the business which he the said Tho. Violet had treated with them about[1]."

This is the first mention in contemporary literature of a visit to a Jewish synagogue in England, and, notwithstanding the mention of the High-priest, it is not quite certain that the writer means a place of public worship; for on this occasion at least it was made use of as a place for transacting business, in which the High-priest, who is spoken of as an annually elected officer, is mentioned as having taken a prominent part, the word may be used in its etymological sense as a meeting-place, or, as is more probable, the whole story may be a fabrication on the part of the anonymous pamphleteer. In any case, it is to be observed that the building, which was so far unknown that Violet had to personally conduct his intended accomplice thither, is said to have been situated in Duke's Place, and not in King Street or Creechurch Lane, the traditional sites of the first synagogues. If used as a place of worship as well as business such user was wholly illegal and strictly secret, so that in the only one of the petitions presented against the Jews in the autumn of 1660, which has been thought worthy of preservation among the State Archives, and which contains the most sweeping and, in many cases, unfounded accusations against the Jews, the establishment of a synagogue is only hinted at, but not directly asserted, in the following words: "And moreover such of late hath been the presumption of the Jewes that as the Report hath gone and so doubtless upon inquiry it will be discovered that they have circumcised children, set up and frequented Synagogues and have had and still may have their Schools, Priests, Presbiters, and the like." Violet,

[1] *The Great Trappaner of England Discovered*, p. 3.

in his petition, dated December 18, 1660, says that at the time of the Conference with Menasseh the Jews prayed "to have liberty to erect new Synagogues or Temples amongst us for the free public exercise of their Jewish worship, Customs, and Religion; and they did *then* erect a Jewish Synagogue and it is at this day, every day they celebrate twice in the day their superstition, their fire never goes out all the year[1]." We know however that this last statement is untrue, for otherwise there would have been no object in the Jews petitioning in the spring of 1656 for protection for meeting at their private devotions in their own houses. Nor did Violet himself, an avowed and bitter enemy of the Jews, take any step in the matter until about Christmas, 1659, when he made an application to Mr. Justice Tyril, with the intention of obtaining criminal process against them, a fact which indicates that he could not earlier obtain any evidence of their having set up a synagogue, and so rendered themselves amenable to the criminal law.

No change in the legal status

There is evidence then that in the year and a half which

[1] Violet's Petition, December 18, 1660, p. 1. The previous quotation is from the Remonstrance concerning the Jews, November, 1660, *S. P. Dom.* Car. II, vol. XXI, p. 140. Mr. Wolf, in his *Jewry of the Reformation*, p. 8, note 26, intimates that this latter document is the petition actually presented by Violet to the King in Council. This is not probable; it is more likely to be the petition of Sir William Courtney and others, or one of the other petitions mentioned as being before the Privy Council on November 30, 1660 (see *Privy Council Register*, Car. II, vol. II, p. 57). If it is Violet's original petition, he does not go so far as to say that a synagogue has been actually set up, as he does in his second petition, dated December 18, 1660, and published in pamphlet form in January, 1661. Inasmuch as the debate in the Commons was ordered to take place on December 18, it is probable that this petition was never actually presented, so that it is only a political pamphlet, issued shortly after the proceedings referred to had been dropped, and accordingly little reliance can be placed on the statements of fact it contains.

Mr. Moses, the High-priest, is no doubt correctly identified by Mr. Wolf as Moses Athias, described in the Da Costa lists as "Sin. Moses Atees, Creechurch Laine, a Jewish Ribay, and Sin. Moses the Prest wer the Sinagoge is." Dr. Gaster, in his *History of the Spanish and Portuguese Synagogue* (p. 18), says that he must have acted as the temporary Hazan, and also as a kind of spiritual adviser.

succeeded Cromwell's death the numbers of the Jews increased, and their position and prospects improved so far that they ventured to hold divine service, probably in a private house, but certainly unknown to the general public or the authorities, and conducted with the strictest precautions and concealment. They may have done this also in the old days when Charles I was king, or in the more recent times of Oliver's Protectorate; but if they did they managed to leave no trace to attract the attention either of contemporary informers or subsequent historians. It is, moreover, certain that whatever hopes may have been aroused and whatever laxity there may have been in administering the law in this interval, no change was effected in the legal status of the Jews.

of the Jews till the Restoration.

On Royal Oak Day, May 29, 1660, Charles II made his triumphal entry into London, amidst the plaudits and acclamations of the citizens. Thenceforward all the acts of the late Government, unless expressly confirmed by Parliament, and all the statutes or ordinances enacted during the time of the Interregnum, were absolutely void. Thus the religious settlement effected by Cromwell was at an end, and the situation as it existed at the period before the great rebellion was revived. When Charles was firmly seated on his throne, the previous legislation against sectarianism and nonconformity, intolerant as it was, did not satisfy the bigotry of the triumphant Cavaliers, who, having themselves experienced the evils of persecution, were determined to take vengeance on their former oppressors. The history of the reign accordingly reveals a series of measures directed against all who dissented from the tenets of the established church, and it is somewhat remarkable that at the very time when these measures were being enacted and enforced the Jews obtained a permanent and legal settlement in the country. If they had a settlement before this time, it was so successfully hidden as to escape the attention of the authorities, and to baffle the keen eyes of the informers, always ready to

The Restoration of the king and Resettlement of the Jews.

swoop down upon their prey. Now, for the first time, Jews openly defied the acts against recusants by habitually neglecting to attend any Christian places of worship; now, for the first time, they organized a community, and established a synagogue where Jewish services were publicly held, notwithstanding the severe penalties to which those who took part in them were by the laws exposed. To explain this strange phenomenon it will be necessary to review briefly the general religious history of the reign, and then examine the occasions on which the still small Jewish community was brought into contact with the governing powers. The king himself was of a tolerant disposition, and again and again combatted the zeal for persecution of his Parliament, though in these contests he was often worsted, thanks to his prevailing vices of self-indulgence and indolence. At this time, as has already been pointed out, toleration did not rank high in the scale of virtues, but there can be little doubt that this was one of the few virtues (if we adopt the popular view of his character) which Charles possessed. In his early days he had had experience of the bigotry of the Presbyterians, when he was nominally a king, though really a prisoner, in Scotland, a situation from which his defeat at Worcester, despite the poverty and exile it brought in its train, came as a relief. His mother was a Roman Catholic, and he married a Roman Catholic wife. His own religious convictions were not very strong; during his exile he remained a staunch adherent to the Church of England, and even quarrelled with his mother on account of her attempt to convert his brother the young Duke of Gloucester to Catholicism; but his conduct at this time may have been actuated by policy rather than by conviction. His leanings in later life were certainly towards the ceremonies of the Roman Church, though he put off his formal conversion to it till his death-bed. To him religion was of such little importance that it was absurd to punish any one on its account. He accordingly showed himself a real advocate

Charles II an advocate of toleration in an intolerant age.

of toleration; but when the cry for persecution became too pressing, the desire for ease which prompted all his actions made him yield to it, even as Cromwell, for all his firmness of will, had ultimately given way. This tolerant disposition has already been seen in the grant of the commission to General Middleton in September, 1656, previously mentioned. The promise of protection to the Jews contained in it was only an extension of the terms of the Treaty made with Spain in the spring of the same year, as the price of her assistance for his restoration, by which he agreed to suspend and, if possible, secure the parliamentary revocation of all penal laws. In the same spirit in the Declaration of Breda, issued at the time of his restoration, he says: "And because the passion and uncharitableness of the times have produced several opinions in Religion, by which men are engaged in parties and animosities against each other (which when they shall hereafter unite in a freedom of convocation, will be composed, or better understood), we do declare a Liberty to tender consciences, and that no man shall be disquieted or called in question for differences of opinion in matter of Religion, which do not disturb the peace of the kingdom; and we shall be ready to consent to such an Act of Parliament, as, upon mature deliberation, shall be offered to us, for the full granting that indulgence."

The Convention Parliament, by which Charles had been recalled, did not pass any legislation on the subject of religion. The House of Commons contained many supporters of the old régime, who preferred the Presbyterian Church government established under the Commonwealth to the Church of England as formerly established, and when the question came up for discussion in the House, the king was requested to convene a select number of divines to treat concerning the affair. As a result of the conference a Declaration concerning ecclesiastical affairs was issued. It provided modifications in Church government which were a compromise between the views of the

The Convention Parliament and toleration.

Episcopalians and the Puritans, and further renewed the promise of toleration contained in the Declaration of Breda, in the selfsame terms[1]. The Declaration was presented to Parliament. The House of Commons thanked the king for it, and a bill embodying it and turning it into law was presented and read a first time; but the toleration was thought too wide, and the bill rejected on the second reading by 183 to 157 votes[2].

The new Parliament, 1661.

At the end of the year the Parliament was dissolved, and in the spring of the following year the elections for the new House of Commons were held. A wave of loyalty, such as has been seldom experienced, swept over the country. The Cavaliers were everywhere successful; the Puritans everywhere defeated, and when Charles met his Parliament in May, he was confronted by a House of Commons which might truly be called "plus royalist que le roi." "The divine right of kings," "Church and State," were the mottoes and watchwords of the newly-elected representatives of the people. The Church was to be purged of all dissenting elements, and life in the State to be made endurable only to those who owned allegiance to the doctrines of the national Church. Accordingly, the first thing done by the House of Commons, after the election of Sir Edward Turner as their Speaker, was to order all the members to take the Sacrament according to the old Liturgy, on pain of expulsion, and then, in conjunction with the Lords, to order that "The solemn League and Covenant" should be burned by the common hangman at Westminster and in the City, and that all copies thereof be taken down out of all churches, chapels, and all other public places in the kingdom. Moreover, the first law that it added to the statute-

Members ordered to take the Sacrament.

[1] Baxter, the leading Puritan divine, desired to exclude from the general toleration those who denied the Trinity and Papists, as had been done in Cromwell's time by both the Instrument of Government and the humble Petition and Advice, but the king, mindful of his promises, published the Declaration without this restrictive clause.

[2] See Cobbett's *Parliamentary History*, vol. IV, pp. 79, 82, 131–42, 152–4.

book, was "an Act for the well-governing and regulating of Corporations," commonly called the Corporation Act, by which no one was eligible to hold any corporate office or be a member of any municipal corporation who should not, in addition to taking certain oaths and making certain declarations set out in the Act, "have within one year next before his election taken the Sacrament of the Lord's Supper according to the rites of the Church of England [1]." Thus all Nonconformists, of whatsoever creed or sect, were placed under a political disability, which was not removed till the year 1828. This was immediately followed by an Act restoring the bishops to their seats in the Upper House. The next measure passed this session to which attention must be directed was the Quakers' Act, the passage of which was delayed in the Lords, who "had not stomachs strong enough to digest quite so fast as the Commons furnished them with this sort of food." The objection of the Lords had been that the penalties of the bill extended to others besides Quakers, but after a conference between the Houses the bill was passed. It made penal a refusal to take an oath when lawfully tendered, or maintaining that the taking of oaths was unlawful, and also "if the said persons commonly called Quakers shall at any time depart from the places of their several habitations and assemble themselves to the number of five or more of the age of sixteen years or upwards at any one time in any place under pretence of joining in a religious worship not authorized by the laws of this realm." The penalties were five pounds for the first and ten pounds for the second offence, and any one found guilty after two previous convictions, was to abjure the realm, or otherwise be transported to any of the plantations beyond the seas. This Act was not repealed until 1812, after having been on the statute-book more than a century and a half. It may

The Corporation Act.

The Quakers' Act.

[1] 13 Car. II, stat. 2, cap. 1, in force till 1828, when it was virtually repealed by 9 Geo. IV, cap. 17, and finally repealed by 34 & 35 Vict., cap. 48 (the Promissory Oaths Act, 1871).

be remarked that it was fortunate for the Jews that their name was not coupled with the Quakers, as it has been in several subsequent Acts of the legislature [1].

The Act of Uniformity, 1662.

The other Act of this session that it is necessary to mention is the Act of Uniformity (13 & 14 Car. II, cap. 4), which ordained the exclusive use of the newly-revised Prayer-book in all places of public worship, and rendered incapable of holding any benefice all who had not been episcopally ordained. Moreover, all professors, tutors of colleges, and schoolmasters keeping any public or private school, were required to subscribe a declaration, which included a promise to "conform to the Liturgy of the Church of England, as it is now by law established," and schoolmasters or tutors in private houses, though not compelled to sign this declaration, had to obtain a licence from the bishop of the diocese before exercising their calling, under pain of suffering three months imprisonment, "without bail or mainprize," for each offence. It is to be noted that these last provisions, though allowed to become obsolete, were not repealed till the year 1846.

First Declaration of Indulgence, 1662.

The Act of Uniformity came into force on St. Bartholomew's Day (Aug. 24), 1662. Its effect was not only to drive more than 3,000 ministers from their livings, but also, as the earlier legislation punishing non-attendance at church was now revived, to expose Dissenters of every description to severe pains and penalties. In order to prevent the execution of these cruel laws, the king, on December 20, issued "a declaration to all his loving subjects," in which, among other things, he repels the charge of not performing the promises of toleration made at Breda, as to which he says: "We remember well the confirmations of them since upon several occasions in parliament; and as all these things are still fresh in our memory, so are we still firm in the resolution of performing them to the full. But it must not be wondered at,

[1] The Act is 13 & 14 Car. II, cap. 1, the repealing Act 52 Geo. III, cap. 155. See Cobbett's *Parl. Hist.*, vol. IV, p. 233.

since that parliament to which those promises were made in relation to an Act, never thought fit to offer us any to that purpose, and being so zealous as we are (and by the grace of God shall ever be) for the maintenance of the true Protestant religion, finding it so shaken (not to say overthrown) as we did, we should give its establishment the precedency before matters of indulgence to dissenters from it. But that once done (as we hope it is sufficiently by the Bill of Uniformity) we are glad to lay hold on this occasion to renew unto all our subjects concerned in those promises of indulgence by a true tenderness of conscience, this assurance:—

"That as in the first place we have been zealous to settle the uniformity of the Church of England, in discipline, ceremony, and government, and shall constantly maintain it;

"So as for what concerns the penalties upon those who (living peaceable) do not conform thereunto through scruple and tenderness of misguided conscience; but modestly and without scandal perform their devotions in their own way, we shall make it our special care so far forth as in us lies, without invading the freedom of parliament, to incline their wisdom at this next approaching sessions, to concur with us in the making some such act for that purpose, as may enable us to exercise with a more universal satisfaction, that power of dispensing which we conceive to be inherent in us[1]."

In the face of this declaration we are not surprised to find that the penal laws were not strictly enforced, and that in particular cases, in which the declaration itself was not considered a general dispensation, the power of dispensing conceived to be inherent in the Crown was liberally exercised. Among the Cavaliers the declaration was unpopular, partly because toleration was disliked, but especially because it was thought that undue favour was shown to the Papists. The king referred to this matter in his speech

[1] The whole Declaration is printed in Cardwell's *Documentary Annals of the Church of England*, vol. II, pp. 311–20.

on opening the session of Parliament in February, 166$\frac{2}{3}$, as follows: "The truth is, I am in my nature an enemy to all severity for Religion and Conscience, how mistaken soever it be. I hope I shall not need to warn any here not to infer from thence that I mean to favour Popery. . . . I am far from meaning a toleration or qualifying them to hold any offices or places of trust in the government; nay further, I desire some laws may be made, to hinder the growth and progress of their doctrine; . . . and yet, if the Dissenters will demean themselves peaceably and modestly under the government, I could heartily wish I had such a power of indulgence, to use upon occasions, as might not needlessly force them out of the kingdom, or staying here, give them cause to conspire against the peace of it." The Commons, in their address to the king in answer, respectfully but firmly rejected all idea of indulgence to Dissenters of any kind, offering it to his Majesty's great wisdom "that it is in no sort advisable that there be any indulgence to such persons, who presume to dissent from the Act of Uniformity and Religion established." They also added that the promise of toleration made in the Declaration from Breda was no longer binding, inasmuch as it was expressly a promise of legislation which the Parliament, elected by the free choice of the nation, was unwilling to pass. During the session no further Act against Nonconformists was passed, but at the prorogation in July, the Speaker, on behalf of the House of Commons, thought fit to apologize to the king, and at the same time besought him "to issue out your Proclamation for the putting those laws which now are in force against the Popish Recusants, Sectaries, and Nonconformists in effectual execution[1]." The king made a conciliatory reply to his faithful Commons, but it does not appear that the desired proclamation was ever issued. The rancour of the Church was not to be baulked, and accordingly, at the next session (March 16—May 17, 1664), though the subject was not broached in the

[1] Cobbett's *Parl. Hist.*, vol. IV, pp. 200, 263, 286, 289.

king's speech, the first Conventicle Act (16 Car. II, cap. 4) was passed. It recites that the Statute 35 Eliz., cap. 1, has not recently been enforced, and declares it to be still in force, and further enacts that all persons above the age of sixteen years attending a Conventicle, i. e. any meeting "under colour or pretence of any exercise of religion in other manner than is allowed by the Liturgy or practise of the Church of England at which there shall be five persons or more assembled together over and above those of the same Household," are guilty of a crime, and liable to three months' imprisonment, or, in the alternative, a fine of five pounds for the first offence, to six months' imprisonment or a fine of ten pounds for the second, and transportation for seven years or a fine of £100 for the third or any subsequent offence, and in the last case only was it necessary that the conviction should take place before a jury. Persons transported, who escaped or returned without leave, were declared guilty of felony without benefit of clergy. The Act was only temporary, being limited to a period of rather more than three years, but, as we shall see, it was re-enacted, though with milder penalties, shortly after its expiration. In his speech at the prorogation the Speaker explains the Act and the reason for passing it, though no recommendation on the subject had been made in the king's speech at the opening of the session, in these words: "Whilst we were intent on these weighty affairs, we were often interrupted by petitions and letters and motions representing the unsettled condition of some countries by reason of Fanatics, Sectaries, and Nonconformists. They differ in their shapes and species, and accordingly are more or less dangerous; but in this they all agree, they are no friends to the established government either in Church or State; and if the old rule hold true, 'Qui Ecclesiae contradicit non est pacificus,' we have good reason to prevent their growth and punish their practise. To this purpose we have prepared a Bill against their frequenting of Conventicles, the seed-plots and nurseries of their opinions, under

The Conventicle Act, 1664.

pretence of religious worship. The first offence we have made punishable only with a small fine of 5*l.* or three months imprisonment, and 10*l.* for a peer. The second offence with 10*l.* or six months imprisonment, and 20*l.* for a peer. But for a third offence, after a trial by a jury at the general quarter sessions or assizes, and the trial of a peer by his peers, the party convicted shall be transported to some of your majesty's foreign plantations, unless he redeem himself by laying down 100*l.*: 'Immedicabile vulnus ense recidendum, ne pars sincera trahatur[1]'."

Bill for granting Liberty of Conscience rejected.

In the following session a Bill to enable the granting of Indulgences for Liberty of Conscience was introduced into the House of Lords with the approbation of the king under the auspices of Ashley and Arlington, but without the support of the other ministers. It was opposed by Clarendon, and "In the end very few having spoken for it, though there were many who would have consented to it, besides the Catholic lords, it was agreed that there should be no question put for the commitment; which was the most civil way of rejecting it[2]."

The Five Mile Act, 1665.

The legislation of persecution was not yet complete. In the following year, 1665, by the Parliament which met at Oxford because the plague was still raging in London, the Five Mile Act (17 Car. II, c. 2) was passed which forbade under a penalty of forty pounds and six months' imprisonment any nonconforming teacher or minister of whatsoever denomination from dwelling or coming within five miles of any city or corporate town without subscribing a declaration of non-resistance, and taking the oath laid down in the Act.

No further legislation was enacted till the year 1670; the execution of the laws already passed would have satisfied the Church party; attention was, moreover, absorbed in foreign affairs and the war with Holland; but, on the other hand, the fall of Clarendon had made the cause of

[1] Cobbett's *Parl. Hist.*, vol. IV, p. 294.

[2] Ibid., pp. 311–15, taken from Clarendon's *Life*.

toleration more hopeful [1]. On March 1, $166\frac{8}{9}$, by the prorogation of Parliament the Conventicle Act according to the provisions of its last section expired. The Commons, however, made a determined effort to continue it, and a Bill for that purpose was introduced and passed by 144 to 78 votes, but it never went further than the Lower House [2]. However, during a later session, on April 11, 1670, Charles, as the price of obtaining supplies which would not be granted on any other terms, gave his consent to the second Conventicle Act (22 Car. II, c. 1, repealed in 1812 by 52 Geo. III, c. 155): by it Conventicles, defined as in the former Act, were made illegal, and all persons attending them made liable to a fine of five shillings for the first and ten shillings for the second offence. All persons preaching or teaching at such meetings were to be fined twenty pounds for the first and forty pounds for the second offence, and every person in whose house or barn such a meeting was held was to forfeit twenty pounds, and if he was unable to pay this sum, then it was to be levied on the persons present at the Conventicle. Moreover, constables and others neglecting to give information of offences committed under the Act, and magistrates omitting to enforce its execution, were made liable to penalties of five pounds and one hundred pounds respectively; half of which sums was to go to the informer. All clauses of the Act, contrary to the recognized principles of our criminal law, were to be construed "most largely and beneficially for the suppressing of Conventicles and for the Justification and Encouragement of all Persons to be employed in the Execu-

Second Conventicle Act, 1670.

[1] In his speech on opening the session on February 10, 1667, the king again recommended toleration: "And for the setting a firm Peace, as well at home as abroad, one thing more I hold myself obliged to recommend to you at this present, which is, That you would seriously think of some course to beget a better union and composure in the minds of my Protestant Subjects in matters of Religion; whereby they may be induced not only to submit quietly to the government but also cheerfully give their assistance to the support of it."—Cobbett's *Parl. Hist.*, vol. IV, p. 404.

[2] Cobbett's *Parl. Hist.*, vol. IV, pp. 421–2.

tion thereof." The Lords, however, appended a proviso, which was ultimately agreed to by the Lower House, "That neither this Act, nor anything therein contained, shall extend to invalidate or avoid his Majesty's Supremacy in Ecclesiastical Affairs; but that his Majesty and his Heirs and Successors may from Time to Time, and at all Times hereafter, exercise and enjoy all Powers and Authority in Ecclesiastical Affairs as fully and as amply as himself or any of his Predecessors have or might have done the same; any thing in this Act notwithstanding."

In the spring of the following year both Houses of Parliament petitioned the king to issue a proclamation for the banishment of priests and Jesuits, and the enforcement of the laws against Recusants. The king again complied, making, however, this reservation: "But I suppose no man will wonder if I make a difference between those who have newly changed their religion and those that were bred up in that religion, and served my father and me faithfully in the late wars[1]." For an interval of nearly two years Parliament did not meet for the effective transaction of business.

Declaration of Indulgence, 1672.

The king took this opportunity to publish his famous Declaration of Indulgence on March 15, 1672. It recites the king's desire to preserve the rights and interests of the Church, and the endeavours made to enforce uniformity by coercive measures, and proceeds, "But it being evident by the sad experience of twelve years that there is very little fruit in all these forcible courses, we think ourself obliged to make use of that supreme power in ecclesiastical matters, which is not only inherent in us, but hath been declared and recognized to be so by several statutes and acts of Parliament." The intention of maintaining the doctrine, discipline, and government of the Church of England "as now it stands established by law" is expressed: then follows this passage: "We do in the next place declare our will and pleasure to be, that the execution of all and all manner of penal laws in matters ecclesiastical,

[1] Cobbett's *Parl. Hist.*, vol. IV, p. 479.

against whatsoever sort of nonconformists or recusants, be immediately suspended." An intention of licensing places of public worship for such as do not conform to the Church of England is then announced, and "This, our indulgence, as to the allowance of the public places of worship and approbation of the teachers, shall extend to all sorts of nonconformists and recusants, except the recusants of the Roman Catholic religion, to whom we shall in no wise allow public places of worship, but only indulge them their share in the common exemption from the execution of the penal laws, and the exercise of their worship in their private houses only[1]."

According to Macaulay, of all the many unpopular steps taken by the government, the most unpopular was the publishing of this declaration; it was abhorrent to the enemies of religious freedom, and was thought by the upholders of civil liberty a violation of the constitution, and an unjustifiable exercise of the royal prerogative. The fact that it was at this very time that the Duke of York, the heir presumptive to the throne, ceased to outwardly conform to the established religion, and formally joined the Church of Rome, naturally created the impression that there was an intention to favour Papistry, and the Protestant dissenters felt no gratitude for any relief granted to them on such conditions. When at length the necessity of a supply to carry on the Dutch War forced Charles to reassemble his Parliament in February, 1673, he thus addressed them on this matter: "Some few days before I declared the war, I put forth my Declaration for Indulgence to Dissenters, and have hitherto found a good effect of it, by securing peace at home when I had war abroad. There is one part in it that has been subject to misconstructions, which is that concerning the Papists; as if more liberty were granted them than to the other Recusants, when it is plain there is less; for the others have public

[1] Cardwell's *Documentary Annals of the Church of England*, vol. II, pp. 333–7.

places allowed them, and I never intended that they should have any, but only have the freedom of religion in their own houses, without any concourse of others. And I could not grant them less than this, when I had extended so much more grace to others, most of them having been loyal, and in the service of me and of the king my father; and in the whole course of this indulgence, I do not intend that it shall in any way prejudice the Church, but I will support its rights and it in its full power. Having said thus I shall take it very ill to receive contradiction in what I have done. And I will deal plainly with you, I am resolved to stick to my Declaration[1]."

The power to issue the Declaration questioned in the Commons. The Declaration cancelled.

The question was speedily taken into consideration by the House of Commons, which, after a long and fierce debate, resolved by 168 votes to 116, "That Penal Statutes, in matters Ecclesiastical, cannot be suspended but by Act of Parliament"; and an address to that effect was ordered to be drawn up and presented to the king; a further debate took place on the proposal that the Lords should be invited to concur in the address, but it was rejected by 125 to 110 votes. The address was accordingly presented from the Lower House only. On February 24 the king returned his answer to the address, regretting "the questioning of his power in Ecclesiastics: which he finds not done in the reigns of any of his ancestors; his only design was to take off the penalties the statutes inflicted upon the Dissenters; and which, he believes, when well considered of, you yourselves would not wish executed according to the rigour and letter of the law"; he had no intention of avoiding the advice of Parliament, and if any Bill for these ends should be offered to him he would readily concur in it[2]. The answer was not satisfactory to the House because the claim to suspend penal statutes in matters ecclesiastical seemed to be still asserted, and it was resolved that a second address should be sent to the

[1] Cobbett's *Parl. Hist.*, vol. IV, p. 503.

[2] Ibid., p. 546.

king. On March 1 the king went down to the House of Lords and complained of the addresses he had received from the Commons, and requested advice thereon. The Lords in answer sent up an address to his majesty thanking him for "asserting the ancient just rights and privileges of the house of peers." On March 7 both houses joined in presenting an address against the growth of Popery, and on the following day the king came to the Parliament in person and agreed to the address; he also asked for supply to be dispatched, and added: "My Lords and Gentlemen; if there be any scruple remain with you concerning the suspension of penal laws, I here faithfully promise you, that what hath been done in that particular shall not for the future be drawn either into consequence or example." The same day the Lord Chancellor informed the House that his majesty had on the previous night caused the original Declaration under the great seal to be cancelled in his presence[1]. The thanks of both Houses were then returned to the king, and thus ended this incident which it has been thought right to relate at length on account of the light it throws on the spirit of the times as well as upon the question immediately before us.

Into the religious history of the remainder of the reign, inextricably bound up as it is with the course of politics, it is not necessary to enter at length; there was a perhaps not ill-founded suspicion that with an avowed Papist as successor to the crown attempts would be made to overthrow the established Church. In this state of feeling it was not unreasonable to take care that all places of trust and power should be filled by members of the dominant sect only. This was effected by the Test Act of 1673 (25 Car. II, c. 2), entitled "An Act for preventing dangers which may happen from Popish Recusants," by which all persons holding any office or place of Trust under the crown, whether civil or military, were compelled to publicly

The Test Act, 1673.

[1] Cobbett's *Parl. Hist.*, vol. IV, pp. 551, 556-61.

receive the Sacrament according to the rites of the Church of England, and also to take the oath of Supremacy and sign a declaration against Transubstantiation. The penalty for executing any office without complying with these requirements was incapacity to hold any office or to prosecute legal proceedings or to act as guardian or executor, or to receive any legacy, and also the forfeiture of five hundred pounds, which could be recovered by any informer for his own benefit. It will be at once seen that this Act, though expressly directed against Papists, was equally applicable to sectaries of all denominations. This was followed five years later by the Parliamentary Test Act (30 Car. II, st. 2), entitled "An Act for the more effectual Preserving the King's Person and Government, by disabling Papists from sitting in either House of Parliament," by which for the first time Roman Catholic peers were excluded from taking their seats in the House of Lords. These last enactments are often defended upon the ground that in the then existing political circumstances it was necessary to strictly exclude Roman Catholics from all share in the government of the country; on the other hand, the Anglican party took care to exclude all Dissenters, whether Roman Catholics or not; and though measures were from time to time projected for giving relief to Protestant nonconformists, these were invariably brought forward at times such as the fag end of a session, when they had little chance of ever becoming law. This excuse, however applicable it may be thought to the Test Acts, can hardly be extended to cover a great part of the earlier legislation, such as the Conventicle and Five Mile Acts, or the frequent demands for the execution of the Elizabethan and Jacobean statutes against Recusants.

The Parliamentary Test Act, 1678.

The contest over the Exclusion Bill, the proceedings against those charged with complicity in the Popish Plot, and the subsequent revenge of the court upon the leaders of the country party, did not concern the Jews, protected as they were by their insignificant numbers and exclusion

from all part in the political arena. To them, and the obscure formation of their community in these times of persecution and danger to all who dared to differ in the slightest degree from the religion as by law established and worship God according to the dictates of their conscience, it is now time to turn.

IV.

Petitions against the Jews at the time of the Restoration.

At the time of the Restoration there were some thirty families of Jews in England[1], and these naturally awaited with expectation the promise of the king, given through General Middleton, "to abate that rigour of the law which was against them," and welcomed the declaration of a Liberty to tender Consciences which had been made at Breda. But they had many enemies to reckon with—religious fanatics at a time when no one was thought religious unless fanatical, and trade rivals who, thinking that every transaction of the newly-settled foreign merchants was a loss to themselves, looked with a jealous eye on the large and increasing foreign and colonial trade of the Jews, especially that with the recently-acquired colonies in the West Indies. Accordingly it creates no surprise to find that a number of petitions were presented to the king and the Privy Council praying that the laws against the Jews should be enforced, and that, if necessary, new ones should be enacted. At the meeting of the Privy Council on November 30 such a petition from Sir William Courtney and others was read, and it is plain from the Council's minutes that several other petitions had also been received. The petition of Sir William Courtney is probably the document preserved in the State Papers under the title "Remonstrance concerning the Jews," and dated November, 1660. It recites, apparently taking Prynne's *Demurrer* as a guide, the mischief said to have

[1] See the Da Costa lists published in Wolf's *Jewry of the Restoration*, p. 4.

been done by the Jews in former times and their banishment under Edward I, and how they have "by little and little and by degrees crept and stolen into England again, and together, some as Jewes aliens and others as English, are become of late exceeding numerous, and how they became so is conceived to be by the means of the late Usurper, who most apparently did protect and countenance them in their affairs and actions," and suggests the issue of a commission to inquire into their state, the imposition of heavy taxes, seizure of their property, and their banishment for residing here without a licence from the crown [1]. The Council having heard this petition read resolved that it, together with others on the same subject, should be taken into consideration again on December 7. On that day there were read at the Council a petition of the merchants and tradesmen of the City of London for the expulsion of the Jews, and also a petition of Maria Fernandez Carvajal (widow of Antonio Fernandez Carvajal already mentioned, who had died in November, 1659) and other merchants, Jews by birth, for his majesty's protection to continue and reside in his dominions. The latter petition has unfortunately been lost; the former is probably the petition of the Lord Mayor and Aldermen preserved in the Guildhall archives; it requested the king "to cause the former laws made against the Jews to be put in execution, and to recommend to the Two Houses of Parliament to enact such new ones for the expulsion of all professed Jews out of your Majesty's dominions, and to bar the door after them with such provisions and penalties as in your Majesty's wisdom shall be found most agreeable to the safety of Religion, the Honour of your Majesty, and the good and welfare of your subjects [2]." The Council, judging the business of very great importance, referred all the petitions to the consideration of Parliament, desiring advice therein, and ordered them to be delivered to a member of

[1] *S. P. Dom. Car. II*, vol. XXI, p. 140; *Calendar*, 1660, p. 366.
[2] *Remembrancia*, vol. IX, p. 44.

the House of Commons to be accordingly presented to the Parliament[1]. Though the Privy Council did not itself come to any decisive conclusion on the subject, it seems that the intention was to uphold the king's promise and not to molest the Jews, for on December 17 Mr. Hollis, no doubt under orders from the Council, presented the above-recited order to the House of Commons as specially recommended to them for their advice therein, touching *Protection* for the Jews. The House thereupon decided to take the business into consideration the next morning[2]. The next morning, however, the matter seems to have been shelved, for there is no entry in the journal of anything having been done, and a few days afterwards (Dec. 24) Parliament was dissolved without ever having given their advice on the Jewish problem as they had been requested by the Council. From the general temper of the House of Commons on religious questions during this reign it is clear that no relaxation of the law was to be effected by legislation in favour of the Jews, and the subject was not again brought forward in Parliament for a period of more than ten years. The position of the Jews, though unsatisfactory, was by no means intolerable; the laws against Recusants were not very strictly enforced against them, and their place of worship, if they had already one, was not known, and they therefore escaped all proceedings for taking part in illegal forms of public worship. On the other hand, the new Navigation Act had securely closed all the colonies and plantations against foreign merchants and factors, but this obstacle was surmounted by applying for and in many cases obtaining letters of denization from the king[3]. As early as the year 1662 they were emboldened

Position of the Jews after the Restoration.

[1] *Privy Council Register, Charles II*, vol. II, pp. 57, 67.

[2] *Com. Journal*, vol. III, p. 209.

[3] The Navigation Act is 12 Car. II, cap. 18. See sec. 2, which, being passed by the Convention Parliament, was expressly confirmed by the following Parliament. See 13 Car. II, cap. 14. Mr. Webb, in an appendix to the *Question, &c.*, gives a list of 105 Jews who received letters of denization in this and the following reign, and this list is not exhaustive.

to erect a synagogue. There is the doubtful reference to a synagogue in *The Great Trapanner of England Discovered*, published in 1660, which has already been referred to; but in a letter dated April 22, 1662, and written by Jo. Greenhalgh to his worthy friend Thomas Crompton, minister of Astley chapel, we have the description of a visit to the Jews' synagogue and the form of worship held there. It is plain that the synagogue was a separate building formed no doubt out of a private house and arranged in very much the same manner as synagogues are at the present day, the service also being very similar, lasting some three hours and conducted wholly in Hebrew. It was necessary to observe the strictest secrecy, nor was any one admitted to the building, which was in "a private corner of the city," and had three doors, one beyond another, except very privately. Mr. Greenhalgh himself had some difficulty in going to it. He had an idea that the Jewish merchants in the city must have some place of meeting together for divine worship, and was curious to see it. "Whereupon as occasion offered me to converse with any that were likely to inform me, I enquired hereof, but could not of a long time hear or learn whether or where any such thing was;" but, having taken to the study of Hebrew, he obtained as a teacher a learned rabbi named Samuel Levi, who gave him a ticket of admittance to the synagogue. We may judge the size of the congregation by the writer's statement that in the synagogue he counted "about or above a hundred right Jews and one proselite amongst them[1]." It soon became no longer necessary to maintain this strict secrecy. In

The first synagogue.

There is a curious petition for naturalization of about this date (1661) of Jacob Joshua Bueno Henriques among the *State Papers Colonial*, vol. XV, No. 74. He says he had heard of a gold mine in Jamaica, and desired permission to go there and develop it, giving the king ten per cent. He also asks for naturalization for himself and his brothers Joseph and Moses, and that they may follow their own laws and have synagogues. (See *Calendar, S. P. Colonial*, 1661–8, p. 48, and *Jews in the British West Indies*, by Dr. Friedenwald: pub. American Jewish Hist. Soc., No. 5, p. 45 seq.)

[1] Ellis's *Original Letters*, 2nd series, vol. IV, Letter cccix, pp. 3–22.

The secrecy surrounding the synagogue discarded at the end of 1662 or beginning of 1663.

the absence of any documentary evidence it is not safe to assume that a special dispensation was given by the king to the Jews by reason of that dispensing power which he conceived to be inherent in him, but it may well have been given, and if not it is most reasonable to suppose that reliance was placed on the king's declaration to all his loving subjects, which, as before stated, was published on December 26, 1662. At any rate it is quite certain that the worship of the synagogue, which had hitherto been conducted with the greatest privacy, was shortly after this time no longer concealed, but open to the public; and for a time at any rate without any evil consequences to the worshippers. On October 14, 1663, Samuel Pepys and his wife and his friend Mr. Rawlinson paid a visit to the synagogue after dinner, where they were present at what was evidently the afternoon service for the rejoicing of the law. There was no difficulty as to admission, and no attempt at concealment. The clerk of the acts of the navy remarks upon the disorder, want of attention and confusion in the service, and observes that he could not "have imagined there had been any religion in the whole world so absurdly performed as this[1]." It was in the course of this year that the hitherto isolated Jewish families formed themselves into a community. Henceforth regular records were kept; the synagogue, in addition to being made public, was renovated and improved, and in 1664 a lease was taken; in September, 1663 the *Finta*, or contributions of the individual members of the synagogue, was fixed, and in the following November the *Ascamoth*,

An organized community formed.

[1] *Diary of Samuel Pepys*, Oct. 14, 1663, Wheatley's edition, vol. III, p. 303. This description of a visit to the Synagogue gives an impression which was shared by other Christian observers; see the autobiography of Henry Newcome, M.A., A.D. 1686, "*June* 26. We went to the Jews' Synagogue. I could not have believed, but that I saw it, such a strange worship, so modish and foppish; and the people not much serious in it as it is. And I was affected to think, that many likely men of understanding should be without Christ, and live in the denial of him." Chetham Society's Publications, vol. XXVII, p. 262.

or code of laws to govern the newly-founded community, was drawn up; it was published in April, 1664, and in the same month a *Haham*, or Chief Rabbi, was appointed; the whole organization being completed by April 19, 1664[1]. It was not likely that the public exercise of a strange religion should long remain unnoticed, and the passing of the Conventicle Act, which expressly declared that the Elizabethan legislation against Recusants was still in force and ought to be put into execution, invited an attack upon the Jews. It was not long delayed. The Conventicle Act came into force on July 1, 1664. And immediately afterwards we hear of a Mr. Rycaut molesting the heads of the congregation, suggesting that they were liable to all sorts of penalties and forfeitures, and what was worse, the Earl of Berkshire, the second son of that Earl of Suffolk in fear of whom the Jews had fled the country in the reign of James I, who held a high position at court, being a gentleman of the bedchamber and privy councillor[2], intervened, saying he was verbally authorized by the king to protect them, but threatening that unless they came to a speedy agreement with him, he would himself prosecute them and procure the seizure of their estates. In these circumstances the wardens of the synagogue, the first that had been yet appointed, took the only course open to them, and petitioned the throne direct. With great wisdom they omit all mention of the religious question and the infringement of the newly-enacted law, but say they know of no law to hinder their residence in the kingdom, and ask to be allowed to remain under the protection of the law until his majesty should think fit to order them to depart, and promise to be loyal and obedient subjects of the king. The petition was referred to the Privy Council on August 22, 1664. A most generous answer was returned. The king declared that he had

1664. Threatened attack on the Jews. Petition to the king. His gracious answer.

[1] Gaster's *History of the Ancient Synagogue*, pp. 7, 9–11, 17; Wolf's *Jewry of the Restoration*, pp. 13–15.

[2] See Cockayne's *Peerage*, vol. I, p. 343.

given no orders for molesting or disquieting the petitioners, and that they might "promise themselves the effects of the same favour as formerly they had had, so long as they demeaned themselves peaceably and quietly with due obedience to his Majesty's Laws, and without scandal to his government[1]." The concession was of great importance; it was a formal recognition of a system of public worship which had been established for more than a year in open defiance of the Elizabethan statutes enforcing uniformity, and was given at the very time when Parliament had declared that those statutes should be carried out, and had even added to their severity by the enactment of the Conventicle Act. The king's claim to grant dispensations from penal laws had not yet been questioned in Parliament, and this particular dispensation granting the Jews the same favours they formerly had had, and by implication including the right of public worship which they had of late openly exercised, was never disputed in the legislature. Even assuming an express dispensation had been given to the Jews after Christmas, 1662, the new declaration was necessary to enable them to escape the severe penalties of the new Act which had just come into force.

Inquiry concerning the Jews ordered by the House of Commons.

For some years the synagogue was kept open and the services regularly held without molestation. On February 6, $167\frac{0}{1}$, the House of Commons thought fit to take this matter into their consideration. There was a scheme on foot to prevent the growth of Roman Catholicism, and in case legislation should be introduced, it was thought a good opportunity to aim a blow at Judaism also. It was accordingly ordered "that a Committee be appointed to inquire into the causes of the growth of Popery; to prepare and bring in a bill to prevent it, and also to inquire touching the number of the Jews and their Synagogues, and upon what terms they are permitted to have their residence here, and report it with their opinions to the

[1] *S. P. Dom. Car. II*, ent. Book 18, pp. 78-9; *Calendar*, 1663-4, p. 672.

House[1]." Either from want of time or knowledge, or because the subject was not thought of sufficient importance, the part of the reference relating to the Jews does not seem to have been proceeded with; the Committee's report, which was presented to the House on February 17, dealt only with the causes of the increase of Popery, and it was resolved that an address requesting a proclamation for the banishment of priests and Jesuits, and the enforcement of the laws against Recusants, should be drawn up and presented to the king; whose answer to this address excepting those who served his father and himself faithfully in the late wars has been already mentioned.

1673. Prosecution of the Jews for meeting for the exercise of their religion.

For the time being, then, the Jews were left undisturbed; nor were they concerned with the publication of the Declaration of Indulgence in the spring of 1672, for, for nearly nine years before that time they had openly exercised the right of public worship which was conferred by that instrument on all Nonconformists except Papists. But the cancelling of the declaration in the following year gave occasion for a new attack upon the synagogue; the organizers of it no doubt argued that the withdrawal of the general indulgence of itself annulled the particular dispensation granted to the Jews, which, though previously acted upon, was evidenced and confirmed by the king's answer to their petition given on August 22, 1664. Accordingly, at the winter quarter sessions of 1673 at the Guildhall, the leaders of the Jewish community were indicted of a riot for meeting together for the exercise of their religion in Duke's Place, and a true bill was found against them by the grand jury.

The Jews petition the king and obtain an Order in Council to stay the proceedings against them.

The Jews again petitioned the king, referring to the favourable reply they had received in 1664; and, as was seen in the first of these articles[2], on February 11, 167$\frac{3}{4}$, an order was made by the King in Council "that Mr. Attorney General do stop all proceedings at law against the Petitioners who have been

[1] *Com. Jour.*, vol. IX, p. 198.

[2] Supra, p. 2.

indicted as aforesaid and do provide they may receive no further trouble in this behalf[1]."

Entering a *nolle prosequi* on an indictment a new way of exercising the Dispensing Power.

The method by which the Attorney-General is able to stop proceedings in a criminal trial is by entering a *nolle prosequi*—a course which before these times was not unusual in the case of informations or prosecutions commenced by a representative of the crown. About this very time the system was extended to indictments or prosecutions commenced by any member of the public without the necessity of any intervention or permission from the representative of the crown as a convenient way of exercising that dispensing power which the king thought inherent in his office[2]. It is somewhat remarkable that though Parliament was sitting at the time, and the king's power of suspending penal statutes in matters ecclesiastical had recently been questioned, no protest against this particular dispensation in favour of the Jews was made in either House; this may, however, be accounted for by the fact that Parliament was prorogued within a fortnight of the issue of the Order in Council, which may not have been generally known till some time afterwards. The measure of favour now shown the Jews was a distinct advance upon the proceedings of 1664. In the earlier year a vague promise of protection had been given upon condition that the laws of the land were duly obeyed. The formal Order in Council made ten years later effectually saved the young community from the consequences of undoubted infringements of the laws then in existence. The king could not make the celebration of an unauthorized religious service legal, but he could and did, by the exercise of his dispensing

[1] Hag., *Cons. Cas.*, vol. I, Appendix, p. 2.

[2] In Goddard *v.* Smith (1764), 8 Mod. *Rep.*, p. 264, Chief Justice Holt says that it began first to be practised in the latter half of King Charles the Second's reign, but that on informations it had been frequently done, and he ordered precedents to be searched if any were in Mr. Attorney Palmer's or Nottingham's time. And on another day he declared that in all King Charles the First's time there is no precedent of a *nolle prosequi* on an indictment.

power in this formal way, render those who took part in it immune from the penalties of the law which they were habitually violating. Indeed, shortly after this event, the leaders of the community thought themselves so far secure that during this year they took the lease of a house in Creechurch Lane for a term of twenty-five years, and established there a larger and more commodious synagogue[1]. Nor was their confidence without justification, for no further attack was made upon them during the remainder of the reign.

Progress made in the Establishment of a Jewish community in the reign of Charles

It is well to pause here and glance at the progress made since the king's return. The resettlement, towards which, in spite of several sustained but unsuccessful attempts, no real advance had actually been made during the Commonwealth, was now actually effected, and, if the policy of Charles were confirmed by his successors, legally complete. At the time of the Restoration, Jews, though they might enter the country as freely as other aliens, were yet in no better legal position than they had been in the days of James I; they were subject to heavy fines if they did not regularly attend the Christian services of their neighbours, and were under still severer penalties debarred from setting up a synagogue of their own. It was impossible to establish a settled community or even to meet together for Jewish religious purposes except under the cover of the strictest secrecy. Those who were here are rightly called by Mr. Wolf Crypto-Jews, for they were unable to openly profess their allegiance to Judaism. The king, who in his exile had promised to abate the rigour

[1] Gaster's *History of the Ancient Synagogue*, p. 7. Creechurch Lane is in close proximity to Duke's Place, but the extreme accuracy required in an indictment shows that in 1673 the house of prayer was at Duke's Place itself. Neither Pepys nor Greenhalgh indicates the locality of the synagogue, but it was probably the same house in Duke's Place which was still used in 1673. In the old synagogue in Duke's Place, according to Greenhalgh, the women worshipped in an inner room; in the newer synagogue in Creechurch Lane there was a separate gallery and entrance for ladies.

of the law that was against them, proved as good as his word. At the very beginning of his actual reign we have the earliest reliable evidence of a meeting-place for public worship according to Jewish rites. At first these services, though open to all Jews, were carefully concealed from the general public; yet after a lapse of three years it was possible to hold them openly; and the criminal proceedings which were threatened, or actually took place in consequence, were prevented or rendered abortive by the intervention of the king, and by the year 1674 the community, already firmly established, was able to obtain a long lease of a house, and especially reconstruct it for the purposes of a synagogue. No less than seventy members of the new congregation were granted during the reign letters of denization, and thus acquired the rights of English citizenship. Questions concerning the customs and rights of Jews, as would necessarily happen as soon as an actual settlement took place, now for the first time were discussed and decided in the courts of law—for instance, it was held that a Jew should be sworn on the Old Testament in legal proceedings whether at common law or in chancery; that it was right to alter the venue in a case where a Jew would be a necessary witness so that it should not be heard on Saturday, the Jewish Sabbath, and that a Jew might maintain an action in this country unless expressly prohibited by the king from carrying on trade here[1]. Under the aegis of the king, and protected by the exercise of his dispensing power, a Jewish community had been practically established, requiring only the like recognition and protection from succeeding monarchs to make itself permanently and legally secure.

Accession of James II. His religious policy.

On February 6, 168$\frac{4}{5}$, Charles II died, and his brother James was proclaimed king. The new sovereign was from the first determined that the crushing disabilities under

[1] See the cases of Robeley *v.* Langston (1667), 2 Keble, p. 314; and Anon. (1683), 1 Vern., p. 263; Barker *v.* Warren (1675), 2 Mod., p. 271; and case in Lilly's *Practical Register*, vol. I, p. 4 (1684).

which his fellow Papists laboured should no longer press upon them, and was quite willing to give similar relief to other Dissenters. In his speech made to the Privy Council at the time of his proclamation as king he promised "to preserve the government both in Church and State as it is now by law established," and to defend and support the Church of England. On March 5, to the great grief of all Protestants, mass was publicly said at Whitehall [1], but in his speech at the opening of Parliament on May 22, the king repeated the promise he had made to preserve the government both in Church and State. This assurance, it is plain, did not give universal satisfaction, for, fashionable as it was in those early days of his reign to profess unbounded confidence in the king, there was still some misgiving and jealousy of the royal power in religious matters which was bound to find expression. On May 27, the grand committee for religion reported that they had agreed upon two resolutions, of which the second was "That the house be moved to make an humble Address to his Majesty to publish his royal Proclamation for putting the laws in execution against all Dissenters whatsoever from the Church of England." This resolution gave great offence at court, and the court party in the House managed to defeat it by moving the previous question, which was carried, and the following motion was then unanimously adopted: "That this house doth acquiesce, entirely rely, and rest wholly satisfied in his majesty's gracious word and repeated Declaration, to support and defend the Religion of the Church of England, as it is now by law established; which is dearer to us than our lives [2]." Though no proclamation was issued, an attempt was a short time afterwards made to enforce the penal laws against the Jews; for one Thomas Beaumont issued process under the statute made in the 23rd year of Queen Elizabeth, which inflicted

Jews arrested and charged with recusancy.

[1] Evelyn's *Memoirs*, vol. I, p. 551.

[2] *Commons Journals*, vol. IX, p. 721; *Parl. Hist.*, vol. IV, p. 1357.

a penalty of £20 a month for non-attendance at church, against no fewer than forty-eight Jews, of whom thirty-seven were arrested "as they were following their occasions on the Royal Exchange"; whereupon Joseph Henriques, Abraham Delivera, and Aaron Pacheco, the overseers of the Jewish synagogue, presented a petition to the King in Council praying "his Majesty to permit and suffer them as heretofore to have the free exercise of their religion, during their good behaviour towards his Majesty's Government." King James following his brother's example by a formal Order in Council, exercised his dispensing power in favour of the Jews by ordering the Attorney-General to stop all the proceedings against them; "His Majesty's intention being" (so the order runs), "that they should not be troubled upon this account, but quietly enjoy the free exercise of their religion, whilst they behave themselves dutifully and obediently to his government[1]."

On the petition of Joseph Henriques and others a formal Order in Council made staying the proceedings.

This Order in Council was made on November 13, 1685, at the very time when Parliament, newly reassembled after the suppression of Monmouth's rebellion, was questioning the power of the king to retain in his service Roman Catholic officers who had served against the rebels by granting them dispensations from the Test Act. In his speech to both Houses, at the resumption of the session on November 9, James openly expressed his intention of continuing them in their employment, saying: "And I will deal plainly with you, that after having had the benefit of their service in such time of need and danger, I will neither expose them to disgrace, nor myself to want of them, if there should be another rebellion to make them necessary for me[2]." On November 14 the House of Commons resolved to present an address dealing with this matter which, when finally drawn up and adopted, ran as follows: "We further crave leave to acquaint your Majesty that we have with all duty and readiness taken into consideration your Majesty's

Dispute between James II and Parliament concerning the Dispensing Power.

[1] Hag., *Cons. Cas.*, Appendix, p. 3.

[2] *Commons Journals*, vol. IX., p. 756; *Lords Journals*, vol. XIV, p. 73.

gracious speech to us, and as to that part of it relating to the officers in the Army not qualified for their employments according to an Act of Parliament made in the twenty-fifth year of the reign of your Majesty's Royal Brother of blessed memory, intituled an Act for preventing dangers which may happen from Popish Recusants, we do out of our bounden duty humbly represent unto your Majesty, that these officers cannot by law be capable of their employments; and that the incapacities they bring upon themselves thereby can no ways be taken off but by an Act of Parliament: Therefore out of that great deference and duty we owe unto your Majesty who has been graciously pleased to take of their services to you, we are preparing a Bill to pass both Houses for your royal assent to indemnify them for the penalties they have now incurred. And because the continuance of them in their employments may be taken to be a dispensing with that Law, without Act of Parliament (the consequence of which is of greatest concern to the rights of all your Majesty's dutiful and loyal subjects and to all the laws made for the security of their religion) we therefore, the knights, citizens, and burgesses of your Majesty's House of Commons, do most humbly beseech your Majesty, that you would be graciously pleased to give such directions therein, that no apprehensions or jealousies may remain in the hearts of your Majesty's good and faithful subjects." A motion was made that the concurrence of the Lords be desired to the said Address, but was rejected by 212 votes to 138. And so, as had happened in the year 1673, the denial of the dispensing power of the Crown was embodied in a resolution of the Lower House only. The Lords, however, did not desire to be left behind in this matter, for on Thursday, November 19, they resolved "that Monday next be appointed for reading and considering His Majesty's speech." But in the meantime the king, who had been highly incensed with the Commons Address when presented to him, and had expressed dissatisfaction and surprise at their want of confidence in him, prorogued Parliament,

which never met again for the transaction of business during his short reign[1].

The struggle transferred to the Law Courts. James issues his Declaration of Indulgence.

The struggle was now transferred from the Parliament House to the Law Courts. A decision that the king had power to dispense with the penalties inflicted by the Test Act was obtained[2], and James proceeded to make the utmost use of this judgment in his favour, but not content with granting dispensations wholesale, at length in April, 1687, he published a Declaration for liberty of conscience, suspending all the penal laws, and remitting all penalties incurred under them; allowing the free exercise of every form of religion, and announcing that the oaths of supremacy and allegiance, and the recently enacted tests, should no longer be required to be taken or subscribed by any person, "and further declaring that this royal pardon and indemnity should be as good and effectual to all intents and purposes as if every individual person had been therein particularly named or had particular pardons under the great seal." A year afterwards this Declaration of Indulgence was reissued, and ordered to be read in all churches, but now the storm, which had long been brewing, at length burst, and James was driven from his throne.

[1] *Commons Journals*, vol. IX, pp. 758, 759, 761; *Lords Journals*, vol. XIV, p. 88.

[2] The case is Godden *v.* Hales, which was decided in Easter term, 1686. The action was brought against Sir Edward Hales to recover a penalty of £500 incurred by holding the office of colonel in the army without having taken the oath required by the Test Act. The defendant, in answer, pleaded a dispensation from the Crown. Sir Edward Herbert, Lord Chief Justice of the Common Pleas, after taking time to consult the other judges, declared that he and all the other judges (except Street and Powell, who doubted) were of opinion (1) that the kings of England are sovereign princes; (2) that the laws are the king's laws; (3) therefore it is an inseparable power in the kings of England to dispense with penal laws in particular cases, and upon particular necessary reasons; (4) that of those reasons and those necessities the king himself is sole judge; (5) that this is not a trust invested in or granted to the king, but the ancient remains of the sovereign power and prerogative of the kings of England, which never yet was taken from them nor can be. And therefore, such a dispensation appearing upon record, judgment ought to be given for the defendant. See 2 *Shower*, p. 475; XI St. Tr., p. 1166 seq.

Until after the decision of Godden *v.* Hales in Easter term, 1686, the king had probably not gone beyond the law, though he had undoubtedly stretched his prerogative to its furthest limits, but his proceedings after that time are rightly regarded as wholly illegal. A special dispensation to a particular person or persons is very different from a general indemnity to all who might violate and incur penalties under the penal laws. However much we may at the present time approve of the wording and the substance of the declarations of indulgence, we cannot forget that if toleration was to be established, it could be secured only by an Act of the legislature, and not by the king alone usurping the authority of Parliament. James's hopes of success had lain in uniting all the dissenting sects against the Established Church, but the great mass of Dissenters were as vehement in their opposition as churchmen, partly because they regarded the indulgence offered them as illegal and unconstitutional, and a direct infringement of the liberties of the people and their right of legislation, and partly because they feared that the real object of placing the members of the different sects on the same footing as members of the Church of England, was, after destroying the supremacy of the Established Church, to gradually transfer it to the adherents of the Church of Rome. The Jews did not avail themselves of the Declaration of Indulgence, but for different reasons from their nonconformist brethren. They were satisfied with the dispensation granted them by Charles II, and confirmed by James II in November, 1685, for it enabled them to escape the penalties of recusancy, and also to hold public worship in accordance with the rites of their religion; nor had they any desire to take any part in the political life of the country, which under the Declaration of Indulgence they might have done. For not only were they for the most part aliens and wholly absorbed in commercial enterprises, but one of the ascamoth or laws of the synagogue strictly forbade its members from

The illegality of James's proceedings.

Did not affect the Jews.

taking any part in politics[1]—a very wise provision in the then condition of the newly-organized community. The position of the Jews therefore remained throughout the reign the same as it had been under Charles II, but lapse of time and the confirmation of the dispensation given by Charles and his successor rendered their settlement more secure, and their community was rapidly increasing, and still enjoying the royal favour, as is proved by the fact that thirty-four of its members were granted letters of denization by James II during his short reign.

Views on toleration at the time of the Revolution.

The Revolution of 1688 did not affect the status of the Jews. It was indeed recognized that it was necessary to reward in some way the loyalty to the constitution of the Dissenters, who, in spite of the indulgence offered them by the deposed king, had joined entirely in the resistance to the illegal attacks on the rights and privileges of the Established Church, but it was determined that the toleration to be granted should be strictly limited. The penal laws might be divided into two classes; first those which compelled attendance at church, and punished the holding of religious services not in conformity with the ritual laid down in the book of common prayer, secondly those which disabled all who did not profess the doctrines of the Church, and join in communion with it, from sitting in Parliament, or holding any political or municipal office or any place of profit under the Crown. The gratitude felt by churchmen to their nonconformist brethren for the support rendered to the Church in her hour of need, was not strong enough to create any desire to admit them to any share of political power, and it was thought that sufficient generosity was shown in granting freedom of worship to Protestant Dissenters, and relief from the penalties incurred by absence from church. No attempt was therefore made to mitigate any of the laws falling under the second category, nor were any of those belonging to the first class amended or repealed, but, in accordance with a mode of legislation

[1] Gaster, *The Ancient Synagogue*, p. 88.

which seems peculiarly dear to the English people, the effect of disobedience was annulled by exempting Dissenters from the penalties they would have otherwise incurred. This was done by means of the statute (1 Will. & M., cap. 18) entitled "An Act for exempting their Majesties' *protestant* subjects dissenting from the Church of England from the penalties of certain laws," and generally known as the Toleration Act. In spite of its high sounding title the toleration granted was strictly limited to Protestant Nonconformists, who might take the new oaths of allegiance and supremacy, and subscribe a declaration against transubstantiation; though Dissenters, such as Quakers, "who scruple the taking of any oath," were allowed instead to subscribe a declaration of fidelity to the throne, and also a profession of their Christian belief, and it was also provided "that neither this Act nor any clause, article, or thing herein contained, shall extend or be construed to extend to give any ease, benefit, or advantage to any papist or popish recusant whatsoever, or any person that shall deny in his preaching or writing the doctrine of the Blessed Trinity, as it is declared in the aforesaid articles of religion." Dissenters entitled to the benefit of the Act were enabled to have their places of worship certified, and persons who should disturb the services held there were made liable to penalties. At the same time it was made clear that there was no intention to allow any relaxation of the strict observance of the Sunday, for by section 16 "all the laws made and provided for the frequenting of divine service on the Lord's Day, commonly called Sunday, shall be still in force, and executed against all persons that offend against the said laws, except such persons come to some congregation or assembly of religious worship, allowed or permitted by this Act." Yet, such as it is, the Toleration Act is not unjustly regarded as the charter of freedom of conscience in this country, for it in practice gave all the liberty which at the time it was intended to allow. Nonconformity was still regarded in theory as a crime, but exceptions were

The Toleration Act.

introduced, which in the course of time became so numerous as to eat up the rule. The true effect of the Toleration Act is well expressed by Lord Mansfield in his speech in giving judgment in the House of Lords in the case of the Chamberlain of London *v.* Evans in the year 1767: he says, that in former days nonconformity was "in the eye of the law a crime, every man being required by the canon law, received and confirmed by statute law, to take the sacrament in the church at least once a-year, . . . but the case is quite altered since the Act of Toleration; it is now no crime for a man, *who is within the description of that Act,* to say he is a Dissenter; nor is it any crime for him not to take the sacrament according to the rites of the Church of England; nay, the crime is, if he does it contrary to the dictates of his conscience. . . . The Toleration Act renders that which was illegal before now legal; the Dissenters' way of worship is permitted and allowed by this Act; it is not only exempted from punishment, but rendered innocent and lawful; it is established; it is put under the protection and is not merely under the connivance of the law. . . . Dissenters, *within the description of the Toleration Act,* are restored to a legal consideration and capacity; and an hundred consequences will from thence follow, which are not mentioned in the Act. For instance, previous to the Toleration Act, it was unlawful to devise any legacy for the support of dissenting congregations, or for the benefit of dissenting ministers; for the law knew no such assemblies and no such persons; and such a devise was absolutely void, being left to what the law called superstitious purposes. But will it be said in any court in England, that such a devise is not a good and valid one now?" but then he adds later, "the case of 'Atheists and Infidels'" (among whom Jews are included) "is out of the present question; they come not within the description of the Toleration Act[1]."

[1] Cobbett's *Parl. Hist.*, vol. XVI, pp. 313–27.

Extension of the benefits of the Toleration Act.

The benefit of the Toleration Act was extended to Unitarians in the year 1813, and to the Roman Catholics, who had received considerable measures of relief by statutes passed in 1778, 1791, 1829, in the year 1832, and finally to the Jews in the year 1846, but until the reign of Queen Victoria there had been no legislative enactment exempting the Jews from the penalties of the penal laws, which were finally repealed in the years 1844 and 1846[1].

[1] In 1812 three of the most intolerant Acts passed in the reign of Charles II, namely, the Act against Quakers, the Five Mile Act, and the Conventicle Act, were repealed by the Places of Religious Worship Act, 1812 (52 Geo. III, cap. 155), which also made it necessary, under a penalty of £20, to certify and register all places for religious worship of *Protestants*, at which more than twenty persons should be present.

In 1813, 53 Geo. III, cap. 160, admitted Unitarians to the benefit of the Toleration Act, by repealing the last two lines of sect. 17, which exclude any person who shall deny the doctrine of the Blessed Trinity.

The Acts relieving Roman Catholics are (1) Sir George Savile's Act (18 Geo. III, cap. 60), which exempted Roman Catholics who took the prescribed oath, expressing allegiance to King George and disclaiming the Stuarts and the deposing power of the Pope, from many of the disabilities and penalties imposed since the Revolution by 11 & 12 Will. III, cap. 4. Catholics were henceforth allowed to purchase and inherit land, and the provisions allowing a Protestant kinsman to enter and enjoy the estate of a Catholic heir, and imposing perpetual imprisonment for keeping a Roman Catholic school, were repealed. (2) The Roman Catholic Relief Act, 1791 (31 Geo. III, cap. 32), which among other things exempted all persons who should make a declaration professing the Roman Catholic religion, and take the prescribed oath of allegiance to the king and the Hanoverian succession, from all penalties for not resorting to the parish church, and from being prosecuted for being a Papist, or for hearing or saying mass, or taking part in any other ceremony of the popish religion, provided that all places of worship should be certified, and provided also "that all the laws made and provided for the frequenting of divine service on the Lord's Day, commonly called Sunday, shall be still in force, and executed against all persons who shall offend against the said laws, unless such persons shall come to some congregation or assembly of religious worship permitted by this Act or by the" Toleration Act, i.e. a Roman Catholic or Protestant Nonconformist chapel. (3) 43 Geo. III, cap. 30, substitutes the declaration and oath prescribed in the Catholic Relief Act of 1791 for the oath prescribed in Sir George Savile's Act of 1778. (4) The Roman Catholic Relief Act, 1829 (10 Geo. IV, cap. 7), admitted Roman Catholics to full political rights, with certain exceptions, by exempting them from the provisions of the Test Acts and the Corporation Act. (5) The Roman Catholic Charities Act of 1832 (2 & 3 Will. IV, cap. 115) extended to Roman

Relief from the Test and Corporation Acts.

No relief was formally given to enable Nonconformists to fill municipal, political, or military offices, from which all who did not take the Communion according to the rites of the Church of England were excluded; but after the beginning of the reign of George II such offices were practically thrown open to Protestant Dissenters by passing annual Indemnity Acts, the first of which is 1 Geo. II, st. 2, cap. 23, in favour of those who had omitted to qualify themselves under the Corporation and Test Acts. At length in the year 1828 the statute 9 Geo. IV, cap. 17, substituted a Declaration, "upon the true faith of a Christian," not to disturb or injure the Established Church for the Sacramental test, thus sweeping away all the political disabilities of Protestant Nonconformists, and in the following year the obligation to make a Declaration against transubstantiation was repealed, and Papists also, under certain conditions, were admitted to full political rights by the Roman Catholic Relief Act of 1829.

Legislative relief from the penal laws at length given to the Jews.

It is somewhat remarkable that, until the year 1846, no *legislative* relief from the penal laws, except in so far as some of them had been repealed in the year 1812 and the year 1844, was granted to the Jews.—The repealing Acts were not intended to benefit the Jews; but were made in favour of Protestant Dissenters and Roman Catholics respectively.—Indeed the statute passed in the last-mentioned year, which is entitled "An Act to repeal certain Penal enactments made against Her Majesty's Roman Catholic Subjects," expressly restricted the repeal of many of the statutes it dealt with, to the extent to which they related to or in any manner affected Roman Catholics. The Commission for revising and consolidating the criminal law, which was appointed in February, 1845, recommended in its first report, published three months afterwards, that the

Catholics the benefit of the Toleration Act, by making them subject to the same laws as Protestant Dissenters "in respect of their schools, places for religious worship, education, and charitable purposes." (6) 7 & 8 Vict., cap. 102, expressly repealed many of the penal enactments, so far as they "relate to or in any manner affect Roman Catholics."

clauses in the Uniformity Acts by which a penalty is inflicted for repairing to other places of worship than churches, and also those inflicting penalties on Roman Catholics, Dissenters, and Jews for professing, exercising, or promoting any religion other than that of the Established Church, and also the Laws of Recusancy, be repealed, and further that the religious worship of the Jews be protected in like manner as that of Roman Catholics and Dissenters. These recommendations were carried out in the following year by the Act to relieve Her Majesty's Subjects from certain penalties and Disabilities in regard to Religious opinions (9 & 10 Vict., cap. 59). At length, therefore, after the lapse of more than a century and a half, the Jews were formally, by a solemn Act of the legislature, admitted to the benefits of the Toleration Act, and their religion was no longer merely connived at, but was placed under the protection of the law. During this long period the Jewish question was frequently brought to the notice of Parliament, and the Jews had always both friends and enemies in that assembly; but the Jewish question never became a burning question of the day[1]. The enemies of the Jewish religion, having the letter of the law in their favour, did not feel the necessity of taking any legislative action, though they may have deplored their inability to enforce the penal laws against the Jews. The friends of the Jews, on the other hand, did not care to introduce remedial measures, which would have certainly been opposed and possibly if not probably defeated, because in fact the Jewish religion, though not sanctioned by Parliament, had under the king's dispensing power, as exercised by the Orders in Council in 1674 and 1685, all the protection that was necessary. The synagogue was always open; its worshippers were not prosecuted, and a considerable and

[1] An exception should perhaps be made of the events following the ill-fated Naturalization Act of 1753, but even then the right of public worship and the practical freedom from the penalties of recusancy were never seriously brought in question.

increasing Jewish community gradually grew up both in London and the principal commercial centres. Every year the position became more secure, and premature attempts at legislation would have only endangered it.

Parliament and the Jews. Attempt to lay special taxation upon them.

It cannot, however, be disputed that the Jews were deliberately excluded from the Toleration Act, for almost immediately after its passage their status was the subject of discussion in the House of Commons. In order to provide funds for the reduction of Ireland, which still held out for the Stuart king, and the vigorous prosecution of the war against France, it was resolved in the autumn of 1689 to raise an additional supply of two million pounds. On November 7, the Committee of the whole House, which was sitting to consider the means of raising this sum, recommended that a tax of one hundred thousand pounds be laid upon the Jews, and a bill for that purpose was ordered to be brought in. On November 11 the Jews presented a petition to the House of Commons against the proposed tax. The rule of the House then was that no petition against a bill imposing a tax would be entertained, or if presented entered upon the Journals of the House. This rule, founded on the assumption that as a tax extended over all parts of the kingdom, no individual should be allowed to treat it as a special grievance to himself, was not rescinded until 1842, when standing order 82, discontinuing the former usage and enabling the House to entertain such petitions, was passed. Consequently the petition and the debate upon it are not mentioned in the Commons Journals. The petition gave a very interesting account of the condition of the Jews in England at this time: stating that about the year 1654 there came six Jew families into this kingdom, which since the Restoration of Charles II had been increased to the number of between three and four score families, who had settled in the cities of London and Westminster, under the public faith and protection of King Charles II; that many of them had been made denizens by the last two kings, and that though

one half of them had moderate or indifferent estates, the other half consisted partly of persons assisting the better sort in the management of their commerce, and partly of poor people maintained by their richer brethren, and in no ways chargeable to the parish; that they paid all the taxes and fulfilled all the duties imposed upon them, and by their large commercial transactions they greatly enriched the nation, and increased the revenue from Customs: that they were wholly unable to pay the large sum proposed to be levied upon them, and could not expect any assistance from their brethren abroad; so that if the tax were proceeded with they would be utterly ruined. Though not mentioned in the petition, the rumour was spread abroad that the Jews would be forced to leave the country, and that they would remove themselves and their effects into Holland, rather than submit to the imposition[1]. On Nov. 19 the petition was delivered by Mr. Paul Foley, member for Hereford, and afterwards Speaker; and a debate as to whether it should be received ensued. It was questioned whether the Jews were subjects of the king having the right to petition Parliament, and stated that, if they were, they had no more right than their fellow subjects, and could not petition against an Aid. Sir Thomas Lee said: "Pray let not such petitions be received. You will not receive it from others, pray begin not with the Jews." And though Mr. Foley answered these arguments by declaring "I think that for the honour of the House you are to hear what they will say. When you lay a general tax on a whole kingdom, you can receive no petition against it, because all are represented here, but when there is a particular tax on men they may petition." Mr. Speaker Powle stated that he never knew a petition against a Bill before the House was seised of it, and it was decided not to receive the petition[2]. On Dec. 30 the Bill was read a first

[1] See the *Greenwich Hospital News-letter*, 3, No. 77, Nov. 12; *Cal. S. P. Dom.*, 1689, p. 318; and Luttrell's *Diary*, vol. I, p. 303.

[2] Cobbett's *Parl. Hist.*, vol. V, p. 444, and Gray's *Parl. Debates*, vol. IX, pp. 437–8.

time, and it was resolved that it should be read a second time, but it went no further, for men saw how dangerous a precedent it would be to single out for special taxation a small, defenceless, and wholly unrepresented class, which was unable to bear the burden sought to be imposed upon it. The projected tax was accordingly withdrawn[1]. Therefore the Jews did not become subject to a separate system of taxation, as in our West Indian colonies. They were, however, expected to bear the burdens of the country in the same way as their neighbours, and about this very time great disappointment was expressed that they were not ready to advance or lend, on the security of the new taxes, large sums of money for the purposes of the Government, and the Lord Mayor was actually requested by the Earl of Shrewsbury, then Secretary of State for the North, to send for their elders and principal merchants, and to impress upon them the great obligations they were under to the king for the liberty and privileges they enjoyed, and endeavour to induce them to raise the sum of £12,000, which they had offered to provide, to £30,000, or at the very least £20,000[2]. It is probable that the response to this appeal did not come up to the expectations of the Government, and that it was partly in consequence of this that the exemption from certain of the alien duties, which had been granted in the reign of James II, and continued since the Revolution, was finally withdrawn by an Order in Council made in the October of this year[3].

Mention of Jews in the Act imposing taxation on marriages.

On other occasions also the permanent settlement of the Jews here was recognized by Parliament, and they are more than once expressly mentioned in Acts of Parliament. The first of these Acts is 6 & 7 Will. and Mar. cap. 6, entitled "An act for granting to His Majesty certaine rates and duties upon Marriages, Births, and Burials, and upon

[1] See Macaulay's *History*, ch. xv ; *Commons Journals*, vol. X, pp. 281, 319; *Calendar S. P. Dom.*, Dec. 31, 1689, p. 374; *Greenwich Hospital News-letter*, 3, No. 83.

[2] *S. P. Calendar*, Feb. 10, 1690. [3] See Tovey's *Anglia Iudaica*, pp. 287–95.

Batchelors and Widowers, for the terme of 5 years, for carrying on the War against France with Vigour." It imposed a duty of two shillings and sixpence upon the marriage of every person not in receipt of alms, and additional taxes in case of the marriage of persons of rank or property, and contained a proviso that Quakers, Papists, and *Jews*, and any other persons living together as man and wife, should be liable to the duties they would have been obliged to pay, if they had been married according to the law of England, but at the same time the Act was not to be construed as in any way making good or effectual any such marriage.

The Act against Blasphemy.

Again a few years later, in the spring of 1698, when "the Act for the more effectual suppressing of Blasphemy and Profaneness" was before Parliament, and an amendment was inserted after its return to the Lords, by which all persons openly professing the Jewish religion would have been made liable to the severe penalties it imposed; the House of Commons recognized the right of the Jews to remain here and continue the exercise of their religion by rejecting the amendment by a substantial majority. This incident is thus described by Narcissus Luttrell in his *Diary*, under the date March 22, 169$\frac{7}{8}$: "The Commons yesterday divided about a clause in the bill against prophanesse, relating to the Jews, who deny Jesus Christ; 144 were for it, and 78 against it: so the clause was added that the Jews shal not be molested[1]."

The Act to oblige Jews to maintain their Protestant children. The de Breta case.

The next occasion on which this subject was raised in the legislature was in the year 1702, when the Act to oblige the Jews to maintain and provide for their Protestant children was passed. The way in which this statute was put in operation has already been described in the second of the articles on the "Jews and the English Law," in the JEWISH QUARTERLY REVIEW, and calls for no further comment, but

[1] The *Commons Journals* give the numbers as 140 and 78. In reality no clause was added, but the words which had been struck out by the Lords were restored to the Act. For the history of the Act, see supra, pp. 13–18.

it may be advisable to recall the circumstances which led to its enactment. A few years earlier the Commons had rejected the Lords' amendment to the Act against Blasphemy and Profaneness, on the express ground that it would drive the Jews out of the country, and so deprive them of the means of being rightly instructed in the principles of the true Christian religion. It soon became clear that this desire of gaining proselytes would not be gratified to any great extent if the converts were exposed to financial ruin, nor, as there was not in those days a rich and highly endowed society for the promotion of Christianity among the Jews, were the conversionists prepared to support a burden which they had reasonable hopes of removing to other shoulders. In the year 1701 a case arose which gave an opportunity for introducing legislation. In May of that year Mary Mendez de Breta, a girl nearly eighteen years of age, who had been brought up as a Jewess, embraced the Christian faith, and was baptized by Mr. Thorold, a minister of the Church of England. Thereupon her father, Jacob Mendez de Breta, disowned her for his child, turned her out of doors, and refused to allow her any maintenance, and she, being afraid of her father's anger, applied to the Lord Mayor for protection, and at his order the churchwardens of St. Andrew's Undershaft, in whose parish the father lived, provided for her and maintained her at the charge of the parish. The churchwardens lodged a complaint against the father at the Quarter Sessions at the Guildhall, and an order was made under the Relief of the Poor Act of Elizabeth that the father should allow her twenty shillings a-month for her maintenance, but this order was subsequently quashed by the Court of King's Bench, on the ground that there was no jurisdiction to make it [1]. A petition was then presented

[1] See the Inhabitants of St. Andrew's Undershaft *v.* de Breta, Lord Raymond's *Reports*, vol. I, p. 699. Before the Committee of the House of Commons it was stated that the allowance for maintenance was twenty shillings a-week. *Commons Journals*, vol. XIII, p. 799.

to the House of Commons by the ministers, churchwardens, and overseers of the poor of the above-mentioned parish and the five neighbouring parishes, stating that most of the Jews in London lived in their parishes, and that, "though they enjoy the protection of the government and the free exercise of their religion and grow rich, yet they bear such a hatred to our national religion, that in case any of their children embrace the same, they utterly disown them and treat them with great cruelty; an instance whereof appears by the daughter of Jacob Mendez de Breta, a rich Jew in St. Andrew's Undershaft, who being converted to the Christian Faith, he utterly disowns her for his child and refuses to maintain her; so that she is now kept by the said parish for her encouragement, suitable to her education," and praying that a bill might be brought in to oblige Jacob Mendez de Breta in particular and the Jews in general to maintain and provide for their Protestant children. The petition was at once referred to a Committee. The Committee heard a large number of witnesses on both sides, including the father himself, who said that Mary was not his daughter, but with two or three more children had been laid at his door in Portugal, and that he had maintained them purely out of charity, and further that he had never owned her as his daughter, but had always treated her as a servant, and that if she was entered in the parish books for the poll-tax as his daughter it was without his knowledge or consent. The Committee, however, found that the allegations in the petition were fully proved, and recommended that a bill be brought in according to the prayer of the petition. When the bill was read a second time a petition from several Jews, merchants in London, was presented against it, and after certain amendments had been made in the Commons, it was passed in the Lords without any amendment and almost without debate[1].

On other occasions occurring at frequent intervals before

[1] *Commons Journals*, vol. XIII, pp. 748, 798–800, 813, 839, 848, 886, 889, 895, and *Lords Journals*, vol. XVII, pp. 125, 126, 128, 131, 148.

1846 Parliament took cognizance of the presence of the Jews, generally with the view of mitigating in their favour new enactments which would have otherwise pressed heavily upon them, but it will for our present purpose be sufficient to enumerate briefly the principal of these occasions. For instance, in the year 1722, in order to place a check upon the Jacobites, many of whom were Roman Catholics, it was enacted by 9 Geo. I, cap. 24, that all persons owning land, who refused or neglected to take the oaths appointed for the security of the king's person and government, which included the oath of abjuration as framed in the reign of James I, and ending with the words "on the true faith of a Christian," should register their names and real estates before a fixed day, or in default should forfeit their lands. But, in the following year, an amending Act, 10 Geo. I, cap. 4, was passed, which allowed persons professing the Jewish religion to take the oath without the final words, in like manner as Jews are admitted to be sworn to give evidence in Courts of Justice.

Relaxation of the Act compelling landowners to take the oath of abjuration in favour of the Jews.

Again in the year 1740 an Act was passed enabling all persons who had settled for a period of seven years in any of the British colonies in America to be naturalized, under certain conditions, without the necessity of obtaining a private Act of Parliament, by which naturalization was granted in those days, but it contained a proviso that all such persons should first receive the Sacrament of the Lord's Supper in some Protestant and reformed congregation in Great Britain or one of the colonies, except the people called Quakers, "or such who profess the Jewish religion." It was also further provided that Jews taking the necessary oaths for the purposes of this Act might omit the words "on the true faith of a Christian," in the same way as they were enabled to do under 9 Geo. I, cap. 24[1]. Thirteen years later Lord Hardwicke's Act for the better preventing of clandestine marriages (26 Geo. II,

Similar privileges given the Jews by other Acts of Parliament. The Colonial Naturalization Act, 1740.

Lord Hardwicke's Marriage Act, 1753.

[1] 13 Geo. II, cap. 7, repealed by the Naturalization Act, 1870; see especially secs. 2 and 3.

cap. 33), which made null and void all marriages solemnized without the publication of banns or licence, expressly excepted marriages amongst the people called Quakers or amongst the persons professing the Jewish religion, and most of the subsequent marriage Acts have contained similar exceptions. In the same year was passed the famous Jew bill (26 Geo. II, cap. 26), which permitted persons professing the Jewish religion to be naturalized by Act of Parliament without having previously taken the Sacrament. The Act passed through the House of Lords with great ease, but when it came down to the House of Commons met with strong opposition; indeed it would have possibly been wrecked in the Lower House, had not some of the enemies of the Government slackened their efforts against it, in the belief that it would cause widespread unpopularity throughout the country against the party in power. Nor was this belief ill-founded, for the storm of prejudice and fanaticism that arose during the recess compelled the Government to pass as their first effective measure of the next session an Act repealing the obnoxious Jew bill. For more than seventy years the Jews were not specially mentioned in any Act of Parliament, but they were again expressly excepted from the provisions of the marriage Acts of 1824, 1836, and 1840, and the Registration Act, 1836, provided for the due registration of Jewish marriages by the Secretary of a synagogue certified by the President of the London Committee of Deputies of the British Jews.

The Jewish Naturalization Act, 1753.

This brings us down to the years 1845 and 1846, when the measures of relief were granted, and the Jewish religion finally admitted to the benefit of the Toleration Act. Till then the immunity of the Jews from the consequences of the penal laws had rested on the royal dispensations granted by the king in Council in answer to the petitions of Abraham Delivera and others in 1674, and of Joseph Henriques and others in 1685, and the preceding summary of Parliamentary enactments concerning the Jews shows

The Jews admitted to the benefit of the Toleration Act, 1845 and 1846. Till then they were protected only by the Dispensing Power of the king.

that the legislature tacitly acquiesced in this particular exercise of the dispensing power formerly claimed by the Crown, nor was there any individual bold enough to challenge it by persisting in a prosecution in a court of law. This fact is not without significance, when it is remembered that the laws against recusants, though by no means uniformly enforced, had not become quite obsolete, even at the time when they were finally repealed. The Criminal Law Commissioners, in their first report published in 1845, mention a considerable number of convictions, followed by actual imprisonment of the offenders, which had recently to their knowledge taken place in different parts of the country [1]. Though never questioned in a court of law, the immunity of the Jews did in truth rest upon sufficiently sure foundations. It could not indeed be proved that any charter or formal document of exemption had been executed in their favour, but the fact of the dispensation was sufficiently evidenced by the story of the proceedings taken against them on two important occasions in two different reigns.

There can be little doubt that in the reign of Charles II, when the Jews re-established their community here, the king still retained the power of dispensing with laws, though subject to certain limits, which even in those times could not be precisely defined, but which it was generally acknowledged that James II had in the latter part of his reign undoubtedly transgressed. Accordingly it was not absolutely condemned by the Declaration of Rights, but it was thought sufficient to declare that "the pretended power of dispensing with laws or the execution of laws, by regall authoritie, *as it hath beene assumed and exercised of late,* is illegall." To prevent such abuse in the future, the Bill of Rights absolutely abolished the power, except in such cases

[1] See first report of Her Majesty's Commissioners for revising and consolidating the criminal law, note on pp. 32–3, and also Lord Brougham's remarks, *Hans. Parl. Debat.*, vol. 59, p. 815 (1841), and id., vol. 85, p. 1264 (1846).

as should be specially provided for by statute, and contained a special saving clause, providing no charter, grant, or pardon granted before October 23, 1689, should be in any way impeached or invalidated. Though the Jews had no formal charter in their possession, they could claim the final words of the Order in Council of 1685—"His Majesty's intention being that they should not be troubled upon this account, but quietly enjoy the free exercise of their religion, whilst they behave themselves dutifully and obediently to his government"—as a grant within the meaning of the proviso [1].

Resulting anomaly in the law as to the Registration of Synagogues.

When the facts are properly analysed, it is difficult to suggest any other foundation for the freedom of the Jews to establish synagogues, and to absent themselves from church, than the exercise of the dispensing power of the Crown. From this an anomalous consequence of no small practical importance resulted, namely, that there never was any necessity to certify or register a synagogue in the same way as places of religious worship belonging to other Dissenting bodies. The benefit of the Toleration Act of 1688 was confined to persons who attended divine service at some place permitted by the Act, and no place for religious worship was permitted by the Act until certified to the Bishop, Archdeacon, or Quarter Sessions, and duly registered or recorded, and the Roman Catholic Relief Act of 1791 contained similar provisions for the certification and registration of Roman Catholic places of worship. Furthermore, the second section of the Places of Religious Worship Act, 1812, which is still in force, imposed a penalty of twenty pounds upon every person permitting a congregation or assembly for religious worship of Protestants, at which more than twenty persons should be present, to meet in any place occupied by him before it had been duly certified.

[1] For the dispensing power see the cases of *non-obstante*, 12 Rep., fo. 18: Thomas *v.* Sorrel (1674), *Vaughan*, p. 330, and Godden *v.* Hales (1686), 2 *Shower*, p. 475, and XI St. Tr., p. 1166, with the notes, especially those at pp. 1187 and 1251, and generally Broom's *Constitutional Law*, pp. 492–506; Anson's *Parliament*, pp. 311–17; and Burnet's *Reign of James II*, pp. 458–60.

In the year 1855 the Act for securing the liberty of religious worship (18 & 19 Vict., cap. 86) considerably modified this stringent provision, by excepting from its operation assemblies for religious worship conducted by the incumbent of the parish, or a person authorized by him, and congregations meeting in a private dwelling-house, or meeting *occasionally* in a building not usually appropriated to religious worship. The second section of the same Act, by providing that the expression in the Act of 1846, Her Majesty's subjects professing the Jewish religion, in respect of their places for religious worship, shall be subject to the same laws as Protestant Dissenters are subject to, shall mean are subject to for the time being after the passing of this Act, seems to imply that at that time it was necessary to certify a Jewish synagogue. But it is certain that there was no provision for certifying a synagogue before 1846, and it is hardly consonant with the true principles of the interpretation of statutes to extend the scope of a highly penal section of an Act of Parliament in this indirect way, especially by an enactment entitled "An Act to relieve Her Majesty's subjects from certain penalties and disabilities in regard to religious opinions," the manifest intention of which was to grant relief from former burdens, but not to impose any new obligations. However, by the Places of Religious Worship Registration Act, 1855 (18 & 19 Vict., cap. 81), a Jewish synagogue *may* be certified in writing to the Registrar-General of births, deaths, and marriages, and will then be registered in due time. Although, as has been said, this course is optional and not compulsory, it is to be recommended, because it ensures the following advantages. A building so certified is exempt from uninvited interference by the Charity Commissioners, and is also, if exclusively appropriated to public religious worship, not liable to be rated for parochial or municipal purposes[1]. In

Advantages of certifying a synagogue.

[1] See 16 & 17 Vict., cap. 137, sec. 62; 18 & 19 Vict., cap. 81, sec. 9; and 32 & 33 Vict., cap. 110, sec. 15, as to the provisions of the Charitable Trusts Act; and as to the exemption from rates, 3 & 4 Will. IV, cap. 30; 5 & 6 Will. IV, cap. 50, sec. 27; and 38 & 39 Vict., cap. 55, sec. 151.

addition, a synagogue not certified is not entitled to any of the advantages conferred by the legislature in 1846: a gift or legacy to it is void, nor can contracts to hire seats in it be enforced, or disturbers of the service be punished.

Summary of the foregoing account of the legal recognition of the Jewish religion.

With the mention of this somewhat curious anomaly, the consequence of this method in which full legal recognition has been given to the Jewish religion, it is time to bring the foregoing inquiry to a close; nor is it necessary to recapitulate at any length the conclusions already arrived at. In the year 1290 the Jews were banished from the kingdom by royal edict, but this edict, now lost, would not avail to absolutely exclude from the country centuries afterwards Jews in no way connected with the former bondsmen of the king. From time to time isolated Jews came and lived in England, but the severity of the laws enforcing uniformity of religion was sufficient to prevent the formation of a Jewish community, and as late as the reign of James I the Jews that were here fled the country through fear of the commissioners appointed to execute the laws against Jesuits. The treaty with Spain in 1630 made it somewhat easier for Jews to settle here, by allowing them to evade some of the penalties imposed on recusants, but this advantage, such as it was, was lost by the outbreak of the war with Spain in 1656, though restored after the return of Charles II. Availing themselves of this advantage a small number of Jews settled in the country in the reign of Charles I, and at the time of the execution of that king a formal request was made for the recognition of the Jewish religion, but it was not successful, and being renewed seven years later, in spite of the fair words used and the courtesy shown to Menasseh, it again proved a failure. During Cromwell's régime nothing was done; but there is evidence that the Protector allowed some half-dozen families of persons he knew to be Jews to remain in the realm, but this was a special favour which did not enable them to form a distinct body or set up a synagogue. During his exile Charles II made a formal promise to

relax the law in their favour; but no legislation was introduced, nor, if introduced, would it have had a chance of success. But the promise was fulfilled. A considerable number of Jews received the rights of citizenship; a distinct Jewish community arose, and a synagogue was established. At first the services were kept strictly secret, for fear of the enforcement of the penal laws, but, under the protection of the king's dispensing power, before the end of 1663 it was possible to hold them with open doors, and the attacks made upon the Jews were successfully repelled. On the accession of King James II a further and last attempt was made to visit with the rigour of the law the still young and struggling community, which was again saved by the exercise of the dispensing power of the Crown. After the Revolution the power of dispensation was swept away, but it was expressly provided that charters or grants already made should not be held invalid, and the formal Order in Council of November 13, 1685, granting the Jews the free exercise of their religion, was thus confirmed. At length, in 1846, after an interval of more than a century and a half, the Jewish religion, the profession of which had been frequently recognized by the legislature, was formally made legal by Act of Parliament.

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ERRATUM.

Page 63, line 7 from bottom, *for* 6 & 7 Vict. *read* 7 & 8 Vict.