



R. H. Staining.

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A SHORT
CONSTITUTIONAL HISTORY
OF ENGLAND

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A SHORT
CONSTITUTIONAL HISTORY
OF ENGLAND

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PREFACE TO THE FIRST EDITION



ALTHOUGH many handbooks of Constitutional History exist, I hope that the arrangement of this little book will be found useful enough to warrant its entry on a field apparently already so well occupied.

The want of a small book on English Constitutional History, in which the various subjects are treated in a connected and consecutive manner, has been much felt by me, not only whilst myself reading for the History School, but also whilst subsequently engaged in reading with others. I have therefore determined to publish my notes, in the hope that they may be useful to those about to read for the Schools of Modern History or Jurisprudence, and to any one who desires to ascertain at a glance the leading facts in the history of any subject of constitutional interest.

It has been my endeavour to give, with the Compiler's kind permission, as many references as possible to Professor Stubbs' Collection of Charters, in the hope that such references may in some slight degree assist the reader in his study of that valuable work.

I have to acknowledge with gratitude the courtesy of Professor Stubbs in allowing these references and

extracts to be made, and take this opportunity of expressing my thanks to those who have kindly aided me with suggestions and advice, more especially to Mr. F. S. Pulling, M.A., of Exeter College; Mr. F. York Powell, M.A., Lecturer of Christ Church; and Mr. R. Lodge, M.A., Fellow and Tutor of Brasenose.

I trust that the dates—to verify which no pains have been spared—will be found accurate, and that the arrangement of the notes will really prove of some slight use to those who are studying Constitutional History.

H. ST. C. F.

HALLIFORD HOUSE, MIDDLESEX,

October. 1881.

PREFACE TO THE SECOND EDITION

IN complying with the demand made for a second edition of this little book, the author has taken all pains to correct the various defects in the first edition, which have been pointed out to him by the friendliness of critics.

The present edition, besides undergoing complete revision, will be found to be considerably enlarged; and it is hoped that the additions will be found to be of such a character as to materially improve the usefulness of the book. For the notice of any errors which may exist, or for any suggestions which may be offered, the author will be most grateful.

The author's most sincere thanks are due to the many friends who have so kindly pointed out defects, and suggested improvements in the first edition, but most especially to the Rev. A. B. Beaven, M.A., of Preston; Mr. C. R. L. Fletcher, M.A., Fellow of All Souls; Mr. T. Duncombe Mann, LL.B., Barrister-at-Law; and Mr. J. Wells, Fellow of Wadham.

ST. MORITZ, ENGADINE,
March, 1887.

PREFACE TO THE THIRD EDITION

IN response to the call for a reissue of the late Mr. Feilden's work, the present edition has been prepared, in the hope that after thorough revision its usefulness may be further increased.

No alteration has been made in the arrangement of the book, but it seemed advisable to treat some of the subjects more fully than before. Chapter X and the greater part of Chapter IX have been rewritten, and considerable changes have been made in the earlier chapters. An attempt has been made to draw attention to the views of recent writers on such questions as Folcland and the Gilds, while every endeavour has been made to ensure accuracy in the dates and references.

The Editor wishes to express his thanks to Sir W. Anson, Warden of All Souls College, for permission to make use of his *Law and Custom of the Constitution*—a permission of which he has freely availed himself; and to Mr. G. N. Richardson, Lecturer in Modern History at Oriel and Pembroke Colleges, for his kindness in looking over the proof-sheets, and for many valuable suggestions.

LEAMINGTON COLLEGE.

Dec. 1894.

PREFACE TO THE FOURTH EDITION



OWING to the sustained demand for this work of the late Mr. Feilden, it has been thought necessary to re-edit and revise it once more, bringing it up to date as far as possible, so that it may continue its sphere of usefulness to the students of Constitutional History and find a still wider circle of readers.

The arrangement of the book remains unaltered, but there have been additions to Chapters II and X in particular, where every endeavour has been made to keep that uniform conciseness combined with accuracy which has been so successfully accomplished by my predecessor. Appendices 'C', 'D', and 'E', dealing shortly with the self-governing Colonies, the Constitutional question (1910), and the Regency Act (1910), are new, and here again the same scheme has been followed.

I wish, with their permission, to acknowledge my great indebtedness to Sir William Anson, Bart., Warden of All Souls College, Oxford, and to Prof. A. V. Dicey, K.C., Fellow of All Souls College, for the very valuable assistance I have received from their many works on Constitutional History.

D. H. J. H.

5 PUMP COURT, THE TEMPLE, E.C.

Dec. 1910.

First of Mendicity Principles P 7-13

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A SHORT CONSTITUTIONAL HISTORY OF ENGLAND

CHAPTER I.

THE CROWN.

KINGSHIP in England was a product of the Anglo-Saxon invasion: in their German homes, the Teutonic tribes had been ruled by *Ealdormen* in times of peace, by *Heretogan* in times of war. The union of the peaceful functions of the former with the military functions of the latter formed the basis of English kingship. The advantages of the new institution guaranteed its permanency, and it was gradually adopted by all the invading tribes.

Origin of
English
Kingship.

The position of the early Anglo-Saxon King¹ was entirely personal. He was the head of the race, not the lord of the land. He claimed descent from Woden, thus adding divine prestige to personal merit. His dignity was practically hereditary, for though in theory elective, the Crown always passed to a member of the royal house.

Anglo-Saxon
Kings.

The increase of the royal power is one of the main characteristics of the Anglo-Saxon period: the chief causes were—

Increase of
royal power.

1. The close alliance between Church and State. The former increased the King's influence by investing his office

¹ The word king (*cyning*) is closely connected with kin. According to Prof. Max Müller the original meaning of *cyning* was *father of a family*.

with peculiar sanctity, and by preparing the way for political unity.

2. The creation of a nobility of service dependent on the Crown.

3. The struggle for supremacy between the Heptarchic kingdoms, ending in the victory of Wessex, and the acknowledgement of her King as overlord of all England.

4. Increase of territory consequent on the acquisition of the South-West and the reconquest of the Danelaw.

It becomes territorial.

With the increase of the King's power came a change in his position. His relation to his subjects tended to become *territorial* owing to

a. His increased control of the folkland (p. 204).

b. The development of the Thegghood (p. 222) into a powerful territorial nobility, resembling the later feudal baronage.

c. Commendation;—a practice by which a freeman received protection from the King or a powerful lord on condition of doing suit and service in the latter's court.

d. The conquest of the Danelaw. The tie between the West-Saxon King and his Danish subjects was obviously not one of blood. He was not the head of their race, but the conqueror of their country and the lord of their land. In a word, the relation was territorial¹.

With increased power came an increase of territory and of revenue. The King assumed imperial titles², exacted an oath of fealty from his subjects (943), and exercised an increasing influence over the Witan. The national peace became his peace, the national courts royal courts. The monarch was regarded as the source of justice, and 'offences against the law become offences against the King³.'

Treason.

The development of the royal power is marked by Alfred's

¹ Const. Essays, 12.

² Athelstan (925) styles himself *Rex et Rector totius Britanniae*, and Edgar (959) *Totius Albionis Imperator*. Edward the Confessor however reverts to the title *Rex Anglorum*, and *Rex Angliæ* does not become the formal title of the King on the Great Seal until John.

³ Stubbs, i. 183.

Law of Treason (circa 890), which runs as follows:—

*'If any man plot against the King's life, of himself, or by harbouring of exiles, or of his men, let him be liable in his life, and in all that he has'*¹ Alfred's law

From now to the time of Edward III the law of treason remained undefined except by the arbitrary decisions of the judges. In 1352, however, Parliament asked for legislation on the subject, and the *Statute of Treasons* (25 Edw. III, st. 5, c. 2) was passed, limiting the offence to the following points:— Edw. III's law, 1352.

1. *Compassing the death of the King, Queen, or their eldest son.*

2. *Violating the Queen, the King's eldest unmarried daughter, or his eldest son's wife.*

3. *Levying war against the King in his realm, or adhering to his foes.*

4. *Counterfeiting his seal or money, or importing false money.*

5. *Slaying the Chancellor, Treasurer, or Judges in the discharge of their duty.*

The aim of the statute is personal. It regards an offender as a man who has broken faith with his lord, and its object is to protect the King, not the State, as embodied in the existing constitution². In the law-courts its clauses were frequently strained to meet cases which did not fall within the letter of the Act.

In order to protect the Government against rebellion, the judges held that a conspiracy to levy war against it, or an actual insurrection to alter the constitution or to repeal existing laws, was evidence of compassing the King's death. It was on this ground that convictions were obtained in the following cases:— Judicial instructions.

Norfolk (1572), who had intrigued to marry Elizabeth's rival, Mary Queen of Scots.

Essex (1601), who gathered an armed force with the intention of removing his enemies from the royal council.

¹ Sel. Charters, 62.

² Anson, ii. 72.

The Farley Wood malcontents (1663), who were concerting a rising against the Government ¹.

Russell (1683): he seems to have merely agitated for a new Parliament.

Harding (*temp.* William III), who had sent help to France, then at war with England.

Damaree and Purchase case (1710), in which the destruction of *certain* dissenting chapels was held to indicate a design to burn down *all* such places of worship, and thus to be equivalent to levying war against the King ².

(ii) Written and published words, importing and compassing the King's death, were held to be overt acts of treason; and even unpublished writings libelling the Government, if followed by a rising, were classed as treasonable.

Peacham (1615) was convicted for writing a libellous sermon which was neither printed nor published ³.

Williams (1621) was executed for prophesying the King's death.

Algernon Sidney (1683) was condemned for writing a treatise asserting the responsibility of Kings to their subjects ⁴.

In 1382, owing to the insurrection of the previous year, it was made treason to begin a riot; and in 1397, by 21 Ric. II, cc. 3, 4, the heads of treason were still further defined. An important statute passed in 1495 declared that treason could only be committed against a monarch who was King *de facto* not *de jure*.

The *de facto*
King, 1495.

Tudor legis-
lation on
Treason.

The Tudor period saw numerous additions made to the treason laws. Their main objects were to enforce the policy of the Crown, to secure the succession, and to oppose the papal influence in England ⁵. Henry VIII used them as a weapon with which to terrify men into acquiescence with his will. In the twenty-sixth year of his reign (1534) it was declared treason to endeavour to retain possession of arms, ships, or fortresses, which belonged to the King, after a legal summons

¹ Hallam, iii. 153.

² *Ibid.* 158.

³ *Ibid.* i. 343.

⁴ *Ibid.* ii. 458

⁵ Anson, ii. 72.

to surrender, to attempt to injure, or to wish injury to, the Sovereign, or to call him a heretic, or to deny any of his titles; and subsequent laws extended the penalties of treason to all who denied and afterwards to all who maintained the validity of the royal marriage with Anne Boleyn. Many of these new treasons were abolished by 1 Ed. VI, c. 12 (1547), and though re-enacted by 5 & 6 Ed. VI, c. 11, were again removed from the statute-book by 1 Mar. st. 1, c. 1. By 3 & 4 Ed. VI, c. 5, assemblies of twelve or more persons to discuss State affairs were declared treasonable. In 1554, the unpopularity of Mary rendered it necessary to declare praying for the Queen's death, or preaching against the title of the King (Philip of Spain) and Queen, and their issue, to be treasonable offences, 1 & 2 Phil. and Mar. cc. 9, 10. In 1559, by 1 Eliz. c. 5, it was made treason to deny the Queen's title; in 1571 (13 Eliz. cc. 1, 2), to deny the power of the Queen and Parliament to limit the succession, or to call the Queen heretic, schismatic, or usurper, or to bring papal bulls into England; in 1572, after the execution of the Duke of Norfolk (p. 3), the movements in favour of Mary Queen of Scots caused it to be declared treason to hold castles against the Queen, or to attempt to rescue prisoners (14 Eliz. cc. 1, 2). In 1661 (13 Car. II, st. 1, c. 1), it was made treason to imagine any bodily injury to the King; in 1702, to hinder, or attempt to hinder, the next in succession to the throne according to the *Act of Settlement*; in 1707, to assert by writing, or printing, the right to the Crown of any other person than the next in succession according to the *Act of Settlement*, or to deny the power of the Sovereign and Parliament to limit the succession.

In 1715 the *Riot Act* gave the Government power to deal with rioters as felons, and thus dispensed with the necessity for strained construction of the statute of Edward III; and the Act of 1795, by making treasonable all attempts to intimidate Parliament, or force the Crown to change its ministers, gave statutory recognition to offences against the State which were not also offences against the King¹.

¹ Anson, ii. 72.

Treason
Felony Act,
1848.

1870.

Procedure in
trials for
Treason.

Act of 1696.

In 1848, the offences which had previously been regarded as high treason, with the exception of those actually committed against the Sovereign, were made *treason felony*, and so not necessarily punishable with death. In 1870 forfeitures for treason were abolished and the punishment reduced to hanging¹.

Before the close of the seventeenth century, trials for treason were most unfairly conducted. Previous to the reign of Edward VI only one witness was necessary to secure a conviction, and though the statute of 1552 increased the number to two, it did nothing to remedy the hardship to which the accused was subject. He was first privately examined by the Privy Council, and when tried in public was called upon to answer at a moment's notice charges which had been prepared at leisure². His witnesses could not be sworn, no counsel might plead his case, and the Court took his guilt for granted. In fact it was extremely difficult to secure an acquittal 'unless the defence amounted to a positive proof of innocence³.'

The Act of 1696 (7 & 8 Will. III) put an end to this iniquitous system by allowing the prisoner to employ counsel, to compel the attendance of witnesses, and to receive a copy of the indictment five, and a panel of the jury two, days before the trial. It further provided that the two witnesses for the prosecution must both depose to acts relating to the same kind of treason⁴, and forbade the introduction during the trial of evidence which had not been specified in the indictment. No prosecution was to be commenced after three years from the commission of the offence, except for an attempt on the

¹ 'Treason, therefore, as distinct from treason-felony, is the doing or designing anything which would lead to the death, bodily harm, or restraint of the King, levying war against him, adhering to his enemies, or otherwise doing acts which fall under the statute of Edward III.' Anson, ii. 73.

² The Court sometimes adjourned to allow time for defence (e.g. in Strafford's case, 1641), but this practice was not usual.

³ Gardiner, History of England, 1603-42, i. 124.

⁴ e.g. a conviction could not be secured if one witness deposed to an act of imagining the King's death, and another to an act of adhering to his enemies.

King's life. Procedure was further regulated by 1 Anne, c. 9, which enacted that the Crown witnesses should be examined on oath; and by 7 Anne, c. 21, which provided the prisoner with a copy of their names ten days before his trial began.

The Succession to the Throne. From the earliest times the power of the crown was subject to two checks¹:—

1. The increasing power of the nobles consequent on the acquisition of large estates with jurisdiction over the inhabitants (p. 73).

2. The elective character of the monarchy.

The germ of the hereditary principle may be traced very early in the fact that, while the Witan (p. 93) had the sole power of electing the Anglo-Saxon King, they almost invariably confined their choice to the royal family, and to the eldest male representative, if of full age and capacity². *Exceptions*, Canute, 1017; Harold, 1066. 'Every so-called irregularity in the West-Saxon Succession,' says Dr. Gneist³, 'may be referred to testamentary disposition, to agreements respecting claims of inheritance, or to the personal incapacity of the person passed over.'

Hereditary
succession.

The Norman Conquest gave a considerable impulse to the hereditary principle. Arguing from the analogy of a feudal fief, men came to look on the crown as the property of the sovereign, and to apply to it those rules of succession which regulated the descent of ordinary estates. But the

The Hereditary and the Elective Principle.

¹ The strength of these checks depended greatly on the personal character of the King. Notice the distinct decline in the royal power owing to the weakness of kings like Ethelred II and Edward the Confessor.

² The nominee of the late king occasionally had the advantage, e.g. Harold, named by Edward the Confessor, on his death-bed. Minors, as a rule, were not elected for practical reasons—the only instances being the two brothers, Edward the Martyr, (975), and Ethelred II, (979)—thus Ethelred I was chosen (866) in preference to his young nephew; Alfred (871) was preferred to the sons of Ethelred; Athelstan, the illegitimate son of Edward the Elder, was chosen (925) before his legitimate brother; Edred (946) before Edwy; and Edward the Confessor (1042) before the son of Edmund Ironside.—See also Stubbs, *Select Charters*, 62. *Conc. Legatin.*, Cap. xii.

³ *Const. Hist.* i. 39 note.

Anglo-Norman Kings.

immediate descendants of the Conqueror were unable to plead an hereditary title, and thus the old elective theory,—almost the sole check on the despotism of the Norman Kings—was maintained in all its fullness. WILLIAM himself was careful to go through a form of election, and it was the vote of the central assembly, backed by the force at their disposal, which constituted the title of RUFUS and HENRY I. In his Charter of Liberties (1100) the latter declares himself crowned ‘*communi consilio baronum totius regni Angliæ*’¹. The King made the barons swear fealty to his daughter Maud, thus hoping to secure the crown for her; at his death however it fell to STEPHEN, who in his second charter says he is ‘*assensu cleri et populi in regem Anglorum electus*’². He too failed to hand down the crown to his son, and was succeeded by HENRY II, son of Maud. As William of Newburgh says³:—*haereditarium regnum suscepit conclamatus ab omnibus*. At his death the crown passed to his eldest surviving son Richard, but the election of John (1199) in preference to his nephew Arthur shows that the hereditary principle was not yet established. At his coronation the Archbishop, Hubert Walter, declared the elective character of the Kingship, stating that the King of England was chosen *ab universitate regni* after invoking the grace of the Holy Spirit⁴.

Angevin Kings.

The idea that the succession was confined to the male line, which, in spite of the efforts made in favour of the Empress Maud, was a prevalent one, prevented Arthur’s sister Eleanor from being named, and on John’s death the succession of the youthful HENRY III was secured by the admirable policy of the Earl of Pembroke, notwithstanding the bad government of the preceding reign.

Edward I.

At Henry’s death, his son EDWARD was recognised as King by hereditary right, though owing to his absence abroad the ceremony of election and coronation could not be performed

¹ Sel. Charters, 100.² Ibid. 120.³ Ibid. 127.⁴ It must be mentioned, however, that the authority for this is a somewhat suspicious passage in *Matthew Paris*.

for nearly two years. He is the first English King whose reign dates from the demise of his predecessor and commences before coronation. The inconveniences of the *interregnum*¹ were thus obviated, and the way prepared for the theory that the King never dies, which became the accepted doctrine by the reign of Edward IV.

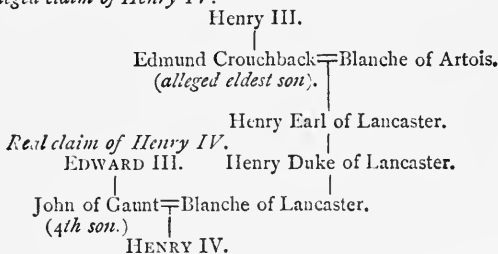
On the deposition of Edward II, his son EDWARD III was chosen, and was in his turn succeeded by his grandson, RICHARD II, a minor, who is expressly declared by Archbishop Sudbury to have succeeded *by hereditary right*. After the deposition of Richard, HENRY IV (son of John of Gaunt, fourth son of Edward III) was elected by *the voice of the people*; Parliament settled the succession on him and on his heirs 1404, and confirmed it 1406 (7 Hen. IV, c. 2); *the Lancastrian title was therefore purely Parliamentary*, though Henry showed his regard for hereditary right by claiming to be the lineal successor of Henry III through his maternal ancestor, Edmund Crouchback, the alleged elder brother of Edward I². The House of York, descended on the maternal side from Lionel of Clarence, third son³ of Edward III, claimed on

Lancastrian title.

Yorkist titles.

¹ Between the death of one King and the election and coronation of another the King's peace was in abeyance. The maintenance of order was the business of no one, while the State had no one to represent it for the purpose of enforcing the peace. Anson, ii. 57.

² *Alleged claim of Henry IV.*



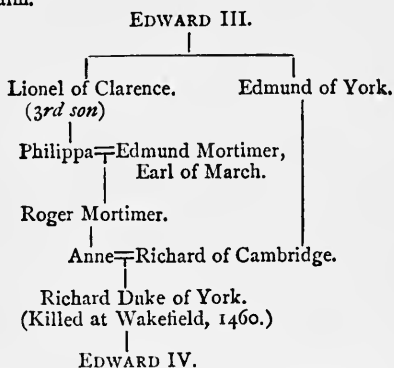
The story of John of Gaunt and his supporters was that Edmund was in reality the *eldest* son, but that the infirmity of a crooked back, (whence the name Crouchback), caused him to be passed over in favour of Edward I. Crouchback, however, simply means one who has taken the cross, *i.e.* become a Crusader.

³ The second son, William of Hatfield, b. 1336, died young.

the principle of indefeasible hereditary right¹; in 1460, Parliament compromised the matter by giving the unpopular Henry VI a life interest only in the crown, and declaring Richard Duke of York heir. On the deposition of Henry, at the end of the same year, Richard's son EDWARD was elected King by the popular voice, Richard himself having been killed in battle in the meantime. RICHARD III managed to supplant his nephew EDWARD V, and to obtain a kind of election by the people, alleging that his brother Edward IV was at the time of his marriage with Elizabeth Woodville, Lady Grey, betrothed to Lady Eleanor Butler, and that his children were therefore illegitimate; whilst the children of the Duke of Clarence were debarred from the succession by their father's attainder. Parliament entailed the crown on his heirs, (1484). HENRY VII claimed the crown by inherent right and by victory over his enemies; and though his title is very debateable 'it is quite possible to maintain that he was King by hereditary right².' Parliament however wisely avoided the delicate point, and enacted (1485) 'that the inheritance of the crowns of England and France rest, remain, and abide in the person of our now Sovereign Lord, Harry the Seventh, and in the heirs of his body³.'

Tudor title.

In the reign of his son the succession was frequently
¹ Yorkist claim.



² Stubbs, Lectures on Mediaeval and Modern History, pp. 343-5.

³ Tudor claim. See on opposite page.

altered at the royal wish. In 1534, by 25 Hen. VIII, c. 22, it was entailed on the King's heirs male, and in default on the Princess Elizabeth; in 1536, by 28 Hen. VIII, c. 7, Mary and Elizabeth were declared illegitimate, and the crown was settled on the issue male of Henry, and Jane Seymour, or, in default, on the issue of any future wife; *by this act, Henry was also empowered to devise the succession by will.* In 1544, by 35 Hen. VIII, c. 1, Mary and Elizabeth were again conditionally placed in the entail¹, and the king was provisionally empowered to devise the succession. Henry, in accordance with these acts, devised the crown, in the event of issue failing his three children, to the descendants of his *younger* sister Mary, Duchess of Suffolk; but, in distinct opposition to this, on the death of Elizabeth, in whose reign it was made treason to deny the right of the Queen and Parliament to limit the succession, JAMES VI of Scotland, great-grandson of Henry's *eldest* sister Margaret, was declared king by the Council, and by 'the will of the people²,' and though the Parliament 'fortified his title with an

Acts of Succession temp. Henry VIII.

JAMES I

EDWARD III.

John of Gaunt $\overline{\text{3rdly}}$ Catharine Swynford.

John Beaufort,
Earl of Somerset.

John, Duke of Somerset.

Margaret Beaufort $\overline{\text{—}}$ Edmund Tudor, Earl of Richmond.

HENRY VII $\overline{\text{—}}$ Elizabeth of York, daughter of
EDWARD IV.

HENRY VIII.

¹ The influence of the hereditary principle may be seen in the lack of national sympathy for Lady Jane Grey.

² Stuart claim.

HENRY VII.

Margaret $\overline{\text{—}}$ JAMES IV of Scotland.

JAMES V.

Mary Queen of Scots $\overline{\text{—}}$ Earl Darnley.

JAMES I (VI of Scotland).

Act of Recognition ¹; the statute declared that he was entitled to reign by descent ².

During the Stuart reigns, the claims of Parliament to interfere with the Succession were opposed by the upholders of the royal prerogative. They taught that the heir reigned by *Divine Right*, and that resistance to his rule was both unlawful and sinful. But the right of the national assembly to depose a monarch for misgovernment and elect another in his stead was vindicated by the *Revolution of 1688*. James II fled from the country, and Parliament declared that he had 'abdicated the government and that the throne is thereby vacant ³.'

Divine
Right.

Revolution
of 1688.

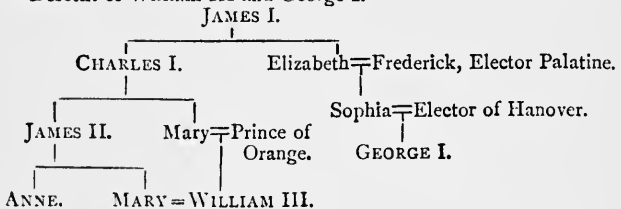
WILLIAM and MARY of Orange were named King and Queen and the succession settled on the heirs of Mary's body; in default of such issue, on the Princess Anne of Denmark and the heirs of her body; and, failing them, on the heirs of the body of William III. On the death of the Duke of Gloucester, son of the Princess Anne, and heir presumptive to the throne (1700), it became necessary to legislate afresh for the settlement of the Protestant succession, and in 1701, was passed the famous *Act of Settlement* (12 and 13 Wm. III, c. 2), which entailed the crown on the Electress Sophia, Duchess Dowager of Hanover, and the heirs of her body *being Protestants*, passing over the children of James II; this Hanoverian succession was confirmed in 1707, and the crown has ever since descended, without interference from Parliament, in a strictly hereditary line ⁴. Its hereditary

Act of Settle-
ment, 1701.

¹ Anson, ii. 59.

² Until this Act was passed, James was in the eye of the law a usurper. Henry had power given him by Parliament to limit the succession by will, and he devised it to the heirs of his younger sister, Mary Brandon, before those of his elder sister Margaret. ³ Hallam, iii. 94.

⁴ Descent of William III and George I.



character at the present day is firmly established; but the throne is in reality held, not from any claim of blood, but in accordance with the *Act of Settlement* as expressing the national will and the power of the legislature.

In addition to the right of election the Witan had also the power of

Deposition,

Deposition.

which was exercised to remove a King for incapacity or bad government.

Instances, before the supremacy of Wessex,—not connected with conspiracies or rebellions: *in Northumbria*, ALCRED, 774; ETHELRED, 779; EARDULF, 808. Instances in early times.

Instances in Wessex: SIGEBERT, 755, (deposed from all his kingdom except Hampshire); EDWY, 957, (deposed by part of his subjects, the Mercians and Northumbrians, in favour of his brother Edgar); ETHELRED II, deposed 1013, restored 1014; HARTHACNUT, 1037, deposed in Wessex in favour of his half-brother Harold Harefoot¹, who had ruled North of the Thames².

It is a question whether the offer of the Crown to Prince Lewis of France by the Barons in 1216, does not amount to a sentence of deposition against John, although the Barons failed to carry that sentence out; whilst Henry III was of course *practically* deposed by the *Provisions of Oxford* in 1258 (p. 16 and Appendix A).

Instances, in later times, of deposition by Parliament:

In later times.

In 1327, six articles were drawn up against EDWARD II by Bishop Stratford, mentioning several points in which he had broken his coronation oath, and declaring him unfit to govern. Parliament renounced their homage through their spokesman, Sir W. Trussel; and Edward was deposed and shortly afterwards murdered. Edward II.

In 1399, RICHARD II was forced to offer to resign the crown, and, thirty-three articles having been drawn up against him, Richard II.

¹ Harthacnut subsequently succeeded Harold, 1040.

² The case of Ethelwulf, 857, which is sometimes regarded as an instance of deposition, was merely the division of the kingdom between father and son in consequence of a rebellion set on foot by the latter.

he was deposed by Parliament 'as useless, incompetent, and altogether insufficient and unworthy.'

The case of HENRY VI, deposed by the Yorkists, 1460, is not in point; his deposition was not the act of the nation, but of an aristocratic assembly of the baronage; 'he was not deposed for incompetency or misgovernment, but set aside on the claim of a legitimate heir whose right he was regarded as usurping¹' the plea being that he had violated the Parliamentary agreement of 1460, by attacking Richard of York.

James II.

In January 1689, the House of Commons declared, that JAMES II 'having endeavoured to subvert the constitution of this kingdom,—having violated the fundamental laws, and having withdrawn himself out of the kingdom, has *abdicated the government* and that the throne is thereby vacant².' This practically amounted to a deposition; in fact the Scotch Parliament actually substituted the term *forfeited* for *abdicated*.

Royal prerogative under Anglo-Saxon Kings.

The Royal power and prerogative³.

Anglo-Saxon kingship was personal, not territorial. The royal prerogatives were not large, consisting merely of special privileges as regards wergild, the revenue, purveyance, jurisdiction, right of pardon, and the like. The most important seem to have been the possession of all forest rights, and the power of preventing the building of castles. Under the Norman Kings, the royal prerogative was extensive and undefined; the royal power had increased greatly owing to,

Norman Kings.

1. The change from personal to territorial kingship. The King becomes lord of the land.

2. The growing wealth of the crown.

3. The administrative system of Henry I.

4. The alliance of crown and people against the feudal nobles.

5. The energetic character of William I and Henry I.

¹ Stubbs, iii. 191.

² Hallam, iii. 94.

³ Prof. Dicey defines prerogative as 'the residue of discretionary or arbitrary authority, which at any given time is legally left in the hands of the crown.'—*Law of the Constitution*, 348. Sir W. Anson groups the prerogatives of the crown under three heads: its powers in the executive and legislative departments of government, its rights as feudal lord, and the outcome of attributes ascribed to the crown by the mediaeval lawyers. (ii. 5.)

The King practically did what he found himself strong enough to do ; he imposed what taxes he chose, theoretically with the consent of his council ; he repressed lawlessness, and dispensed justice with a strong hand, by this means increasing his own power. The only real check on the despotism of the Norman Kings was the elective character of the succession, which caused them to conciliate the people by the issue of Charters of Liberties.

The Angevin, or Plantagenet Kings, were most despotic. Angevin Kings. HENRY II, in whose reign the lawyer Glanville writes, '*Quod principi placuit legis habet vigorem,*' by his whole policy aimed at the consolidation of his own power. Before his death the supremacy of the King was established, and he was the acknowledged head of the Legislature and Executive. RICHARD I, and JOHN, marked their sense of the power of the Crown by omitting to issue a Charter of Liberties at their coronation, and the latter held ideas of absolutism, which led to his being forced to sign *Magna Carta* (June 15th, Magna Carta, 1215 1215), 'the keystone of English liberty,' and *the first actual limitation of the royal prerogative.*

Magna Carta is founded on the Charter of Liberties of Henry I, in which the King had acknowledged the limitation of the royal power, and it embodies many of the forty-nine Articles presented to John by the Barons. The most important articles are to this effect :—

1. *That no scutage or aid, with the exception of the three ordinary feudal aids, shall be levied without the consent of the Great Council.*

2. *That the Great Council of the whole kingdom shall be summoned in a regular manner for the imposition of aids.*

3. *That no freeman shall be imprisoned, exiled, or otherwise punished, except by the lawful judgment of his peers, or by the law of the land.*

4. *That justice shall not be denied or delayed to any one.* (Appendix A.)

In November, 1216, John's Charter was re-issued, at Charters of Henry III, 1216. Bristol, by the Earl of Pembroke, aided by Gualo, the Papal

Legate, with the omission of the clauses referring to taxation, this omission being due to the minority of Henry III, and to the recognition by his ministers that those clauses would deprive them of much of their power of raising money; it was stated that the suspension of the clauses was merely temporary, though, as a matter of fact, they were never restored. In 1217, another re-issue took place, with the omission of the Forest clauses, which were in the same year issued as a separate Charter, and with some additions, most important of which is a declaration of the King's right to levy *scutage* as in his grandfather, Henry II's time. This Charter also contains the germs of the Statutes *quia emptores* and *de religiosis* (Appendix A). In 1225, a fresh one was issued, important for two reasons:—(1) it is said to be issued '*spontaneâ et bonâ voluntate nostrâ*,' 'which,' remarks Dr. Stubbs¹, 'opened the way for a claim on the King's part to legislate by sovereign authority without counsel or consent;' (2) it contains the idea of connection between the redress of grievances and the granting of supplies, in its last clause, which is to the effect that the grant of a fifteenth is made in return for the concession of the Charter. Henry's misgovernment at home and abroad induced the barons to make several attempts at reform. They demanded the dismissal of the king's foreign favourites and the right to choose the Chancellor, Justiciar, and Treasurer, who were not to be dismissed without their consent. For a long time their efforts met with little success, but at last in 1258 they forced Henry to submit to the *Provisions of Oxford*. A Committee of Reform, consisting of twelve baronial and twelve royal nominees, drew up the following scheme of government.

Provisions
of Oxford
1258.

Fifteen Counsellors were to act as the permanent advisers of the Crown, and were to be chosen as follows: the twelve members of the original twenty-four, who had been nominated by the Barons, chose two of the nominees of the Crown (the Earl of Warwick, and John Mansel), the twelve chosen by the King selected two of the Baronial twelve (Roger

¹ Stubbs, ii. 37.

Earl Marshal, and Hugh Bigod); by these four the Council of fifteen was to be elected. Two other Committees were also to be appointed, one of twelve members, nominated by the Barons, to consult with the King's Council at the three annual Parliaments, and one of twenty-four members, representing the nation, to consider financial matters in general, and aids to the King in particular. The offices of Justiciar, Chancellor and Treasurer were restored, '*parlemenz*' were to meet three times a year, and the power of the sheriffs was curtailed¹. The new Constitution practically abolished the monarchy, and put the government of the country into the hands of the greater barons. The King was superseded by a narrow oligarchy, and the Great Council by small Baronial Committees.

The *Provisions of Westminster* (1259) redressed the special grievances of which the Barons complained, but the reconciliation was only temporary. Both sides submitted to the arbitration of Lewis of France, and by the *Mise of Amiens* (1264) the Provisions of Oxford were annulled, and the power of the King to appoint his own ministers was fully recognised. The Barons refused to accept the award, and appealed to arms. Henry was defeated at Lewes, and the *Mise of Lewes* (1264) confirmed the Provisions of Oxford.

A Parliament which included representative knights from the shire, met in the same year and drew up a new scheme of government. Three electors nominated by the Barons were to choose a Council of nine members, by whose advice the King was to act. If the *communitas praelatorum et baronum* agreed to remove one of these electors, the King must meet their wishes and appoint their nominee². This constitution extended the limits of Parliament and marks an advance on the scheme of 1258. The ultimate source of authority is now the *communitas praelatorum et baronum*, strengthened by the admission of the knights of the shire to

Provisions of
Westminster
1259.

Mise of
Amiens, 1264.

Mise of
Lewes, 1264.

¹ It is noteworthy that no attempt was made to replace those clauses of the Great Charter which were omitted in the re-issue of 1216.

² Sel. Charters, 413.

Parliament
of 1265.

Parliament. In 1265, Simon de Montfort called his famous Parliament, and for the first time in English history, representatives from the towns and representatives from the shires sat together in the central assembly. In the same year war broke out anew, but though the royal party was victorious, the *Dictum de Kenilworth* (1266) declared that the King must keep the Charters, and the Parliament of Marlborough (1267) 're-enacted the provisions of 1259,' and though leaving in the hands of the Crown the appointment of ministers and the election of sheriffs 'conceded almost all that had been asked for in the Parliament of 1258¹.'

Dictum de
Kenilworth
1266.

Edward I.

The reign of EDWARD I is marked by the admission of the Commons to Parliament (p. 131) and by the partial surrender on the part of the Crown of its claims to arbitrary taxation. In 1297 Humphrey Bohun, Earl of Hereford, Roger Bigod, Earl of Norfolk, and Archbishop Winchelsey, representing the baronial and clerical interests, extorted from Edward the *Confirmatio Cartarum*. It confirmed the Great Charter and the Charter of the Forest, and provided that for the future the King should not exact, '*la male toute des leines* ²,' or take '*tiu manere des aides, mises, ne prises*,' as he had previously taken, except '*par commun assent de tut le roiaume, sauve les auncienes aides et prises dues et custumees* ³.' The Charter expressly recognised the *Magna* or *Antiqua Custuma* of 1275 (p. 191), and made no attempt to regulate the levy of *Tallage* (p. 188). Edward I only considered himself bound to observe the letter of the law, and accordingly levied a tallage in 1304, and by negotiations with the foreign merchants obtained an increase in the duties on exported wool and other commodities, which was known as the *Parva* or *Nova Custuma* (p. 191).

Confirmatio
Cartarum
1297.

The *Confirmatio Cartarum* was in French: there is another document in Latin, differing in one or two important points from the *Confirmatio* (which does not contain

¹ Stubbs, ii. 97.

² The maletote of wool was a duty of 40 shillings on every sack of wool.

³ Sel. Charters, 495.

the word tallage), and known as the Statute *de tallagio non concedendo*. 'It is,' says Dr. Gniest¹, 'apparently the incomplete draft laid before the regent for his ratification, and not confirmed by any official document.' It is this Latin form that is referred to as a Statute by the *Petition of Right*, 1628, and held to be so by the Judges, 1637. In March, 1299, Edward was obliged to confirm the *Charters of the Forests*; a reservation, '*Salvo jure coronæ nostræ*,' evoked such hostility that a fresh confirmation, with the omission of the obnoxious words, was made two months later. In March, 1300, were issued the *Articuli Super Cartas*, a supplement to the *Confirmatio Cartarum*, dealing with certain abuses, such as purveyance, ordering the appointment of Commissioners to inquire into the Administration of the Forests, and into infringements of the Charters, though the rights of the prerogative were reserved; and making various legal reforms. The Charters were finally confirmed by Edward in return for a money grant, at the Parliament of Lincoln, 1301².

De tallagio
non con-
cedendo,
1297.

Articuli
Super Cartas,
1300.

Final Con-
firmation,
1301.

EDWARD II, the only despicable Plantagenet, drew upon himself, in 1309, the necessity of assenting to eleven articles for the redress of abuses of purveyance, excessive imposts, delay of justice, depreciation of the coinage, and the like. In 1310, by the forced consent of the King, twenty-one Lords Ordainers were appointed to frame ordinances for 'the advantage of the Church, the King, and the people.' The composition of this body was as follows:—two earls were elected by the bishops, two bishops by the earls; the four thus chosen elected two barons, and these six chose fifteen others. Six Ordinances were issued, August 1310, and supplemented in 1311 by thirty-five others. The Ordainers tried to remedy abuses by restraining the royal power and enforcing the claim of the Barons to control the

Edward II.

The Lords
Ordainers,
1310.

Ordinances,
1311.

¹ Const. Hist. ii. 9, note.

² In spite of these concessions Edward I was a very powerful King. But, as Bishop Stubbs remarks (Const. Hist. ii. 291), it was the royal power *in* and *through* the united nation, not as *against* it, that he designed to strengthen.

appointment of ministers. Gaveston, the royal favourite, was exiled, new customs and fresh forest usurpations were abolished, and the Charters were confirmed. The privileges of the Church were maintained, Parliaments were to meet once or twice every year, and the King was forbidden to make war, leave the realm, or appoint the great officers of state *without the counsel and consent of the baronage in parliament*. No provision was made for the action of the third estate. 'The privileges asserted for the nation were to be exercised by the Baronage.'

Declaration
of 1322.

Though renewed in 1316, the Ordinances were repealed in 1322 by the influence of the Despensers¹ as prejudicial to the royal power, and the important constitutional principle was laid down that 'matters which are to be established for the estate of our Lord the King and of his heirs, and for the estate of the realm and of the people, shall be treated, accorded and established in Parliaments by our Lord the King, and by the consent of the *prelates, earls, and barons, and the commonalty of the realm*'². From this time the kingdom was virtually ruled by the Despensers, until a national combination, with the self-seeking Isabella at its head, deposed the King, January 1327 (p. 13).

Edward III.

The reign of EDWARD III is very important in the history of constitutional progress. Although the enthusiasm aroused by the French war sometimes enabled the King to resort to illegal taxation, and even, in 1341, to annul a Statute to which he had previously given his consent, Parliament succeeded in placing important restrictions on the royal power.

The Act of 1340 decreed that no common aid or charge should be laid on the nation except by the common consent of the prelates, earls, barons and commons in Parliament, and in 1352 the king declared that the levy of *Tallage* should cease³. *Purveyance* (p. 179) was abolished in 1362, except for the personal wants of the King and Queen, and the Act of

Tallage.

Purveyance.

¹ From *Dispensator*, a steward.

² Stubbs, ii. 352.

³ Edward III was very unwilling to relinquish his claim to levy this impost, and in 1377 declared that 'great necessity' might still compel him to exact it.

1352 laid down that no one should be forced to furnish armed men to the King, unless bound to do so by the conditions of his tenure. The *Statute of Staples* (1353) legalised the *Nova Custuma* (p. 191), and the irregular duties levied on imports were converted into a Parliamentary grant (1373), and thenceforth became a part of the royal revenue under the names of *Tunnage and Poundage* (p. 192). Parliament asserted its complete control over this branch of taxation by the Statutes of 1362 and 1371, which enacted that neither merchants nor any other body should set any subsidy or charge on wool without Parliamentary consent ¹.

Commissions of Array.

Customs.

In addition to securing the control of national taxation, Parliament wished to determine the way in which its grants should be applied. The royal consent to the *Appropriation of Supply* (p. 115) was easily gained, but the *Audit of Accounts* was more difficult to obtain. Though frequently demanded in the reign of Edward III, and yielded in principle in 1379 ², it was not clearly established till 1406 ³.

Appropriation of Supply.

Audit.

The right of the Commons to deliberate on questions of peace and war, and to interfere with the details of the administration was clearly recognised in this reign. In order to secure national sympathy for his foreign policy, Edward frequently appealed to the Commons for advice, but they were by no means eager to assume the position of advisers, and 'seem to have been very cautious in admitting that peace and war were within their province at all ⁴'. However, they attacked domestic abuses with great vigour. Attempts were made to secure the responsibility of Ministers to Parliament (1341), to limit the expenses of the royal house-

Administration.

¹ However, in spite of the legislation of Edward III's reign, 'the entire prevention of financial overreaching on the part of the Crown was not attained for many centuries.' Stubbs, ii. 517.

² Stubbs, ii. 567.

³ *Ib.* iii. 54.

⁴ In the following reign they were extremely reluctant to commit themselves. In 1384, when forced to give a direct answer on the question of peace or war, they agreed to reply in the same terms as the prelates and magnates, but protested that they should not henceforth be charged as counsellors in this case, nor be understood to advise either one way or the other. Stubbs, ii. 602-3.

hold and to restrain the alienation of crown lands: while the constitutional principle that *redress precedes supply* was foreshadowed in the events of 1339.

Impeachment.

In judicial matters, two important privileges were won. The Commons asserted their right to *impeach* (p. 150) the Ministers of the Crown (1376) and the Lords made good their claim to trial by their peers alone (1341).

Richard II.

During the minority of RICHARD II, the position of the Commons was very powerful. They frequently exercised the rights acquired in the previous reign, impeached the King's ministers (1386) interfered with the royal household, and in 1377 obtained the appointment of two treasurers to superintend the disbursement of the subsidy for the French war.

In 1389 Richard took the reins of government into his own hands, and for eight years ruled as a constitutional King. The Commons however grew more subservient, and in 1390 and 1391 'it was declared on the petition of the Lords and Commons, that the King's prerogative was unaffected by the legislation of his reign or those of his progenitors'.¹ Gradually the royal policy changed. Richard abandoned his constitutional attitude (1397) and by a series of despotic measures made himself absolute. An obsequious Parliament granted him a life revenue and delegated its authority to a Committee of eighteen.

The King's arbitrary rule and his impolitic conduct toward Henry of Lancaster cost him his throne. In 1399 he was deposed by Parliament on thirty-three counts, accusing him of injustice to individuals, infractions of the constitution, 'abuse of the prerogative, illegal taxation, and the assumption of legislative powers'.² Henry of Lancaster was chosen to succeed him.

The Constitutional experiment of the Lancastrian Kings.

The Lancastrian Kings made an honest attempt to govern England by constitutional methods. Parliament became the direct instrument of government, and harmony was established between the legislative and executive, by allowing the two

¹ Stubbs, ii. 486.

² Richard had said 'that his laws were in his own mouth and often in his own breast, and that he alone could change and frame the laws of the kingdom.' Stubbs, ii. 505.

Houses to nominate the members of the Royal Council¹ (p. 38). The Commons enjoyed the rights they had previously acquired and gained new powers and privileges.

In 1401 they claimed that redress should precede supply, and though the King refused their request, it is probable that it was really secured by the practice of delaying the grant till the last day of the session². Their right to freedom of deliberation was fully recognised in the same year. In 1406 they definitely established their right to insist on an audit of the royal accounts, and in 1407 to originate money grants. In 1406, 1410, and 1430, Acts were passed to regulate the county elections, and in 1429 Members of Parliament were allowed freedom from arrest. An important Act, passed in 1414, declared that statutes should follow the wording of petitions on which they were based, and in the reign of Henry VI the practice arose of presenting *Bills* drawn as statutes, in place of petitions. Parliament was consulted on matters of foreign policy, and freely exercised its right to control the administration and inquire into public abuses.

Sir John Fortescue, in his *De Laudibus Legum Angliæ* and *De Natura Legis Naturæ*, bears witness to the constitutional nature of the Lancastrian rule. England is a *dominium regale et politicum*, her monarch a *rex politicus*, unable to alter the laws or lay impositions on his people without their consent: 'the King exists for the sake of the kingdom, not the kingdom for the sake of the King³.'

But this great 'constitutional experiment' proved a failure. The selfishness of the great nobles, the incapacity of Henry VI, and the prejudices and political blindness of the Commons brought about its fall. The poverty and weakness of the Crown, the inability of the executive to enforce order in the country districts, and the factious rivalries of the nobles overthrew the House of Lancaster, and prepared the way for the New Monarchy.

The rule of the Yorkist and Tudor sovereigns has been styled the '*New Monarchy*' because their reigns are marked

¹ Const. Essays, 235.

² Stubbs, iii. 263.

³ *Ib.* 241.

Powers of
the House of
Commons.

Fortescue's
testimony

Failure of
the Lancas-
trian rule.

The New
Monarchy

by a great change in the character of the kingship. Weary of anarchy, all men were ready to welcome a government which would repress the lawless elements of society, and by giving protection to life and property render commercial development possible. The Wars of the Roses had swept away the old nobility, the Commons were not strong enough to stand alone, and the Church, conscious of being out of touch with the nation, sought safety in alliance with the Crown. Accordingly the Tudors were able to override the restrictions on the royal power, and to ignore the spirit of the constitution, though conforming to the letter of the law. The government of the country was carried on by the King and his Council, and Parliament became little more than a convenient machine for the expression of the royal wishes.

Edward IV. The altered character of the monarchy was seen during the reign of EDWARD IV. Parliament only met at considerable intervals, and did not pass a single remedial statute. Fines and forfeitures rendered the King wealthy, and when in need of money he had recourse to *Benevolences* (p. 200). These were abolished by RICHARD III, but he was nevertheless compelled to resort to them to supply his financial wants.

At the accession of HENRY VII there were certain definite checks on the power of the King, which are thus described by Mr. Hallam¹:—

1. *No new tax could be levied without consent of Parliament.*
2. *No new law could be made without the same consent.*
3. *No committal to prison could take place without a legal warrant specifying the offence ; and the trial must be speedy.*
4. *Criminal charges, and questions of fact in civil rights, were decided by a jury.*
5. *The King's officers were held responsible to the nation, and could not plead in defence the King's order* (p. 46).

The Tudors. In spite of these checks, the power of the Crown was much increased under the Tudors, owing to the strong character of the sovereigns, the extermination of most of the baronial party, the increase of the Crown possessions from the for-

¹ Const. Hist. i. 2.

feitures during the Wars of the Roses, and the action of the Courts of Star Chamber and High Commission. HENRY VII Henry VII. made many illegal exactions by Benevolences, and excessive fines. During his son's reign Parliament was most subservient to the royal will. By 31 Hen. VIII, c. 8 (1539), the King's proclamations acquired the force of law (p. 170); and by 28 Hen. VIII, c. 17 (1536), any future King who had reached the age of twenty-four years was empowered to rescind any Statutes passed since his accession. HENRY'S power was also greatly increased by his position as head of the Church of England, whilst his coffers were filled with the spoils of the monasteries. However, in spite of his despotism, he ruled according to law, and, as Lord Bolingbroke remarks, 'by applying to his Parliaments for the extraordinary powers which he exercised, owned sufficiently that they did not belong of right to the Crown.' Under MARY, forced loans Mary. were exacted, and Proclamations made, whilst an Act was passed declaring the prerogatives of a Queen identical with those of a King. Parliament was also controlled by the creation of rotten boroughs. ELIZABETH denied all independence to Parliament (p. 101), declaring that she would not have her prerogative 'argued nor brought in question.' She was practically supreme, but, although persons were occasionally committed to prison and unjustly tried, she ruled on the whole wisely, and without any great violation of constitutional liberty; and *Hooker*, writing towards the close of her reign, says of the royal power, '*Lex facit regem*; the King's grant of any favour made contrary to the law is void; what power the King hath he hath it by law, the bounds and limits of it are known.' During the later years of the reign, Parliament began to reassert its power, and in 1601 won a great victory on the subject of *monopolies* (p. 201). Hooker's view of the royal power

With the Stuarts, however, the doctrines of *Divine Right*¹ Divine Right. and passive obedience began to gather strength. JAMES I, from his natural inclination, and from the defect in his

¹ For an essay on this subject see Gairdner and Spedding's *Studies in English History*.

parliamentary title, held that hereditary right was expressly sanctioned by heaven; that the King was in consequence absolute, his rights inviolable, and the constitutional limitations of the prerogative, as Lord Macaulay says, 'merely concessions which the sovereign had freely made, and might at his pleasure resume.' This doctrine was unknown in the earlier stages of English history, when succession in accordance with rules of primogeniture had been by no means universal. The theory of Divine Right, as promulgated by James I, was warmly taken up by the King's party, and by the high-churchmen, who aimed at increasing the power of the Crown, and gaining its support for themselves. By the Canons of 1606 the necessity of passive obedience was insisted on; in *Dr. Cowell's* 'Interpreter,' published in 1607, the doctrine was so strongly upheld as to give great offence to Parliament, and to compel James to order the suppression of the book. In 1628, *Dr. Mainwaring* was impeached for preaching in favour of absolutism, and was heavily fined; as a reward, the King made him Bishop of St. David's. In the reign of Charles II, a treatise was published by *Sir Robert Filmer*, the advocate of *active* obedience, in which he maintained that Kings are absolute by divine right, 'and are not answerable to human authority.' These ideas were taken up by the Tory party, and especially by the University of Oxford, but gradually disappeared after the Revolution of 1688, and in 1701 an oath was imposed on the clergy and certain officials by Parliament that William III was 'the lawful and rightful King.'

Dr. Cowell.

Dr. Mainwaring.

Sir Robert Filmer.

Stuart Kings.

Subserviency of the Judges.

Holding these ideas, the Stuarts claimed an unlimited prerogative, and at once attempted to govern arbitrarily and without Parliament; they were aided by the *Court of Star Chamber* (p. 52) and by the subserviency of the judges, *e.g.* in *Bate's case* (p. 198), and the case of *Ship-money* (p. 199). In 1610, however, the judges declared that the King could not create any offence by proclamation, and had no prerogative beyond that which the law of the land permitted him to enjoy. In 1616, on the judges refusing to delay the

administration of justice in the *case of Commendams* (App. B.), in accordance with James' order, they were sent for by the King, and compelled to ask pardon on their knees, promising amendment in the future. *Coke* alone attempted to vindicate their action, and was in consequence dismissed from the Chief Justiceship. From this time, James I was absolute in the Law Courts, and he informed his Parliament that 'it was sedition to require what a King could do by virtue of his prerogative.' His hatred of the Puritans and Non-conformists, whom he regarded as subversive of monarchy, sprang also from his theory of absolutism. He was always needy, and always extortionate; proclamations were rife, the Dispensing power was freely used (p. 171), and money was illegally raised by forced loans, benevolences, monopolies, and the sale of honours (p. 178). James I.

CHARLES I, following in his father's steps, and attempting to rule without Parliament, was always in want of money, which had to be obtained illegally. In 1627, the liberty of the subject was infringed by the imprisonment of *Sir Thomas Darnel*, and four others, for refusing to contribute to a general loan; they sued out their writs of *habeas corpus* (p. 241); in reply, the Warden of the Fleet asserted that they were imprisoned *by the special command of the King*; and Sir Nicholas Hyde, chief justice, gave judgment for the Crown on the point. The prisoners were shortly afterwards released by the King's order, but the country had been alarmed. In 1628, Charles was obliged to assent to the *Petition of Right*, and from 1629 to 1640 ruled without a Parliament, having recourse to various means of raising money, *e.g. the exaction of tunnage and poundage on his own authority, sale of monopolies, revival of the forest laws, distraint of knighthood, ship-money, and the like.* Many abuses, such as the Star Chamber, were swept away by the Long Parliament; and in 1660, CHARLES II surrendered the feudal rights in return for a fixed annual sum. Towards the end of his reign, Charles, by the aid of the judges, managed to increase the power of the crown by confiscating the charters of the boroughs (p. 269), and only Charles I.
Darnel's Case.
Charles's exactions.
Charles II.

restoring them on conditions which rendered the return of court nominees at the Parliamentary Elections certain.

JAMES II at once began to display despotic tendencies; in 1685, he levied customs by Proclamation before they had been granted by Parliament; he produced a judicial decision in favour of the Dispensing power (p. 171), and by various attempts to subvert the constitution, lost the throne.

James II.

Bill of Rights,
1689.

By the *Bill of Rights*, 1689, a lasting check was put upon the abuse of royal power, and the change which had been taking place in the popular conception of sovereignty was emphasised; respect was claimed for Parliamentary privileges; the exercise of the Suspending and Dispensing power without consent of Parliament, the levying of money by pretence of prerogative without a Parliamentary grant, and the maintenance of a standing army without Parliamentary authority were declared illegal¹ (App. A). This check was strengthened by the *Act of Settlement*, 1701, which provided against packing Parliament with placemen, declared the royal pardon invalid in cases of impeachment, and secured the independence of the judges, who were not to be removed from their office except upon the address of both Houses of Parliament.

Act of Settlement,
1701.George I.
George II.
George III.

GEORGE I and GEORGE II had little personal influence and little national sympathy, but GEORGE III, who sought to rule as a national sovereign, made such progress towards re-establishing the influence of the Crown, by his dictation to Lord North, and his attempts to be his own unadvised minister, that in 1780, Mr. Dunning moved, and passed, in the House of Commons, the famous resolution that that influence 'had increased, was increasing, and ought to be diminished.' Although Parliamentary Government has existed since the Revolution of 1688, the Crown has retained much of its influence, owing to its position as the head of society, to its

¹ 'In opposition to the doctrine that the Crown was a piece of real property which could never be without an owner, it (the Bill of Rights) declares the throne vacant. In opposition to the doctrine that the succession to the throne was a matter of divine indefeasible hereditary right, it regulates that succession. In opposition to the doctrine of passive obedience, it affixes conditions to the tenure of the Crown.'—Anson, i. 24.

powers of patronage, and to that love of monarchy which is the characteristic of the English people. The sovereign has at present many legal prerogatives, most of which are practically vested in the ministry, such as the power of summoning, proroguing, and dissolving Parliament at pleasure, of refusing assent to any Bill (practically obsolete, p. 169), of making peace or war, of dealing with foreign nations by making treaties, and receiving and sending ambassadors, of pardoning offenders after conviction, and of creating peers¹. Many of the feudal and fiscal prerogatives of the Crown, such as purveyance, coining, regulation of markets, and the like, have been surrendered. The sovereign is, in fact, the head of the Church, the army, the law; is the fountain of justice, mercy, and honour; and has, formally at any rate, the supreme executive power, as well as a co-ordinate legislative power, with the Houses of Lords and Commons.

Regencies, which are a natural sequence of hereditary kingship, may be rendered necessary, (1) *by the infancy*; (2) *illness*; (3) *madness*; (4) *absence of the King*. Thus William I, during his absence in Normandy in 1067, left as regents his half-brother, Odo, Earl of Kent, and William Fitz-Osbern, Earl of Hereford. The office of regent in early times usually fell to the Justiciar in the event of the sovereign's absence. Instances of regencies in English history are—

(1) In 1190 *Richard I* before leaving England appointed the Chancellor, William Longchamp, Guardian of the kingdom.

(2) 1216. Owing to the minority of Henry III the *Barons* chose William Marshall, Earl of Pembroke, *rector regis et regni*; with him were associated the legate Gualo, and Peter des Roches.

¹ 'No modern lawyer,' says Professor Dicey (*Law of the Const.* p. 61), 'would maintain that these powers, or any other branch of royal authority, could not be regulated or abolished by Act of Parliament, or, what is the same thing, that the judges might legally treat as invalid a statute, say, regulating the mode in which treaties are to be made, or making the assent of the Houses of Parliament necessary to the validity of a treaty.'

(3) 1272. Edward being abroad at the death of Henry III, the *Council* at once assumed the functions of Regency, the government being carried on by Walter Giffard, Archbishop of York, assisted by Roger Mortimer, and Robert Burnell (afterwards Bishop of Bath and Wells)¹.

(4) 1297. Edward I, on joining his army in Flanders, left his son Prince Edward as regent, together with an assisting Council of Regency. By them the *Confirmatio Cartarum* was provisionally accepted, and sent to the King for ratification (p. 18).

(5) 1327. At the accession of Edward III, a minor, *Parliament* appointed a regency of four bishops, four earls, and six barons, headed by Henry, Earl of Lancaster.

(6) 1377. Richard II was a minor, and though no regent was appointed, a council of twelve was named by the *Barons*, to aid the Chancellor and Treasurer, and was frequently modified by Parliament, which had the real control of affairs.

(7) 1422. Henry V, at his death, named the Duke of Gloucester regent; subsequently, however, the peers, 'having searched for precedents, found that he had no such claim on the ground of relationship, and, that the late King could not without the assent of the estates, dispose of the government after his death².' Accordingly *Parliament* appointed the Duke of Bedford, 'or, in his absence beyond the sea, the Duke of Gloucester, to be the protector and defender of the kingdom and English Church, and the King's chief counsellor.' Sixteen counsellors were subsequently added by Parliament, and the Lords declared that the Protector's power was limited to defending the realm against internal and external foes.

Three inferences may be drawn from the proceedings of this year:—

- (1) That the King has no power to nominate a regent during the minority of his successor.
- (2) That neither the Heir apparent, nor any other person,

¹ Stubbs, ii. 104.

² *Ib.* iii. 97.

is entitled to exercise the royal prerogative during the infancy of the King.

(3) That Parliament alone has right of nominating a regent, and of determining his powers¹.

(8) 1454. Owing to Henry's insanity, the *Peers* chose Richard, Duke of York, Protector. Parliament confirmed the appointment. The King recovered and dismissed him.

(9) Nov. 1455. Henry had a relapse, and the Duke of York was again appointed as his lieutenant.

(10) 1483. On the accession of Edward V, Richard Duke of Gloucester, was appointed Protector by the *Council*.

(11) 1547. In accordance with a statute of 1536 (28 Hen. VIII, c. 7), modified in 1544, sixteen executors were appointed as a regency during the minority of Edward VI: they chose the Earl of Hertford as Protector of the kingdom.

(12) 1751. A Regency Act, passed on the death of Frederick, Prince of Wales, made the Princess Dowager of Wales regent in the event of any of her children succeeding under the age of eighteen; the Act also nominated a council of regency, with power to the King to add four more.

(13) 1765. On George III suffering from a severe illness, a Bill was passed appointing a council of regency, and defining their duties; the King was empowered to nominate as regent either the Queen, the Princess Dowager of Wales, or any descendant of George II; the name of the Princess was only inserted after considerable opposition from the Ministers, especially Lords Halifax and Sandwich.

(14) 1788. George III became insane, and Fox upheld the right of the Prince of Wales to be regent; Pitt maintained the right of Parliament to make the appointment. It was determined to create a Regency by statute, 'but a statute needed the royal assent, the King could not give the royal assent in person, nor could he authorize by sign manual the affixing of the Great Seal to a Commission, which should enable others to give his assent.' At last 'the two Houses were invited by Ministers to concur in

¹ Taswell-Langmead, 371. Hallam, Middle Ages, iii. 189.

directing the Chancellor to put the Great Seal to a Commission for giving assent to the Regency Bill when it had passed the two Houses¹. The King recovered before the Bill was carried.

(15) 1810. George III again became insane, and the Prince of Wales was appointed regent; the Bill was passed June, 1811, and the royal assent given by commission on a resolution of Parliament. The regent's power was limited; he was not, for twelve months, to create peers, nor was he to grant offices and pensions, except during pleasure.

(16) 1830-1. In the event of the Princess Victoria coming to the throne under the age of eighteen, the Duchess of Kent was to be regent.

(17) 1837. Provision was made for the carrying on of the government by Lords Justices, in the event of the Queen's decease whilst the heir (the King of Hanover) was abroad.

(18) 1840. In the event of a child of the Queen succeeding, under the age of eighteen, the Prince Consort was to be regent.

Allegiance.

Allegiance,² or 'the true and faithful obedience of the subject due to the sovereign,' is of two kinds:—

(1) *Natural*, *i.e.* the allegiance due from persons born in the dominions of the sovereign: formerly this was perpetual, but by the *Naturalisation Act* of 1870 (33 & 34 Vic. c. 14), a British-born subject may renounce his allegiance by becoming a naturalised subject of a foreign power.

(2) *Local*, due from aliens during the time they are resident only.

Legislation
on the sub-
ject.

In 1581 (23 Eliz. c. 1), it was made high treason to attempt

¹ 'This grotesque and dangerous fiction,' says Sir W. Anson (ii. 77), 'would seem to enable two branches of the legislature to dispense with the concurrence of the third.'

² 'Fealty is the simple undertaking to be faithful. . . . Homage is the undertaking to be faithful in respect of land, binding the vassal to the lord of whom he holds lands. Allegiance is the duty, which every man ow'd, to be faithful to the head of the nation, land or no land. But, as the King was supreme landowner and judge, the idea of homage and fealty were merged in Allegiance.' Anson, ii. 68.

to withdraw subjects from their allegiance; by 7 Anne c. 5, 1709, the children of subjects born abroad were to be deemed natural-born (see *Oath of Allegiance*, p. 141).

Bretwalda (*Breotan*, to distribute, *i.e.* 'widely ruling,' Bretwaldas with a sense of undefined superiority¹), was a name given in Anglo-Saxon times to Kings who had acquired some sort of supremacy over their neighbours; the nature of this supremacy is doubtful, but the title probably indicates, as Dr. Freeman says, early attempts at uniting the whole of England under one sovereign, and was assumed by a King in virtue of personal or territorial power. That the power, which probably differed at various times, was definite, is shown by Ethelbert of Kent granting to St. Augustine a safe conduct, when on his way to hold a Synod in some far distant part². The words used by Bede, in describing the circumstance, are '*Adjutorio usus Ædilbercti regis.*'

Queen Consort (*Cwen*, the wife), at first occupied a high position, owing to the respect in which all Teutonic nations held their women; though after the murder of her husband, Brihtric of Wessex, by Edburga (802), the title of Queen was abolished in Wessex, that of *hlæfdige*, or lady, being substituted for it, with a great diminution of privileges. Queen Consorts have usually been crowned from the earliest times, though the ceremony was omitted in the case of Queen Caroline, wife of George IV. They had various privileges, such as protection by the *Statute of Treason*, the possession of cities as private property (*e.g.* Exeter belonged to Emma, Queen Consort).

¹ Sir F. Palgrave refers the title to a Roman origin, and to the idea of Imperialism. Mr. Kemble says the Bretwalda was an elected head, while Dr. Lingard tries to establish a regular line of Bretwaldas. There were eight altogether—

Ella of Sussex,	<i>circ.</i> 477-510,	Bretwalda,	492.
Ceawlin of Wessex,	560-593	"	<i>circ.</i> 584.
Ethelbert of Kent,	<i>circ.</i> 565-616	"	<i>circ.</i> 589.
Redwald of East Anglia,	<i>circ.</i> 599-620	"	<i>circ.</i> 617
Edwin of Northumbria,	617-633	"	624.
Oswald	"	633-642.	
Oswy	"	642-670.	
Egbert of Wessex (first <i>rex Anglorum</i>),	802-839,		827.

² See Gneist, English Const., i. 41 note.

Queen Gold. wife of Ethelred II), and the right to *Queen Gold*, or a mark of gold for every hundred marks of silver paid to the King; this due, mentioned in Domesday as *Gersumma reginæ*, appears to have been frequently paid *temp.* Edward IV, and was claimed as late as the time of Charles I, by Henrietta Maria, who, however, surrendered it in consideration of a sum of money, in 1635.

Queen Regnant. The **Queen Regnant** enjoys exactly the same prerogatives and privileges as a King; this was settled by a statute of Mary, the first Queen Regnant of England, April, 1554 (1 Mar. sess. 3, c. 1), which provides that 'the regal power of the realm is in the Queen's Majesty as fully and absolutely as ever it was in any King.'

CHAPTER II.

THE COUNCIL AND COURTS.

Origin. In Anglo-Saxon times there existed a body of advisers of the Crown distinct from the general assembly of the *Witan*; these advisers were summoned by the king and were generally chosen from the officers of his household (*e.g.* the *staller*, the *bower thegn*, the *dish thegn*, and the *horse thegn*). King's Council, origin.

History to Henry III.

History to
Henry III.

After the Norman Conquest, this body of counsellors continued to exist as a committee of the national council, the *Magnum Commune Concilium*, and was known as the *Continual Council* (*Concilium ordinarium*), at first so closely connected with the national council as to be hardly distinguishable from it. The King's Council, the *Aula Regis* or *Curia Regis* gradually assumed a distinct position *owing to the continuity of its existence*, and to its members being available for consultation at any moment, instead of at only three stated periods in the year, as in the case of the national council. Those members were at this time the permanent officials of the state and household, whose necessary residence at and about the court, by reason of their office, facilitated consultation, *i.e.* the Justiciar, the Treasurer, the Chancellor, the Marshal, the Steward, the Chamberlain, the Constable, the Butler (pp. 225 sq.); sometimes, also, minor officials, such as the Chancellor of the Exchequer, and the King's Sergeant were present; while certain bishops and barons, in addition to the two archbishops, who sat in right of their position, were occasionally summoned. Practically up to the time of the minority of Henry III, the *personnel* of the King's Council varied at the will of the sovereign.

Powers.

The *powers* of this *Curia Regis*¹, executive, legislative, and judicial, were immense, and co-extensive with those of the King, whose agent it was. In its judicial and financial aspect, it gradually develops into the *Curia Regis* in its third sense, and into the Courts of Common Law *temp.* Henry III. In 1178, Henry II created the Council a Court of Appeal from the decisions of the judges. From this time until the reign of Henry III, when the Council assumes a more important position, owing to its action as a Council of Regency during the minority, the King's Councillors appear more in the light of personal, than of official advisers; the history of this body is obscure, and its position barely recognised. Dr. Gneist's opinion is that there was no permanent royal Council until Henry III, 'when a government Council was first formed for the discharge of the whole business of the State.' His idea is that 'the existence of a properly constituted *Concilium ordinarium*, or "Select Council," is assumed,' from the fact of the King transacting 'the current business of government with a small number of State officials².'

The Council from Henry III to Henry VI.

History from
Henry III to
Henry VI.

History. During the minority of Henry III, the royal Council increased much in importance; its development continued under Edward I, and it tended, as was natural in that age of definition, to become a body totally distinct from the courts of law, and from Parliament, with which it came into frequent collision. By the reign of Richard II, in which the first minutes of the Council appear (1386), it had assumed a fairly permanent form, though the various stages in its growth cannot be accurately distinguished. In 1301, the King's Councillors are first mentioned by name, and during the same period an oath of secrecy and fidelity was

¹ It should be carefully borne in mind that the expression *Curia Regis* is used to denote—

1. The *Commune Concilium*.
2. The *Concilium Ordinarium*, or King's Council, as here.
3. The Judicial Committee of the Council, a later and narrower sense.
4. The Court of King's Bench.

² Const. Hist. i. 270, note.

made incumbent on all members. During the Lancastrian period, and especially in the reign of Henry VI, when it practically performed the functions of a Council of regency, the Council was at the zenith of its power.

Composition.

Composition.

Temp. Henry III and Edward I. The State and Household officers, the two archbishops by prescriptive right, the judges, certain prelates, nobles, and other persons summoned as Councillors¹. 'When all these were called together it was a full Council, but, where the business was of a more contracted nature, those only who were fittest to advise were summoned, the chancellor and judges for matters of law, the officers of State for what concerned the revenue or household²;' officials of inferior position, such as clerks, attended on special occasions when their special knowledge might be of use. Councillors *temp.* Edward I were required to take an oath of secrecy and fidelity, and to swear 'to do justice honestly and unsparingly.' Under Richard II, the oath was to keep secrecy, and to advise the King to the best of their ability, whilst by degrees the Council became a sworn and salaried body of advisers, as distinguished from mere officials. Their proceedings were regulated by rules, passed at different times, from the reign of Edward I, both in Parliament and in the Council itself. In 1387, Archbishop Courtenay formally claimed 'for himself and his successors in office, the right of assisting at all the sittings of the royal Council, be they general, special, or secret³.' In 1404, at the request of Parliament, Henry IV appointed as his Council the Duke of York, the Earls of Somerset, and Westmoreland, six bishops, six barons, six knights, and another commoner; he named somewhat similar councils in the same way, 1406, and 1410. The Council appointed by Parliament at the accession of Henry VI, was composed of the Protector (Bedford), the

¹ 'It is still uncertain,' says Dr. Stubbs (Const. Hist. ii. 258), 'whether the baronage generally were not, if they chose to attend, members *ex-officio*.'

² Hallam, *Mid. Ages*, iii. 139.

³ Gneist, i. 403.

Duke of Gloucester, who presided in the absence of Bedford in France, the Duke of Exeter, Archbishop Chichele, four bishops, five earls, and five barons. In the reigns of Richard II and Henry IV, the King's Councillors held their office for a year, though they appear to have been reappointed as a matter of course, except after misconduct; shortly afterwards they were appointed for life, but could be removed at the King's pleasure, or at their own request.

Relations to
Parliament.

Relations of the Council to Parliament.

During the reign of Henry III, the National Council made several attempts to control the appointment of the great officers of State, and thus restrain the powers of the King's Council. This, however, was only possible under a weak King¹, but if carried out would have practically made the *Concilium Ordinarium* a committee of the *Commune Concilium*, since most of the members of the Royal were already members of the National Council². Under Edward III, it was provided by a statute of 1341, *repudiated by the King in the same year*, that ministers were to be nominated in Parliament. In answer to a petition of the Commons in 1377, the chief officials were to be appointed in Parliament, during Richard's minority. Frequent petitions were subsequently presented to the King on the subject, but he refused to listen to them. In 1404, 1406, and 1410, Henry IV nominated the Royal Council in accordance with the wishes of the Commons, and during the minority of Henry VI all appointments to this body were made in Parliament. The latter also endeavoured to control the growing power of the Council, by imposing a stringent oath of office on the members, by the practice of impeaching ministers who acted unconstitutionally (p. 150), and by passing various acts for the regulation of the councillors, *e.g.* 1406, and 1424. It also claimed the right of

Nomination
of ministers
in Parliam-
ent.

Henry IV.

Henry VI.

¹ *E.g.* by the *Ordinances* of 1311, the great offices of State were to be filled up by the King with the counsel and consent of the baronage. Stubbs, ii. 330.

² In conjunction with the rest of the baronage and excluding the Commons and the minor clergy, the permanent Council sometimes acted under the title of *Magnum Concilium*. Stubbs, ii. 260.

fixing the amount of the salaries of the councillors, 1406, and 1431¹. During the reign of Edward III, frequent statutes were passed, at the request of the Commons, to restrain the arbitrary exercise of the Council's power, *e.g.* 1331, 1352, 1354, 1362, 1363 and 1368 (5, 25, 28, 36, 37 & 42 Edw. III), and in 1390, a petition was presented by the Commons praying that 'neither the Chancellor, nor the King's Council, after the close of Parliament, may make any ordinance against the common law, or the ancient customs of the land, or the statutes made heretofore, or to be made in this Parliament².' Under the Lancastrian Kings, the relations between the Parliament and the Council were more cordial (*e.g.* in 1406, the Commons expressed their 'great confidence' in the King's Council), owing to the fact that the Council was appointed and regulated by Parliament. From 1437, however, when Henry VI began to appoint his councillors absolutely, the Council comes into frequent collision with Parliament, which could only effectually attack the King's ministers by impeachment in individual cases (pp. 150 sq.).

Statutes to
restrain the
Council.

Powers of the King's Council³.

Powers.

From the time that the royal Council attained a recognised position these were very great, being practically co-ordinate with those of the King, the instrument of whose prerogative it was; whether King or Council was practically supreme, depended on the character of the sovereign; *e.g.* Edward I ruled the Council, but the Council ruled Henry VI.

(a) *Executive*⁴. The Council was the agent of the King Executive.

¹ 'The archbishops and Cardinal Beaufort had 300 marks, other bishops 200, the treasurer 200, earls 200, barons and bannerets £100, esquires £40.'—Stubbs, iii. 251.

² Hallam, *Mid. Ages*, iii. 140; *see also* Gneist, i. 409.

³ 'The King could do nearly every act in his permanent Council of great men which he could perform when surrounded by a larger number of his nobles; except impose taxes on these nobles themselves.'—Dicey, *Privy Council*, p. 19.

⁴ 'Their work was to counsel and assist the King in the execution of every power of the crown, which was not exercised through the machinery of the common law.'—Stubbs, iii. 252.

⁵ Its functions 'were primarily executive, and it derived such legis-

during the minorities of Henry III, Richard II, and Henry VI, and during the absence of Henry V in France; its executive powers were enormous. It provided funds with which to carry on the administration, regulated trade, exercised special control over foreign merchants and attempted to provide for the maintenance of order. It became, in fact, the wielder of the sovereign power, and under Henry VI was practically independent.

Legislative.

(b) *Legislative.* Previous to the formation of a representative Parliament, the power of legislation was exercised by the King in Council; e.g. the Statute of Rageman (1276, 4 Edw. I) was '*accorded by our Lord the King and by his Council*¹,' and in 1283 '*the King by himself and by his Council ordained and established*²' the Statute of Acton Burnel (11 Edw. I). But the desire to obtain a wider sanction for his measures, sometimes induced the King to make the magnates a party to his legislation. Thus the Statute of Mortmain (1279, 7 Edw. I) was enacted '*by the advice of our Prelates, Earls, Barons, and other of our subjects being of our Council*³,' and before issuing the Statute of Westminster II (1285, 13 Edw. I), the King called together '*the Prelates, Earls, Barons and his Council at Gloucester*⁴.' After the admission of the Third Estate to Parliament the practice arose of enacting laws '*by the assent of the Prelates, Earls, and Barons, and at the request of the Commons*⁵.' But the Crown in Council still retained the power of legislation, and enactments in which the Commons did not participate were frequently made during the mediæval period.

The Council exercised the power of altering Statutes, either by extending their provisions, or by relaxing them, as in the case of the *Statutes of Provisors* (p. 282).

Deliberative.

(c) *Deliberative.* The Council was a permanent body of
lative, political, taxative, and judicial authority as it had, from the person of the King, although many of its members would have a constitutional share of those powers as bishops and barons.—Stubbs, ii. 259.

¹ Statutes of the Realm, i. 44.

² Ibid. i. 53.

³ Ibid. i. 51.

⁴ Ibid. i. 71.

⁵ This formula was first employed in 1327.

advisers, ready to deliberate and give counsel on all political matters submitted to it by the King. It advised on questions of peace and war, and on treaties, and also received and answered numerous petitions, not only from private individuals, but also from the Commons. In 1280, these petitions in council became so numerous that only the most important were reserved for the King and Council, the rest being sorted, and sent to the various courts¹; shortly afterwards official 'receivers' of petitions were appointed.

(d) *Financial*. The Council was charged with the duty of auditing the royal expenditure, and of raising loans, more especially under the Lancastrian Kings, when power was granted them by Parliament to give security up to a certain sum, varying from £20,000 to £100,000. The Council often raised money by arbitrary exactions, especially *temp.* Richard II; and occasionally the Lords of the Council themselves lent large sums, or pledged their credit as security.

(e) *Judicial*². It acted as a Court of Appeal (from 1178), and as a court of first instance for the trial of powerful offenders. After the *Curia Regis*, or committee of the Council, had developed into the Courts of Common Law (p. 58), the Council lost much of its jurisdiction; it still, however, retained some special judicial powers, which were chiefly exercised for the assistance of the weak or the poor, and for the maintenance of order³. It frequently showed a tendency to encroach on the jurisdiction of the common law, and in consequence complaints were made against the arbitrary exercises of the Council's judicial power, and

¹ Stubbs, ii. 264.

² The legislative powers of the Privy Council, and the Appellate Jurisdiction of the House of Lords, are due to the fact that originally the members of the *Concilium Ordinarium*, or judicial body, were also members of the great council, or legislative body. As the House of Lords developed, there grew up a tendency to regard the judges, and other members of the *Concilium Ordinarium*, who appeared, as 'assessors,' and from Edward III they ceased to attend, the Lords retaining the Appellate Jurisdiction (p. 89).

³ Anson, ii. 87.

its infringement of the liberty of the subject, during the reigns of Edward III (1331, 1351, 1352, 1354, 1362, and 1368); Richard II (1390, 1391, 1393); Henry IV (1399); Henry V (1416); and Henry VI (1422).

During the disturbances of Henry VI's reign, the cases in which the Council exercised its judicial power were almost always those of the more powerful offenders, who could have been reached by no lesser court. The usual method of proceeding was by summoning the accused parties before the Council.

The Council from Henry VI.

The Council
from
Henry VI.

History. During the reign of Henry VI, the term *Privy Council* (*concilium secretum* or *privatum*) came into use, and was applied more especially to those paid and sworn councillors, who habitually attended, and took the oath of secrecy. From the time of Henry VIII, up to 1641, *ordinary* councillors existed side by side with *privy* councillors. The former possessed no administrative powers and were merely summoned to give legal advice or (perhaps) to sit in the Star Chamber. They are the progenitors of the modern Queen's Council¹. During the Tudor period, the Council, though all-powerful in the nation, was subordinate to the sovereign, specially *temp.* Henry VIII, owing to the strength of the Tudor character, the collapse of the nobility after the wars of the Roses, and the introduction of commoners to the council board—a practice begun by Edward IV, and carried on by subsequent Kings². This subserviency continued under the first two Stuarts, who used the Council as the instrument of their illegal demands until 1641, when most of its powers were swept away (16 Car. I, c. 10). After the Restoration, in 1660, all councillors were sworn of the Privy Council, and though the *custom* soon arose that only those

Ordinary
Councillors.
Privy
Councillors

Tudor
period.

¹ Thus, at the present day, a member of the Council does not attend the meetings unless specially summoned.

² Before the rebellion of 1536, one of the popular grievances was 'that the Privy Council was formed of too many persons of humble birth, whereas at the beginning of the reign it had consisted of a much larger number of nobles.'—Gneist, ii. 178 note.

pecially summoned should appear, the *right* of attendance lies with every individual member, *e.g.* the Dukes of Argyll and Somerset attended without a summons on the death of Anne, 1714. Charles II, finding the numbers of the Council unwieldy, began the practice of governing by a Cabinet (p. 48), and though an attempt at re-organisation was made in 1679, by Sir William Temple (*infra*), the Council soon ceased to govern the country. The Privy Council was formerly dissolved *ipso facto* at the King's death, but, by an Act of 1707 (6 Anne, c. 41), continues now to sit for six months after, unless previously dismissed by the successor.

Composition.

Composition

Edward IV introduced commoners into the Council, which, at the close of the reign of Henry VI, had been composed exclusively of magnates. This practice was continued by Henry VII, and the numbers of the councillors, who in former days were about twelve, increased considerably. In 1553, in which year the Council was regulated by Edward VI, the numbers were forty, including two judges, and twenty-two commoners; this body worked in five committees, on the most important of which (the Committee of State of twenty members), sat seven commoners. Under James I, and Charles I, the members of the Council were chiefly peers. Charles II, finding the large numbers of the Privy Council an impediment to the transaction of business, entrusted Sir William Temple with the duty of re-organising the Council, 1679. The Council was to consist of thirty, instead of fifty members, and was to 'represent the different influential bodies of the nation.' Membership was to be conferred on various bishops, judges, and leading members of Parliament, and the whole 'Council was to derive weight from its collective property'.¹ It was soon found, however,

Temple's
Scheme.

¹ Dicey, Privy Council, p. 139. 'The scheme,' says Dicey 'was an ingenious attempt to combine the old system of government by a Council with the merits of the modern plan of government by a Cabinet, formed from the principal Parliamentary leaders of the day.'

that this body was too large for the secrecy desired, whilst the different elements, of which it was composed, made it useless as an executive body, in which unity of action was indispensable.

Modern
Privy
Council.

At the present day the Cabinet, and not the Privy Council, is the body which advises the Crown. The latter is now merely a 'formal medium for expressing the royal pleasure in certain matters of executive government. It meets for the purpose of making Orders, issuing Proclamations, or attending at formal acts of State¹.' Privy Councillors are appointed for life, but can be removed by the King or at their own request. The members of the Cabinet are necessarily members of the Privy Council, but 'beyond these there is a group of persons eminent in political life or in the service of the Crown, on whom the rank of Privy Councillor is conferred as a complimentary distinction².' Such members never attend a session of the Council without special summons. The *Act of Settlement* 1701 (12 & 13 Wm. III) disqualified an alien born for appointment to the Privy Council, but the disqualification was removed by the *Naturalization Act* of 1870.

Powers of the Privy Council.

Powers to
1641.

(1) Up to 1641 these were enormous. Under the Tudors, the Council, though subordinate to the sovereign, was very powerful; the King, in increasing his Council's power, was in reality increasing his own. The Council, *temp.* Edward VI, at whose accession it acted as a Council of Regency to assist the executors appointed by the will of Henry VIII, was divided into five committees, the chief of which was the 'Committee for the State,' the real Privy Council; the other committees were composed of ordinary councillors. Under the first two Stuarts, the Council became the instrument of illegal demands and exactions.

During this period, it arrogated to itself enormous judicial powers, which were exercised through the Courts of Star Chamber, the North, and the like (pp. 52 sq.). Its legis-

¹ Anson, ii. 133, 143.

² *Ibid.* ii. 135.

lative authority was greatly strengthened by the Act which gave the royal proclamations the force of law (1539, 31 Hen. VIII, c. 8), and by the statutes 34 & 35 Hen. VIII. Though these were repealed in 1547 (1 Edw. VI, c. 12), proclamations were frequently made (p. 170).

(2) In 1641, by the abolition of the Star Chamber, most of the powers of the Council, except the political ones, were swept away. It retains the power, however, to inquire into all offences against the Government, and to commit offenders, though those committed can claim their writ of *habeas corpus*. It also remained a Court of Appeal from the Admiralty and Colonial Courts, and in cases of lunacy, idiocy, or divorce; in 1833, by 2 & 3 Wm. IV, c. 92, 1832, these Appellate powers, together with those of the Commission of Delegates in ecclesiastical cases, were transferred to the Judicial Committee of the Privy Council, which still exists with jurisdiction in Colonial appeals and in certain ecclesiastical cases (*Public Worship Regulation Act* 1874).

From 1679, when Temple's scheme failed, the Council has ceased, as a body, to take any part in the administration, which is carried on by the Cabinet, though an attempt was made to revive its power, by a clause in the *Act of Settlement*, to the effect that 'all matters and things relating to the well-governing of this kingdom, which are properly cognizable in the Privy Council by the laws and customs of this realm, shall be transacted there, and all resolutions taken thereupon shall be signed by such of the Privy Council as shall advise and consent to the same.' This clause was repealed in 1705 (4 Anne, c. 8). The Privy Council is still, however, in theory, the only instrument through which the sovereign can exercise his prerogative, being the only body of ministers recognised by law, and retains certain powers of legislation, *e.g.* the issuing of Orders in Council. It works at the present day by means of committees, which have considerable powers in regulating matters under their control, *e.g.*—

The Board of Trade, established on its present basis 1786, Board of Trade.

as the successor of the Committee of Trade and Plantations (appointed by Charles II, 1668¹), and charged with the control of merchant shipping, trade, railways, and the like.

Judicial
Committee
Committee
of Educa-
tion.

The Judicial Committee (p. 45).

Local
Government
Board.

The Committee of Education, appointed 1839.

Privileges of
a Privy
Councillor.

The Local Government Board, established 1871, in the place of the Poor Law Board, charged with matters concerning the public health, improvement of towns, and the like.

The Privileges of a Privy Councillor consist now merely in the right to bear the title of Right Honourable; in 1487, however (3 Hen. VII, c. 14), it was made felony for any of the King's servants to conspire against the life of a Privy Councillor; and in 1711 (9 Anne, c. 21), in consequence of the attempted assassination of Harley by Guiscard, to assault a Privy Councillor in the execution of his office was made felony without benefit of clergy; this was repealed 1828 (9 Geo. IV). In 1539, by 31 Hen. VIII, c. 10, the Lord President of the Council was declared to have precedence next to the Lord Treasurer; this office 'was revived by Charles II in the person of Anthony, Earl of Shaftesbury.'

Lord
President.

Oath of
Office.

The oath of a Privy Councillor was to give advice according to the best of his discretion, and for the King's honour, and the public weal; to keep the King's counsel secret; to avoid corruption, and to act in all things as 'a good and true councillor ought to do to his sovereign lord².'

Ministerial
respon-
sibility.

Ministerial responsibility.

(1) Ministers
are respon-
sible to the
King.

The responsibility of ministers to Parliament did not become an established principle till the close of the seventeenth century. In the middle ages, the executive power was wielded by the King in Council, and at first he alone had the right to appoint and dismiss his ministers. Ministerial responsibility meant responsibility to the Crown. But as early as 1191 the barons and bishops unconstitutionally deposed the justiciar William Longchamp for abuse of power, and from the reign

The nation
attempts to
control the
King's minis-
ters.

¹ 'The first suggestion of such a department appears to have been given under the Protectorate.'—Trail, Central Government, p. 123.

² Blackstone.

of Henry III we can trace the idea of securing the redress of administrative abuses by maintaining a hold on the King's ministers. In the middle ages three methods were adopted for attaining this object.

(1) The claim to elect the great officers of State was frequently put forward by the barons in the reign of Henry III (*e.g.* in 1244), but the King stubbornly resisted, and the proposal dropped during Edward I's reign. Revived by the Lords Ordainers it was defeated or dropped in the reign of Edward III, only to be once more brought forward under Richard II. It does not seem that the claim was ever really established, and its failure seems to show that it could not be carried into practice.

(2) Oaths were often imposed on great officials in the hope of binding their consciences, but such attempts were nearly always futile.

(3) The impeachment of ministers (p. 150). The Good Parliament of 1376 impeached Latimer and Neville, and in 1386 the Commons arraigned Michael de la Pole in the same way. His condemnation 'showed that the great officers of State must henceforth regard themselves as responsible to the nation, not to the King only¹,' and the impeachments of 1388 'proved that no devotion to the King could justify the subject in disobeying the law of the land.'

But such gains proved premature. In the sixteenth century, it was to the Crown and not to the nation that ministers were responsible, and though the Tudor sovereigns allowed Parliament to participate in the punishment of unpopular ministers, the national representatives showed no inclination to take the initiative.

But when the Stuart Kings began to rule in opposition to the nation's wishes, the House of Commons attacked the ministers by whom their policy was carried out. The claim to punish the advisers of the Crown for offences committed in their public capacity (*e.g.* Bacon 1621, Middlesex 1624), grew into a claim to control their policy by punishing them

(2) They gradually become responsible to Parliament

¹ Stubbs, ii. 563.

for adopting measures which Parliament considered to be contrary to the interests of the nation (*e.g.* Buckingham 1626, Strafford 1641, Clarendon 1667). The impeachment of Danby in 1679 (p. 153) established the principle that a minister cannot plead the royal commands in justification of an illegal act, while the trial of Oxford in 1715 showed that a minister is personally answerable for acts of policy even when they are carried out at the order of the sovereign.

After the Revolution of 1688, the responsibility of ministers to Parliament became a recognised constitutional doctrine, and in order to fix on individuals the responsibility for particular measures, the *Act of Settlement* (1701) laid down that resolutions should be signed by those Privy Councillors who had advised their adoption¹.

At the present day, ministers are responsible for every act of the Crown, and in the words of Professor Dicey 'it is now well-established law that the Crown can act only through Ministers and according to certain prescribed forms, which absolutely require the co-operation of some Minister, such as a Secretary of State or the Lord Chancellor, who thereby becomes not only morally but legally responsible for the legality of the act in which he takes part. Hence, indirectly, but surely, the action of every servant of the Crown, and therefore in effect of the Crown itself, is brought under the supremacy of the law of the land².'

The Cabinet.
Definition.

The Cabinet 'is an informal committee of the Privy Council³, consisting of a 'small body of men, who hold or have held high office, who share the same political opinions, and are jointly responsible for their action⁴.' As a body it is not recognised by law, and its members derive their authority from their position as Privy Councillors.

Rise of.

Historically, government by a Cabinet represents the solution of the great constitutional problem of the seventeenth

¹ This clause was repealed shortly afterwards.

² *Law of the Constitution*, p. 302.

³ Morley, *Walpole (Twelve English Statesmen)*, p. 147.

⁴ Anson, ii. 111.

century—how to harmonise the Executive and the Legislative. Finding the Privy Council too large for the despatch of business, Charles II transacted his 'secret affairs' with a few of its most trusted members. The unpopularity of this *Cabal* induced Temple to lessen the numbers of the Privy Council, and make it more representative (p. 43). His attempt proved a failure, and Charles reverted to his previous plan, and his policy was followed by James II and William III.

But before Government by the Crown in Council could be superseded by Government by Cabinet, it was necessary to establish three principles:—

(1) That the Cabinet should be severed from the Privy Council.

(2) That it should consist of men belonging to the same party, and that none but members of the ministry should be admitted to its ranks.

(3) That it should be brought into harmony with the legislative body.

(i) The first of these principles was practically settled at the close of Anne's reign, and the severance was rendered complete by the withdrawal of the Sovereign from Cabinet Councils¹.

(ii) The second principle was not established till a much later date. The members of the *Cabal* held widely divergent views, and at first William III purposely chose his ministers from men of different parties. Toward the close of his reign, however, he found it expedient to form homogeneous ministries, and from that time ministries have usually been chosen from men holding the same political views. This was a great advance. But the principle could not be regarded as established until the Ministry coincided with the Cabinet. Until the last twenty years of the eighteenth century the Cabinet was an undefined body, consisting of an outer and an inner circle, of '*efficient*' and '*non-efficient*' members.

¹ Since the accession of George I only three instances are given in which the king was present at a Cabinet Council. Two of these were purely formal meetings, and the third rests on doubtful authority. See Anson, ii. 38.

This distinction enabled ministers who had once been efficient members of the Cabinet,—*i. e.* who had formerly had a direct voice in deciding questions of policy—to retain their title of Cabinet minister, ‘even though their political opponents held the great offices of state’¹. For instance, in 1745 the Pelhams insisted that Lord Bath, their chief political opponent, ‘should be out of the Cabinet Council,’ and in 1775 Lord Mansfield refused to share the responsibility for various measures passed by the Duke of Grafton’s ministry, alleging that he was not an *efficient* member of the Cabinet when those measures were taken.

Lord Rockingham’s Cabinet of 1782 seems to have been the first in which there were no non-efficient members; this practice was followed by future prime ministers, and in 1801, Addington laid down that ‘the number of Cabinet ministers should not exceed that of persons whose responsible situations in office require their being members of it’².

(iii) In the fourteenth century, the House of Commons established its right to impeach (p. 150) ministers for grave misdemeanours. In the seventeenth, it went further, and claimed to control their policy and to punish them if such policy seemed detrimental to the public interest. But impeachment and refusal of supply were the only weapons by which this claim could be enforced, and when these were made to subserve party purposes, a serious constitutional difficulty arose. It was obvious that the national representatives had a right to control the national policy: it was equally obvious that no statesman ought to lose his head for tendering advice to the Crown which was obnoxious to the parliamentary majority. The problem was solved by recognising that the Cabinet must be nominated by the parliamentary majority, and that its members should quit office as soon as they forfeited the confidence of the national representatives. A guarantee would thus be given for the adoption of a policy agreeable to Parliament, and the latter could dismiss a ministry as soon as it failed to carry out

¹ Anson, ii. 109.

² Campbell, *Lives of the Chancellors*, vi. 327 quoted in Anson, ii. 110

its wishes. The first point was established by 1715, but Sir W. Anson is of opinion that the Cabinet was not wholly dependent on the House of Commons till about 1830. 'There is no instance before 1830 of a Ministry retiring because it was beaten on a question of legislation or even of taxation¹.' But since the passing of the first Reform Bill 'a defeat in the House of Commons on what the Cabinet has chosen to regard as a vital issue, has been the ordinary mode of terminating the existence of a Ministry².' The change is now complete. The Cabinet has superseded the Privy Council, the executive has been brought into harmony with the legislature, and ministerial crises have taken the place of parliamentary impeachments. Mr. John Morley³, now Viscount Morley of Blackburn, notes the following characteristics of Cabinet government at the present day.

Characteristics of modern Cabinet government.

1. *The collective responsibility of members of the Cabinet.*

Each minister is individually answerable for the work of his own department, but he also 'shares a collective responsibility with the other members of the Government for everything of high importance that is done in every other branch of public business besides his own.' Should the Cabinet fail to carry an important measure, all its members tender their resignation.

2. *The Cabinet is answerable immediately to the House of Commons and ultimately to the electors.*

Responsibility to the Crown is little more than a constitutional fiction, and responsibility to the House of Lords only means that the Peers may resist a measure of which it disapproves until the electors have shown their wishes on the subject⁴.

3. *The Cabinet is exclusively selected from one party.*

In spite of coalitions and occasional conjunctions of politicians holding directly opposite views on fundamental points⁵, this principle has been accepted since the beginning of the eighteenth century.

¹ Law and Custom of the Const. ii. 131.

² *Ib.* ii. 130.

³ Walpole, 154.

⁴ Finance Bill, 1909.

⁵ *E.g.* Lord Liverpool's Government (1812-1827), the members of which agreed to sink their differences on the question of Catholic Emancipation.

4. *The Supremacy of the Prime Minister.*

The head of the Cabinet occupies an exceptional position. Though in theory chosen by the Crown, he is practically nominated by a majority of his party. On assuming office he has the right to choose his colleagues, subject to the approval of the Crown¹, but in many cases they are already designated by public opinion and the wishes of his party. In the distribution of posts the Prime Minister's choice is perfectly free. He devotes special attention to foreign affairs, and settles all disputes which arise between different departments. With the assent of the Sovereign he can call for the resignation of a colleague if displeased with his words or actions, and expects to be consulted by heads of departments before important departmental vacancies are filled up.

It is only during the present century that the position of the Prime Minister has been openly recognised, and even now he is an officer unknown to the law. Walpole, though exercising many of the powers of the modern Prime Minister, was obliged to disavow the title, and in 1741 a minority in the Lords protested 'that a sole or even First Minister is an officer unknown to the law of Britain, inconsistent with the constitution of this country, and destructive of liberty in any government whatsoever².' But in 1803 Pitt declared that there ought to be 'an avowed minister possessing the chief weight in the Council³,' and his view has gradually prevailed. Lord Beaconsfield described himself in the Treaty of Berlin as Prime Minister of England; and on December 2, 1905, the King by sign-manual warrant gave to the Prime Minister place and precedence next after the Archbishop of York.

COURTS GROWING OUT OF THE PRIVY COUNCIL.

Court of Star Chamber (probably so called from the starred chamber of Westminster, in which the meetings of the *Concilium Ordinarium* were held as early as the reign

¹ But 'royal predilections and prejudices will undoubtedly be less and less able to stand against the Prime Minister's strong view of the requirements of the public service.' Morley, Walpole, 158.

² Quoted in Morley, Walpole, 164.

³ Ibid. 162. Stanhope, Life of Pitt, iv. 24.

The Prime
Minister.

Star
Chamber.

of Edward III¹), originated in the civil and criminal jurisdiction of the Council, and was in fact identical with the King's Council acting in its judicial capacity. After the establishment of the Court of Chancery, this jurisdiction declined for a time, until again called into prominence by the lawlessness and corruption of juries which followed the Wars of the Roses. In 1487, the Statute 3 Hen. VII, c. 1, rendered necessary by 'the remnants of wild party struggles, the partiality and venality of the sheriffs and juries, the insolence of the magnates and their armed retinues²,' constituted a committee of the Council, a court with considerable judicial powers, for the purpose of suppressing the evils arising from livery and maintenance, and from seditious and illegal assemblies. The members of the Court were the Lord Chancellor, the Lord Treasurer, the Keeper of the Privy Seal, a bishop, a lord of the Council, and the two Chief Justices; 'their power embraced the punishment of "murders, robberies, perjuries, and unsurities of all men living," in as full manner as if the offenders had been "convict after the due order of the law³."' Under Edward VI the Star Chamber is still a committee of the Council, but by the end of Elizabeth's reign it had become a judicial body distinct from the latter⁴. Gneist ascribes its power to 'the need of the Reformation, with its important inroads on ecclesiastical authority and ecclesiastical property, which, like all radical transformations, required dictatorial powers,

¹ Other derivations are (1) from an Anglo-Saxon word signifying to steer or govern; (2) from the court punishing the *crimen stellationum*, or *cosenage* (Blackstone); (3) from a chamber in which the 'Starrs,' or contracts, of the Jews were kept, and which, after their expulsion in 1290, was devoted to the use of the Council.

² Two views are held about this Statute, (1) that it created the court of Star Chamber, which had no previous existence; (2) *the better view*, that it merely confirmed and defined the jurisdiction of the Council, which had, as early as the reign of Edward III, sat in the *Chambre des Étoiles*. It was acknowledged by the judges in the 'Chamber case' 'that the Court of Star Chamber had existed long before the proclaiming statute of 3 Hen. VII as a very high and honourable Court.'—See Gneist, i. 410, note. The 'Star Chamber,' as a name, first appears in the Statutes 1504 (19 Hen. VII, c. 14).

³ Annals of England, p. 273, note.

⁴ Anson, ii. 89.

that could only in later times be limited and circumscribed by law,' and to 'the spirit of persecution and arbitrariness which, originating in religious controversy, spread an inquisitorial spirit abroad throughout the whole of the political system¹.' The Star Chamber had at first considerable civil jurisdiction, *e.g.* in admiralty cases, in suits with aliens, in certain testamentary cases, and in suits between corporations². Towards the end of Elizabeth's reign, 'it had ceased to render help to the poor or weak, or to remedy the uncertainties or inadequacy of the common law³,' and under the Stuarts became merely an instrument for enforcing the claims of prerogative.

Civil jurisdiction.

Procedure.

The procedure of the court was entirely unregulated by law, and consisted in summoning the accused to appear (by writ of *subpoena*, or by summary arrest), and then examining him on oath. The punishments, which were usually excessive, and often illegal, were imprisonment, fines⁴, mutilation⁵, and whipping; torture (p. 80) was often employed for the extraction of evidence and confession; and, though the court could not inflict capital punishment, it often procured the condemnation of its victims by imprisoning and fining juries, *e.g.* the jurors who acquitted Sir Nicholas Throckmorton of treason, 1554, were fined and imprisoned. The Star Chamber took cognizance of every sort of misdemeanor and offence; and especially busied itself with cases of libel, and with the censorship of the press, 1585 (p. 243). It became the practice for the crown to create offences by proclamation, and to proceed against offenders in the Star Chamber, but this was declared illegal by Sir Edward Coke in the *case of Proclamations* (App. B).

The Star Chamber 'represented a judicial power residing in the executive, limited by no settled rules, exerciseable at the royal discretion, and alleging the interests of govern-

¹ Const. Hist. ii. 184.

² Hallam, ii. 30.

³ Anson, ii. 90.

⁴ A Mr. Alington was fined £12,000 for marrying his niece. Sir David Forbes, for abusing Lord Wentworth, £8,000. Hallam, ii. 35.

⁵ Prynne, Bastwick, and Burton, for seditious writings, were mutilated, fined £5,000 each, and imprisoned in Jersey, Scilly, and Guernsey.

ment as the ground of its exercise,' and its abolition in 1641 (16 Car. I, c. 10) deprived the Crown of a 'formidable weapon for the suppression of free speech and writing, and for the enforcement of proclamations which the King had no right to make¹.' After the Restoration a proposal was made to establish a similar court, but nothing came of it.

Court of High Commission. The germ of this Court may be seen in the Commission of 1557 appointed by Mary to inquire into cases of heresy². But it was not permanently established till 1583, when Elizabeth, authorised by the *Act of Supremacy* (1559, 1 Eliz. c. 1, sec. 18), appointed forty-four commissioners 'to vindicate the dignity and peace of the Church by reforming, ordering, and correcting the ecclesiastical state and persons, and all manner of errors, heresies, schisms, abuses, offences, contempts, and enormities³.' Twelve of its members were bishops, the rest privy councillors, clergy and civilians. Three commissioners, one of whom must be a bishop, formed a quorum. Its powers were immense, and were exercised in a most arbitrary way, *e.g.* the oath, *ex-officio* administered to clergy suspected of Puritanical leanings, which consisted in a stringent and minute cross-examination on oath, from which there was no escape. In 1610 the Commons presented a remonstrance against the Court, but its abuse of power continued until it was abolished by the Long Parliament in 1641 (16 Car. I, c. 11). In 1686 an attempt was made to revive it in the Ecclesiastical Commission Court, consisting of seven members, which was declared 'illegal and pernicious' by the *Bill of Rights*, 1689.

Court of Requests, (a) was 'an offshoot of the Privy Council in its judicial capacity⁴.' It originated in the reign of Richard II, as a lesser Court of Equity for 'poor men's suits.' Its members were the Keeper of the Privy Seal, and those members of the Council who happened to be present, whilst, later, *Masters of Requests* were appointed. In 1598

¹ Anson, ii. 28, 90.

³ Blackstone.

² Hallam, i. 202, note.

⁴ Dictionary of Eng. History.

it was found to have no power to put its judgments into execution, and was abolished in 1641, at which time it took cognizance of 'almost all suits that by colour of equity, or supplication made to the prince, might be brought before him¹.'

Debts. (b) London, and certain other towns, had Courts of Requests, or Conscience, for the recovery of small debts, established in London *temp.* Henry VIII. They were confirmed by various Acts of Parliament, but proving inadequate, were abolished by the *County Court Act* of 1846.

Council of the North.

The Council of the North was established by Henry VIII in 1537, in consequence of the insurrection of 1536, known as the Pilgrimage of Grace². Its original objects were to maintain order in the northern counties of Yorkshire, Durham, Northumberland and Westmoreland, and justice was administered under a Lord President³; by degrees, however, it usurped a great deal of arbitrary jurisdiction, especially during the presidency of Wentworth. However, it was swept away by the Long Parliament in 1641, by the same Act which abolished the Star Chamber (16 Car. I, c. 10). Its headquarters were at York.

Council of Wales.

The Council of Wales was set up at Ludlow by Edward IV in 1478, to administer justice and maintain order in Wales, and the four counties on the Welsh Marches, Hereford, Gloucester, Worcester, and Shropshire. Under James I, complaints were made about the extent of the Council's jurisdiction in the border counties; and the judges decided that they were not under the Council's authority. It was practically abolished in 1641 (16 Car. I, c. 10. sec. 2), and formally so in 1689 (1 Wm. and Mar. c. 27.)

Court of Wards.

Court of Wards was established in 1540 (32 Hen. VIII, c. 46), to administer feudal wardships, and to make certain inquiries, on the death of a tenant in chief, into the extent of his possessions, and the age of his heir, in order that the

¹ Blackstone.

² Hallam, ii. 42.

³ 'A concurrent jurisdiction with the Council of the North was exercised further by the three Courts of the Scotch Marches (East, West, and Middle Marches), which included Northumberland, Cumberland, and Westmoreland.'—Gneist, ii. 189.

King's rights might be exacted. It was further regulated in the following year by 33 Hen. VIII, c. 22, when the cognizance of Liveries, or feudal investitures, was added to it. The Court was a Court of Record¹, and its chief officer was the Master of the Wards. The jurisdiction was oppressively exercised during the reigns of James and Charles I, and was condemned by a parliamentary resolution in 1645. The Court was abolished by statute in 1660 (12 Car. II, c. 24).

Court of Augmentation of the King's Revenue was established in 1536 (27 Hen. VIII, cc. 27, 28), for the superintendence and regulation of the revenues of the lesser monasteries, which had been taken over by the Crown. It was a Court of Record, and was presided over by a Chancellor. It ceased to exist in 1553 (1 Mary, sess. 2, c. 10).

Court of Augmentation.

COURTS OF LAW.

The **Curia Regis** was at first the same as the Committee of the *Commune Concilium*, known as the Permanent Council. By degrees the term *Curia Regis*, or *Aula Regis*, began to be used to denote the King's Council in its capacity of a Supreme Court of Justice, with the King at its head, and in the reign of Henry I appear traces of a definite organisation and staff, the result of the labours of Bishop Roger of Salisbury. The *Curia Regis*, which at this time always followed the King, was occupied at first more especially with financial business, in which capacity it was called the Exchequer (*infra*). Its members were the great officers of the household, such as the Constable, Chamberlain, Steward, Marshal and Butler, and a number of officials, such as the Justiciar, Chancellor and Treasurer, who were appointed by the King to help carry on the work of government². In its judicial capacity, the

Courts of Law.
Curia Regis.

¹ 'A Court of Record is that where the acts and judicial proceedings are enrolled in parchment for a perpetual memorial and testimony.'—Blackstone.

Courts of Record are the King's Courts, and they alone have the power of inflicting fines and imprisonment.

² 'It is even possible,' says Dr. Stubbs (Const. Hist. i. 388), 'that a close examination of existing records would show that all officers who discharged judicial functions were members, under some other title, of the King's Household.'

Curia Regis acted as a Court of Appeal from the local courts, and as a Court of First Instance in cases in which the tenants in chief, who were too powerful to be reached by the lesser courts, were concerned; when special leave was obtained from the King, ordinary cases could be brought before the *Curia Regis*. The *Curia Regis* also was in close connection and communication with the local courts by means of its travelling justices, who, towards the end of Henry I's reign, began to make circuits of the country for purposes of finance and justice (p. 252). Under Henry II, the increased judicial business of the *Curia* had caused the number of judges to become so large (18) that the King, in 1178, appointed five of them to sit regularly in *Banco*, to hear all complaints, and to transact all the business, which subsequently fell to the three Courts of Common Law (*infra*); at the same time Henry transferred the appellate jurisdiction to the *Concilium Ordinarium* (p. 41). The limited body of judges was the origin of the Courts of King's Bench and Common Pleas; the system was slightly modified in 1179. The *Curia* still continued in theory, though not in practice, to transact its business in the presence of the King, and continued to follow him¹, to the great inconvenience of all concerned. It was shortly afterwards broken up into the three

Courts of Common Law, e. g.—

Exchequer.

(1) *Court of Exchequer* (from the chequered cloth of the table where the accounts were taken), probably uniting Anglo-Saxon and Norman machinery, dates from William I, though it was not fully organised until Roger of Salisbury's time, in the reign of Henry I. It was concerned with the assessment and collection of revenue, and was presided over by the Justiciar, with whom were the Chancellor, Treasurer, and other officers of the *Curia Regis*, called, when sitting in their fiscal capacity, *barones scaccarii* (p. 252). In these *barones*, travelling for assessment, originated the *itinerant justices*. The Exchequer, the first court to exist, from the early importance of financial matters on which everything else depended, was

Barones
Scaccarii.
Justices in
eyre.

¹ E. g. in 1277 Edward I removed the Law Courts to Shrewsbury.

for some time almost indistinguishable from the *Curia Regis*, of which it was originally the financial side; it split off, however, *temp.* Henry II, and became a separate court, with a distinct staff of officers, from Edward I. Exchequer sessions were held at Easter and Michaelmas, at Westminster, when the Sheriffs attended, and paid in their dues for ferm, Danegeld, pleas, etc. There were two divisions, (1) *Exchequer of Account*, which received reports, negotiated business and tried revenue cases, (2) *Exchequer of Receipt* which received and weighed the money. The records of the court were preserved on three rolls. One, called the Pipe Roll, was kept by the Treasurer, another called the Roll of the Chancery, by the Chancellor, and the third by an officer nominated by the King. Barons of the Exchequer, presided over by a Chief Baron (first appointed 1312), decided financial disputes between the King and his subjects, *e.g.* cases of *Bate*, and *Hampden* (pp. 198–200). Common Pleas were forbidden to be heard in the Exchequer 1282, and also by the *Statute of Rhuddlan* (1284), by the *Articuli Super Cartas* (1300), and by the *Ordinances* (1311). The Exchequer had common law and equitable jurisdiction only in cases in which the King was specially concerned, but by a legal fiction, the rights of other courts were encroached upon, *e.g.* a plaintiff, *A*, by alleging that he was a debtor to the King, and could not pay because he could not recover a debt owed him by *B*, could bring his suit against *B* into the court. This has been rendered impossible by an Act of 1832. The equitable side was abolished 1841 (5 Vict. c. 5) and the Exchequer business was transferred to the Exchequer division of the High Court of Justice, 1873, by the *Supreme Court of Judicature Act*, 36 & 37 Vic. c. 66, and is now, by an Order in Council of 1881, assigned to the Queen's Bench division.

Exchequer
of Account.

Exchequer of
Receipt.

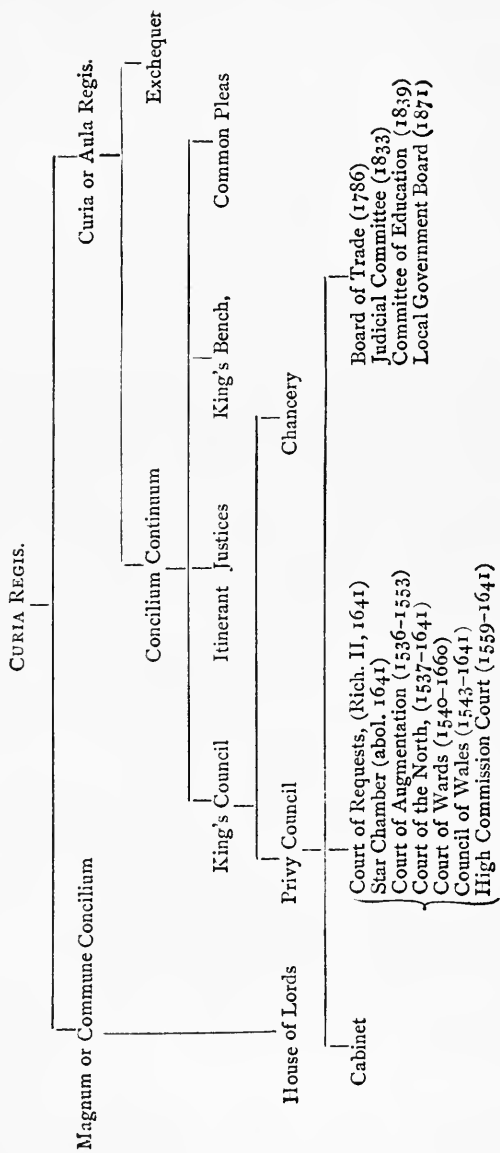
Exchequer
Records.

(2) *The Court of Common Pleas*; *Magna Carta* provided that common pleas, *i.e.* civil suits between subjects, should be held in a fixed place, and not follow the King¹. This

Common
Pleas.

¹ 'Communia placita non sequantur curiam nostram, sed teneantur in aliquo loco certo.'—*Magna Carta*, art. 17.

THE COUNCIL AND THE COURTS.



led to the establishment of the Court of Common Pleas at Westminster. In common with the Exchequer and the King's Bench, it seems to have received a separate staff of judges towards the close of Henry III's reign, and under Edward I, the three courts became entirely distinct. The *Articuli Super Cartas*, 1300, provided that no Common Pleas should be held in the Exchequer. The Court of Common Pleas had originally the exclusive jurisdiction in actions concerning real property. It was merged in the Common Pleas division of the High Court of Justice, 1873, but is now, by an Order in Council, 1881, transferred to the Queen's Bench division. The number of judges seems to have varied considerably, *e.g. temp.* Edward III, there were nine, Edward IV, four, Edward VI, seven, James I, five; subsequently the ordinary number was four, presided over by a Lord Chief Justice¹.

(3) *The Court of King's Bench* as a distinct tribunal ^{King's Bench} probably dates from 1178. In that year Henry II, finding the staff of the Curia Regis too large, reduced its number to five judges. They were to sit '*in Banco*,' nominally '*coram rege*,' and 'were to hear all the complaints of the kingdom and do right².' Difficult cases were to be reserved for the royal hearing. Prior to 1873 the court might follow the King, because in theory, the latter was always present at its sessions; *e.g. temp.* Edward I, it sat at Roxburgh, but practically from Richard II, it has sat at Westminster; and from Henry VI, the King has ceased to preside in person, though Edward IV sat for three days 'to see how his laws were executed.' In the *Articuli Super Cartas*, 1300, it was provided that 'the King's Chancellor, and the justices of his bench, shall follow so that he may have at all times near unto him some that be learned in the laws³.' Its jurisdiction, both civil and criminal, was very great, and its business comprised all that of the old *Curia Regis*, which was not transferred to

¹ The Common Pleas were presided over, *temp.* Edward I, by a *Capitalis Justiciarius*, the first being Gilbert de Preston.

² Stubbs, i. 601.

³ Blackstone.

the Courts of Exchequer, and Common Pleas. It had special jurisdiction over all inferior courts, and civil corporations, and 'protected the liberty of the subject by speedy and summary interposition.' It had two sides, the *Crown side*, which took cognizance of all criminal causes, and the *Plea side*, which took cognizance of all civil causes, except those concerning the revenue, and real actions. It was presided over by a Chief Justice and four judges. The Court of King's Bench is now merged, by the Act of 1873, in the King's (or Queen's) Bench division of the High Court of Justice¹.

Court of
Chancery.

Equity.

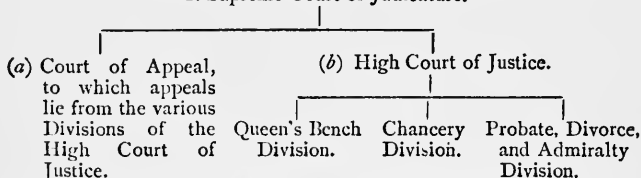
The Court of Chancery, whose early history is intimately connected with the royal Council, sprang from the *Concilium ordinarium* exercising its functions as a Court of Appeal and Equity. Equity turns on the idea of the King's perfection, and his power to amend the law, and to redress grievances for which there is no relief at common law. The Chancellor, as the chief legal officer of the Council, presided over it when exercising its judicial functions in the King's absence. From the reign of Henry II, all suits were begun by writ; offences and cases, for which no special writ existed, could not be tried; to obviate this difficulty, the drawing up of special writs to meet such cases was entrusted to *Clerks in Chancery*, *temp.* Edward I. In 1280, 'matters of grace and favour' were to be reported on by the Chancellor, before being referred to the King; and in 1348, the *Court of*

Clerks in
Chancery.

¹ For the history of the Common Law Courts, *v.* Foss's Judges, vols. ii. and v.

Courts as at present existing—

1. House of Lords. Final Court of Appeal.
2. Supreme Court of Judicature.



A few local courts exist at the present day with special procedure, *e.g.* the Lord Mayor's Court, London; the Court of Passage, Liverpool; the Salford Hundred Court, Manchester; and the Tolzey Court, Bristol.

Chancery was established, by an ordinance specially giving the Chancellor authority in matters of grace; at the same time *Chancery* ceased to follow the King. The equitable jurisdiction of *Chancery* grew rapidly under Richard II, in whose reign John Waltham, 'by a strained interpretation of the *Statute of Westminster* II, devised the writ of *subpoena*, returnable in the Court of *Chancery*¹, by which a suitor could compel his adversary to appear. From 1394, it stands out with great distinctness, and gradually increases its power, in spite of remonstrances made by the Commons during the Lancastrian reigns. There were continual struggles between *Chancery* and the Common Law Courts, as to whether the former could remove causes from, and reverse the decisions of, the latter; e.g. between Sir Edward Coke and Lord Chancellor Ellesmere, when James I decided in favour of *Chancery*, 1616. From Edward IV to Charles II, the system of equity did not make much progress; from that time, however, it was gradually perfected, until it reached its zenith under Lord Eldon. In 1825, the administration of the Court of *Chancery* was freely discussed in Parliament, and a Commission appointed to inquire into the matter; its procedure was greatly bettered in 1852. *Chancery* became a division of the High Court of Justice by the Act of 1873. (See *Chancellor*, p. 255.)

Writ of
Subpoena.

The Court of Exchequer Chamber was a Court of Error with no original jurisdiction. It was instituted in 1357 (31 Ed. III, c. 12), as a Court of Appeal from the Common Law side of the Exchequer; its members were the Lord Chancellor, the Lord Treasurer, and the judges of the King's Bench and Common Pleas. In 1585 (27 Eliz. c. 8) the judges of the Common Pleas, and the barons of the Exchequer, were empowered to try appeals from the Court of King's Bench. The Court was again reconstituted in 1830 (11 Geo. IV, 1 Wm. IV). It is now merged in the Court of Appeal. Causes which the judges found 'to be of great weight and difficulty' were sometimes heard in the

Exchequer
Chamber.

¹ Blackstone.

Court of Exchequer Chamber before judgment was given in the Court below. Appeals lay from this Court to the House of Lords.

Forest
Courts.

Forest Courts. A system of independent *Forest Courts* was established by Henry I, and perfected by Henry II; they were formerly held with great regularity, but the 'last Court of Justice Seat of any note' was held *temp.* Charles I before the Earl of Holland¹. The Forest Courts, which were regulated in 1641 (16 Car. I, c. 16), fell into disuse at the Revolution of 1688. They were four in number—

(1) *The Court of Attachments, or Woodmote*, held every forty days to inquire into offences against *vert and venison*, *i.e.* against the trees and covert, and against the game.

(2) *The Court of Regard*, held every three years for the *expedition* of dogs, *i.e.* the cutting one of the three claws, or the ball of one of the forefeet, to prevent their hunting.

(3) *The Court of Sweinmote*, held three times a year for the trial of general offences.

(4) *The Court of Justice Seat*, or chief court held before the itinerant justices of the forests for the trial of all cases connected with the forest. (See *Forests*, p. 183.)

COURTS CONNECTED WITH THE WAR DEPARTMENT.

Court of
Chivalry.

Court of the Marshal and Constable, otherwise known as the *Curia Militaris*, or *Court of Chivalry*, was a court formerly held before the Earl Marshal, and the Lord High Constable. By a statute of 1390 (13 Ric. II, c. 2), it had jurisdiction over 'pleas of life and member, arising in matters of arms and deeds of war, as well out of the realm as in it²,' and was in the days of chivalry much frequented as a court of honour. Appeals lay from it to the King. Since the Duke of Buckingham was deprived of his post in 1514, the office of Lord High Constable has been revived only on special occasions, and the court has been held before the Earl Marshal alone, with jurisdiction in civil matters. In 1641, the Earl Marshal's Court was temporarily abolished as

¹ Blackstone.

² *Ibid.*

'a grievance.' It was last used in 1737. The College of Arms is its descendant at the present day. (See *Constable and Marshal*, p. 258.)

Court of Admiralty was established by Edward III, Admiralty. *circ.* 1350, and was held before the Lord High Admiral (p. 257), or his deputy. It had both criminal and civil jurisdiction, and took cognizance 'of all crimes and offences committed either upon the sea or on the coasts out of the body or extent of any English county¹.' By a law passed in the reign of Henry VIII the cases in the Court of Admiralty were allowed to be tried by jury. The Admiralty Courts were regulated and their powers limited 1390 (13 Ric. II, c. 5); 1392 (15 Ric. II, c. 3); 1401 (2 Hen. IV, c. 11); 1536 (27 Hen. VIII, c. 4, by which a royal commission was empowered to try pirates, owing to the process of the Admiralty Court being inappropriate to such cases); 1537 (28 Hen. VIII, c. 15); 1827, 1828, and 1840; whilst their criminal jurisdiction was taken away 1844. The Admiralty Court was, by the Act of 1873, transferred to the Probate, Divorce, and Admiralty division of the High Court of Justice. There was until recently a *Prize Court* for the decision of questions connected with prizes and booty in time of war.

COURTS OF THE HOUSEHOLD DEPARTMENT.

Household
Department

Court of the Lord Steward of the Household was established in 1541 (33 Hen. VIII, c. 12), on the precedent of a statute of 1486, empowering the Lord Steward to try charges of treason brought against members of the royal household; it had jurisdiction over 'all treasons, misprisions of treason, murders, manslaughters, bloodshed, and other malicious strikings²,' within two hundred feet of the palace gate. Part of its jurisdiction was taken away in 1829, and the rest in 1849. From it must be carefully distinguished—

Court of
Lord
Steward.

The Court of the Lord High Steward of Great Britain, which is constituted, *pro hac vice*, to try peers

Court of
Lord High
Steward

¹ Blackstone.

² *Ibid.*

accused of treason or felony, when Parliament is not sitting. A Lord High Steward, being appointed by a commission under the Great Seal, could summon an indefinite number of peers to try the case; though not less than twenty-three. This practically gave the Crown the power of securing a judicious selection of peers. In 1696, however (7 & 8 Wm. III, c. 3), the right of attendance was given to all peers.

Court of
Marshalsea.

Court of the Marshalsea was of very old origin, and was held before the Steward, and the Marshal of the King's household, to administer justice to the King's servants. It was regulated by Statutes of 1300 (28 Ed. I, c. 3), 1331 (5 Ed. III, c. 2), 1384, 1390, and 1436. By the Statute of 1390, its jurisdiction was extended to a radius of twelve miles from the King's palace. It was abolished in 1849. With it is closely connected **The Palace Court** (*Curia Palatii*), erected by Charles I in 1631, to try personal actions within twelve miles of Whitehall Palace. It was abolished in 1849.

Palace Court.

Courts of
Special
Jurisdiction.
Stannary
Courts.

COURTS OF SPECIAL JURISDICTION.

The Stannary Courts (*Stannum*, tin) are courts of record for the administration of justice amongst the tanners in Devonshire and Cornwall. A charter of 1305 confirmed the ancient privileges of the tinworkers to sue and be sued, except in cases of land, life, and member, in the Stannary Court only, before the Vice-Warden of the Stannaries; these privileges were again set forth in a Statute of 1377. In 1512, Strode, a member of the House of Commons, was imprisoned by the Stannary Court for having proposed a bill for the regulation of the tinworkers. The House declared these proceedings void (4 Hen. VIII, c. 8). (See *Privileges of Parliament*, p. 107.) In 1607, the judges held that no writ of error lay from the Stannary Courts to any Court at Westminster, though an Appeal lay from the Under Warden to the Lord Warden, and thence to the Privy Council of the Prince of Wales, as Duke of Cornwall. In 1855, the appeal lay from the Lord Warden to the Judicial Committee of the Privy Council, and now lies to the Court of Appeal of the

Supreme Court of Judicature. These courts became the engine of an arbitrary prerogative, which robbed the mining districts of the west of the benefit of the common law¹. They were misused by the Stuarts, and accordingly regulated by the Long Parliament (1641). In 1873 the jurisdiction of the Lord Warden was transferred to the new Court of Appeal (p. 221).

Courts of the Cinque Ports, *i.e.* of the ports of Sandwich, Dover, Hythe, Hastings, and Romney (to which were subsequently added Winchelsea and Rye). These ports had special privileges and jurisdiction as early as the time of William I, and had courts of their own where the King's writ did not run (except prerogative writs such as *habeas corpus*). These courts were held before the mayor and jurats of each port, a writ of error lying to the Lord Warden's Court at Shepway, and thence to the King's Bench. They were the Courts of Brotherhood, and Guestling, in which matters concerning the supply of ships were regulated; the Court of Chancery, held at Dover; the Court of Shepway, the highest of all; the Court of Lodemanage concerning pilots, the jurisdiction of which was transferred to the Trinity House by 16 & 17 Vic. c. 129; and the Court of Admiralty, which is still held at Dover. (See *Cinque Ports*, p. 220.)

Courts of the Counties Palatine. The Earls of the Palatine Counties of Chester, Lancaster, and Durham had royal rights, and the sole administration of justice in their territories, where the King's ordinary writs did not run; all writs were issued in the name of the Earl, and offences were said to be against his peace. They had Courts of Common Pleas and Chancery, the judges of which were appointed by the Earl until 1536, when many of the special privileges were curtailed by 27 Hen. VIII. The Chancery Court of Lancaster still exists, though the Common Plea Courts at Lancaster, and Durham, were abolished by the Supreme Court of Judicature Act of 1873. (See *Counties Palatine*, p. 219.)

Court of Commissioners of Sewers is a court author-

¹ Dictionary of Eng. History, art. *Stannary Courts*.

Cinque Port
Courts.

County
Palatine
Courts.

Court of
Commissioners of
Sewers.

ised in 1532 (23 Hen. VIII, c. 5), to be appointed, when required, by a commission under the Great Seal, though Commissions of Sewers were granted as early as 1427 (6 Hen. VI, c. 5). The Commissioners are appointed for some particular district, and have jurisdiction in the place named only; their business is 'to overlook the repairs of sea banks and sea walls, the cleansing of public rivers, streams, etc. '; they form a Court of Record.

LOCAL COURTS.

Shire-moot.

The Shire-moot (*scir-gemot*).

Pre-Norman.

(1) *Before the Norman Conquest.*

The shire-moot was originally the folk-moot, or assembly of the people, as well as the court of the shire. The meetings were held twice a year¹ (May and October), under the presidency of the sheriff, or *scir gerefa* (the royal officer), who was also the convener; with him sat the bishop, and the ealdorman (the national officer). Its members were the land-owners, the reeve, priest, and four representatives from each township, twelve representatives from every hundred, and all officials. Judgment lay theoretically with the whole body of suitors, though practically a committee consisting of the twelve senior thegns declared the shire report. Its judicial powers, civil, ecclesiastical, and criminal, were large, though suitors had first of all to seek justice in the lower court; if they failed to obtain it, the appeal lay to the shire court, in which all business relating to the county was transacted. New laws were announced in it from time to time, and in the reign of Athelstan, the Kentish shire-moot at Faversham is found approving of certain new police laws. All suitors, on their way to and from the shire and hundred courts, were under the special protection of the law². With the shire-moot popular representation at this time ends.

After the
Norman
Conquest.

(2) *After the Norman Conquest.*

From the reign of William I the bishops ceased to sit in the shire court, and the latter was deprived of its jurisdiction

¹ Sel. Charters, 71, 73.

² Ibid. 74.

in ecclesiastical cases. However, the Conqueror recognised the value of English local institutions, and was careful to preserve the moot's secular jurisdiction. His policy was carried out by Henry I, who about 1108, ordained that the county and hundred courts should be held in the same places, and at the same times, as in Edward the Confessor's reign¹. The sheriff, now known as *Viccomes*, continued to preside, though with increased power, owing to the disappearance of the ancient ealdorman, and the business was conducted as in the pre-Norman times. The county courts were at this time chiefly concerned with the dispensation of justice, both in civil and criminal cases, and with the assessment of the revenue (p. 194); these duties were performed by jurors and judges. Under Henry II, the county court not only performed all the ordinary business of the shire, but was also called together to meet the itinerant justices; in this latter capacity the court was more completely representative of the county than at its ordinary sessions². *Magna Carta* contains some provisions as to the holding of certain assizes in the County Courts four times a year, and limits their jurisdiction by forbidding sheriffs, constables, and bailiffs to hold pleas of the crown. The charter of Henry III, 1217, provides that the County Court shall be held monthly³; and it was in these ordinary meetings, from attendance at which many magnates and towns were excused⁴, that matters of local or private interest were transacted; extraordinary meetings, such as those to meet the justices, were convened by special writ⁵. These monthly sessions were confirmed 1225 (9 Hen. III, c. 35), 1297 (25 Ed. I, c. 35), and 1549 (2 & 3 Ed. VI, c. 25).

County
Courts *temp*
John.

The county business transacted in these courts was:— Business.

(1) *Judicial*. The Justices sat there when on circuit; all Judicial.

¹ Sel. Charters, 104, 105.

² It contained 'the archbishops, bishops, abbots, priors, earls, barons, knights, and freeholders, and from each township four men and the reeve, and from each borough twelve burghers.'—Stubbs, ii. 205.

³ Sel. Charters, 346, § 42.

⁴ Ibid. 311. (*Charter of Dunwich*.)

⁵ Ibid. 358.

matters relating to the police organisation of the county were also managed in the court. The coroners, who kept the pleas of the crown, were elected in the County Court.

Financial.

(2) *Financial*. Taxes were assessed by knights chosen in the court¹. (3) *Military*. The sheriff summoned the smaller freeholders, and proclaimed his orders in the court.

Military.

The knights of the shire were also, at a later period, elected in the County Court (p. 135). (See *Sheriff*, p. 252.) Even as early as *Magna Carta*, 1215, all sheriffs, constables, coroners, and bailiffs had been forbidden to hold pleas of the crown, which were transferred to the King's justices, and from the time of Edward I the County Courts gradually lost their power, as they became less and less used for judicial purposes. In 1846, the modern County Courts, for the recovery of small debts, were established in place of the Courts of Request (p. 55); their jurisdiction was extended in 1850, and limited equity powers were granted to them in 1865. These Statutes were consolidated by an Act of 1888 and extended in 1903². An appeal from their decision can be made to a divisional court of the High Court of Justice.

The Hundred Moot.

Hundred
Moot.
Pre-Nor-
man.

(1) *Before the Norman Conquest*, met once a month², and was convened by the hundreds ealdor. The suitors were all holders of land within the hundred, or their representatives, and six representatives from each township, *viz.* the parish priest, the reeve, and the four best men. The judges, though in theory the whole of the suitors, were practically a chosen body of twelve; this body of twelve appears in the laws of Ethelred, as a Jury of Presentment, sworn to present every guilty person in the hundred to justice, and *temp.* Henry II, became the Grand Jury (p. 85). All suitors were bound to attend the Court when summoned, under penalty of a fine. The jurisdiction of the Hundred Court was both civil and criminal, though its powers in criminal cases were, from the first, much diminished by grants of *sac*

¹ Sel. Charters, 352.

² 3 Ed. VII. c. 42.

³ Sel Charters, 71. (*Laws of Edgar*, cap. 5.)

and *soc* to private individuals (p. 73). All suits had to be first tried in the Hundred Court before being taken to a higher tribunal. The Hundred Court was represented in the Shire Court by twelve chosen men. The ealdorman and bishop, owing to the number of hundreds in the shire, could only be present on occasions of peculiar importance.

(2) *After the Norman Conquest.* *Circ.* 1108, Henry I After Norman Conquest. orders that the Hundred Court shall be held as in the time of Edward the Confessor¹; the ordinary Hundred Court met, *temp.* Henry II, every fortnight, and was occupied with minor suits and debts; twice a year there was held the Great Hundred Court, for the view of frank-pledge (p. 74). Under Henry III, 1234, the Hundred Courts for the adjudication of small cases were to be held every three weeks; the *Statute of Merton*, 1236 (20 Hen. III), excused freemen from personal attendance both at the Hundred and County Courts; the jurisdiction of the Hundred Courts gradually declined, and in spite of an attempt, in 1340, to remedy abuses which had crept into the working of the Courts, they soon fell into disuse. They were abolished, 1867 (30 and 31 Vict. c. 142, sec. 28), by a provision that no suit that could be brought in a County Court should be brought in any inferior court.

The Township Moot (*tungemot*), the forerunner of the Township Moot. vestry meetings of the present day, was the lowest court, being, in early times, often very little more than a family meeting. Its functions were small, and were limited to local affairs of police and the like, and to the making of *by-laws* By-laws. (*i.e.* village, or township, laws). It also elected the *reeve*, except in cases of dependent townships, where he was the lord's nominee.

The Sheriff's Tourn (*turnus Vicecomitis*), was held Sheriff's Tourn. twice a year, in the octave of Easter and Michaelmas, before the sheriff, 'being indeed only the *turn* of the sheriff to keep a court leet in each respective hundred².' It was intended to relieve the County Court of the vast number of petty

¹ Sel. Charters, 104.

² Blackstone.

criminal cases, and was, says Dr. Gneist¹, 'a branch of the County Court by virtue of royal commission.' At the Michæelmas 'tourn' a *view of frankpledge* was taken² (p. 74). After the *Provisions of Westminster*³, 1259, and *Statute of Marlborough*, 1267 (52 Hen. III), exempted the great men and clergy from attendance at the sheriff's tourn, it soon fell into disuse.

Manorial
Courts.

Manorial Courts, the outcome of the private jurisdictions of *sac*, *soc*, etc. (*infra*), were—

Court Leet.

(1) *Court Leet*. Lords of manors, who under Anglo-Saxon laws had rights of *sac* and *soc*, or who since the Conquest had received grants in which these words occurred, exercised criminal jurisdiction in a *court leet*⁴. This was held once a year, the lord's steward acting as president; its procedure resembled that of the national courts. If the lord had the *view of frankpledge* (p. 74), his tenants were excused from going to the Sheriff's Tourn: if not, they were merely exempt from attendance at the court-leet of the Hundred⁵. By the *Statute of Marlborough*, 1267 (52 Hen. III), all bishops, peers, nobles, and clergy were exempted from attendance, causing the importance of the Courts Leet to decline very much, though they are still occasionally held in certain manors. The Court Leet was a Court of Record.

Court
Customary.

(2) *Court Customary* was a court held in every manor, under the presidency of the steward, to settle questions connected with villenage, and copyhold tenure.

Court Baron.

(3) *Court Baron* ('the court of the *barons* in the old sense of freemen⁶') was a court held in every manor before all freeholders who owed suit and service to the lord, and

¹ Const. Hist. i. 177.

² Sel Charters, 346. (*Charter of 1217*, Art. 42.)

³ Ibid. 402. (*Prov. West.*, Art. 4.)

⁴ Stubbs, i. 399.

⁵ Ibid.

⁶ Mr. Maitland, in his introduction to *Select Pleas in Manorial Courts*, states that the Court Baron is the court of the lord—*curia baronis*, not the court of the freeholders. 'I have never seen, nor do I know of any evidence that the freeholders of a manor are ever dignified by the title *barones*.'

was the descendant of the Township Moot. It was not a Court of Record. It was held every three weeks, under the lord, or his steward, and determined all disputes about the lands within the manor; at first, it 'exercised a civil jurisdiction analogous to that of the Hundred Court, in real actions as in actions of debt¹'; later, the actions were practically limited to 40s., debt or damage. 'The mode of procedure was left to the custom of the individual localities².'

Private Jurisdiction was frequently given to the recipients of large grants of land, and by this means many lordships were entirely removed from the jurisdiction of the local courts³. The growth of the private courts materially increased the power of the great landowners, and diverted much of the profits of justice from the King. The chief rights granted were:—

Private Jurisdiction.

Sac, the right to hold a court for one's tenants. Sac.

Soc, the right to ameracements arising from such a court. Soc.

Toll, the right to tallage one's villeins. Toll.

Team, the right to the progeny, the brood, the team of one's villeins⁴. Team.

Infangentheof, local jurisdiction over thieves who committed the offence, or were apprehended within the lordship⁵. Infangen theof.

Anglo-Saxon Police Arrangements were based primarily on the idea of mutual responsibility. At first the *mægth* or kindred of an offender was responsible for his appearance, but its place was gradually taken by the *gild* Anglo-Saxon police.

¹ Gneist, i. 170.

² Ibid., and Glanville, xii. 6.

³ They were not exempt from the jurisdiction of the Shire Court until after the Norman Conquest.

⁴ These four definitions are quoted from the introduction (p. 22) to Professor Maitland's *Select Pleas in Manorial Courts*. The author is of opinion that these words conveyed no special rights of jurisdiction—a view which is opposed to that hitherto received. 'On all these words,' he says, 'a minimising interpretation seems to have been set:—*they conveyed no right that would not have passed without them*, they did but describe the feudal or manorial jurisdiction, and conveyed no regality, no, not even the view of frankpledge.' See also Stubbs, i. 184, note 2, and Sel. Charters, 78.

⁵ Enc. Brit. *sub* Theft.

(p. 262) or artificial family¹. By the laws of Athelstan, Edmund and Edgar², every man was bound to have a *borh* or surety, who would answer for him if accused. If free, a man could choose his own borh, but if unfree, his lord was answerable for him. This system was developed by Canute, who compelled every man to be in borh, and at the same time to register himself in a hundred and a *tithing*³.

Frithborh
or Frank-
pledge.

The union of these two ideas produced *frithborh* or *frankpledge*—associations of ten men bound to try and arrest one of their number if guilty of a crime, and clear themselves of complicity. In spite of the ‘laws of Edward the Confessor⁴,’ it is probable that this system did not exist previous to the Norman Conquest: in any case the mutual responsibility of the ten for each other’s offences was not recognised until subsequent to that date. The *frithborh*, which was known in the North of England as *tenmannetale*, was presided over by a *borhs ealdor*. The *view of frankpledge*, after the Norman Conquest, was an inquiry held twice a year by the sheriff, in the *Courts Leet* and *Sheriff’s Tourn*, into the condition of the various *frankpledges*; the time of holding the ‘view’ was regulated 1297 (25 Ed. I, c. 35). Under the Norman Kings, the law was administered with a heavy hand, usually to the prejudice of the English. William I introduced the custom known as *Presentment of Englishry*, by which a murdered man was regarded as Norman, and the hundred, in which the body was found, punished accordingly, unless it could be specially proved that he was an Englishman⁵. By the time that the fusion of the Normans and English had taken place, *temp.* Henry II, this law had ceased to be burdensome, though it was not abolished until 1340 (14 Ed. III, st. 1. c. 4).

View of
Frank-
pledge.

Presentment
of Englishry.

Compurga-
tion.

Compurgation. In Anglo-Saxon times facts were determined either by Compurgation, or by Ordeal. If a man was accused by a private individual, he might bring *Com-*

¹ Sel. Charters, 63, c. 27.

² Ibid. 66, c. 2; 67, c. 7; 71, c. 6.

³ Tithing in this sense probably means a group of ten families.

⁴ Sel. Charters, 76.

⁵ Charters, 84, 201.

purgators to swear to his good character and credibility. They were generally twelve in number, and the value of their oaths depended on their social position, a thegn's oath, for instance, being equal to that of six ceorls, whilst an ealdorman could outweigh the testimony of six thegns, or a whole township. The word of the King, and of the archbishops, was sufficient in itself; and a priest's oath was accepted without any Compurgation. Perjury, such as in the breach of the *wed*, or oath to stand trial, or 'to perform any lawful obligation,' was punishable by imprisonment, and by various ecclesiastical penalties¹. A criminal presented for trial in the Shire Court by the Hundred Court, was regarded as already convicted by public opinion, and could not seek acquittal by Compurgation. The practice of Compurgation was gradually superseded by the system of Inquest by sworn Recognitors (see *Trial by Jury*, p. 83), though it continued to be occasionally employed in boroughs which had a charter of exemption from the Shire Court. Under the name of *Wager of Law*, Compurgation also continued to be occasionally employed in actions for debt until abolished in 1833 (3 & 4 Wm. IV, c. 42).

Wager of Law.

Ordeal². Facts were also determined by the Ordeal, 'which appears to have been allowed as an alternative to those who failed in or shrank from the process by Compurgation³.' The ceremony took place in the church, under the direction of the priests, and usually consisted in walking over, or handling, red-hot iron, or plunging the arm into boiling water; when plunged to the elbow, it was known as the *triple Ordeal*; when to the wrist only, as the *single Ordeal*⁴. In these cases the injured limb was bound up by the priest for three days, and, if at the end of that time the wound had perfectly healed, the accused was acquitted. There was also another method; that of tying a man's limbs, and throwing him into a river or pond; if he sank, he

Ordeal.

Triple Ordeal.
Single Ordeal.

¹ *Laws of Alfred*, 1.

² Sel. Charters, 71, 77, 84, 143, 151.

³ Dictionary of Eng. History, art. *Ordeal*.

⁴ *Laws of Edgar and Ethelred*, Sel. Charters, 71, 72.

Coursned.

was considered innocent, if he swam, guilty. The *Coursned*, or 'accursed morsel,' was also employed occasionally; a piece of bread being swallowed, with a prayer that it might prove fatal if the swallower was guilty; Earl Godwin is said to have perished in this manner, 1053. Trial by Ordeal was abolished in England in 1218, in conformity with a decree of the Lateran Council passed in 1215.

Wager of Battle.

Wager of Battle, a custom introduced by William I, who, however, still allowed the English to be tried by Ordeal if they preferred it¹, was used in civil actions, in trials in the Court of Chivalry, and in appeals of felony. It was common abroad, e.g. Gunhild, wife of the Emperor Henry III, and daughter of Canute and Emma, was acquitted by this means on a charge of unfaithfulness. (1) In civil cases the combat was fought by champions, not by the parties themselves, for fear one of the parties to the suit should be slain, thus putting an end to the case. (2) In military cases, such as that of Henry of Essex, 1157, the combat was under the auspices of the Constable and Marshal; and, unless the King interposed, continued until one of the combatants was slain, or gave in; in the latter case, the one who yielded was put to death. (3) In cases of murder or manslaughter, an 'appeal of felony' could be brought by blood relations of the murdered man against the murderer, who had the right to claim 'wager of battle,' unless the accuser was 'a woman, a priest, an infant, or of the age of sixty, or lame, or blind.' The accused pleaded not guilty, and threw down a glove which was taken up by the accuser. In such cases a duel took place between accuser and accused. After a solemn oath had been taken, the combat commenced; if the accused was vanquished, he was hanged; if he killed his adversary, or prolonged the fight from sunrise 'till the stars appear in the evening,' he was acquitted. In the latter event, the accuser was fined 60 shillings, and declared infamous. Wager of battle was claimed as recently as 1817, by one Abraham Thornton

Appeal of Felony.

¹ *Statutes of William I*, Sel. Charters, 84.

accused of murder, who had to be discharged as the appellant refused to accept the challenge. The custom was abolished in 1819 (59 Geo. III, c. 6). Trial by battle was, however, repugnant to English feeling, and was never popular, *e.g.* many towns obtained the insertion in their charters of an exemption from the 'wager' for the burghers¹.

Judicial Punishments were—

Punish-
ments.
Capital.

(1) *Capital*. In Anglo-Saxon times, death was nominally inflicted in cases of theft where the value of the article stolen exceeded 12*d.*, *e.g.* in the laws of Ine, Athelstan, Edgar, and others; practically, however, the thief was allowed to redeem his life by a fine². Treason was made 'death-worthy' by Alfred³ (p. 3); and by degrees, offences against the King, such as coining, and fighting in the King's hall, were made capital. Sacrilege, and witchcraft were also punished by death. Ethelred II in his laws, 1008, decrees that 'Christian men for all too little be not condemned to death, but in general let mild punishments be decreed for the people's need⁴,' and this law was re-issued by Canute; by William I capital punishment was entirely abolished, and mutilation substituted⁵. It was, however, speedily revived under Henry I, 'the Lion of Justice,' who, in 1108, declared that all theft, robbery, clipping, and coining false money, should be punished by hanging⁶; and, in 1124, we find Ralph Basset, the Justiciar, hanging forty-four thieves at one time at Hundehoge in Leicestershire⁷. From this time until 1820, theft remained a capital offence. In that year, by the Statute 1 Geo. IV, the punishment of death was taken away from many offences, though it continued to be the penalty for forgery until 1837. The laws of England were, up to a recent period, extremely draconian, no less than one hundred and sixty offences, many of which

¹ Sel. Charters, 266, 267. (*Charters of Winchester and Lincoln*.)

² 'If a thief be seized, let him perish by death, or let his life be redeemed according to his "wēr."'—*Laws of Ine*, 12.

³ Sel. Charters, 63.

⁴ *Ibid.* 73.

⁵ *Ibid.* 85. (*Statutes of William I*, c. x.)

⁶ *Ibid.* 97. (*Flor. Wig.* 1108.) ⁷ *Ibid.* 98. (*Chron. Ang. S.* 1124.)

were added during the Hanoverian period, being punishable by death; though on several occasions, notably by *Magna Carta*, and by Statutes of 1331 and 1354 (5 & 28 Ed. III), it was ordained that no man should suffer death, except in strict accordance with the process of law. The infliction of capital punishment was mitigated and regulated 1820, 1823, 1837, 1841, and the laws on the subject were consolidated and amended 1861 (24 & 25 Vic. c. 100); the penalty of death now attaches only to the crimes of high treason¹, murder, piracy with attempted murder (1 Vic. c. 88, sec. 2), and to offences against his majesty's ships, arsenals, or dockyards (12 Geo. III, c. 24). In Anglo-Saxon times the punishment of death was inflicted in various ways, by hanging, beheading, drowning, stoning, and burning; subsequently hanging, and beheading, became the usual methods of execution; drowning, however, continued to be employed in the case of women for some time during the Middle Ages, and burning in the case of heretics (1401, *de heretico comburendo*, 2 Hen. IV, c. 15²), abolished 1677³, and of women convicted of treason, abolished, and death by hanging substituted, 1790 (30 Geo. III, c. 48). By a Statute of 1531 (22 Hen. VIII, c. 9), poisoners were ordered to be boiled alive, and the punishment was actually inflicted, April 5, 1532, on a cook named Rose (who, in endeavouring unsuccessfully to poison Bishop Fisher of Rochester, destroyed divers persons), and on Margaret Davy, a maid, March 17, 1543, 'for poisoning three households that she had dwelled in⁴'; the Statute was repealed in 1547 (1 Edw. VI).

Mutilation.

(2) *Mutilation*, *i.e.* loss of ears, nose, eyes, hands, or feet, and scalping, was frequently employed in early times, and was substituted by William I for the punishment of death⁵.

¹ Persons convicted of treason were usually put to death with great barbarity, being disembowelled and quartered whilst still alive.

² Instances of the burning of heretics occur before this.

³ Blackstone, iv. 48.

⁴ Stowe's Chronicle.

⁵ Sel. Charters, 85 (*Stat. William I*, c. x); *ib.* 151 (*Assize of Northampton*, Art. 1).

It was often inflicted for breach of the Forest Laws¹ (p. 183), and continued to be frequently employed for certain offences such as libel, especially under the Star Chamber (p. 52), *e.g.* Prynne, Burton, and Bastwick had their ears cut off by order of the Star Chamber, 1637.

(3) *Peine forte et dure*. A punishment inflicted on those who refused to plead when indicted for felony, was introduced by the *Statute of Westminster I*, 1275, and at first consisted in a rigorous prison discipline and diet. The punishment, however, gradually took the form of laying a heavy iron weight on the body of the prisoner until he submitted; if he remained obstinate, he was pressed to death. This latter method of inflicting the *peine forte et dure* is first mentioned 1407 (8 Hen. IV). At the trial of the regicides in 1660, a threat of enforcing the *peine forte et dure* was employed to induce some of the accused to plead. Instances of the infliction of the punishment are recorded as lately as 1735 (when a culprit was pressed to death at Horsham), and 1741, at the Cambridge assizes; it was not abolished until 1772 (12 Geo. III, c. 20).

(4) *Fines* in Anglo-Saxon times were inflicted for almost every offence; they took the form of *bot*², or compensation paid to the injured party, and of *wite*, or fine paid on each occasion to the King for the breach of his peace (*mund*). The *wites* were collected by the sheriff. There was also a special kind of fine, known as *oferhyrnes*³, inflicted in cases of contempt, such as failing to attend meetings when summoned, and the like. The *bot* for a wound an inch long in the face, was three shillings; for the loss of an ear, thirty shillings. Murder (*murdrum*) was redeemable by paying a *wergild*⁴ to the relatives of the murdered man. (*Wer*, a man's value as to life, or oath, *e.g.* 200 shillings for a ceorl, 1200 for a King's thegn [p. 222].) In early times, on the murder of a King,

¹ By the *Charter of the Forest*, c. 10 (1217), the punishments of death, and mutilation, for Forest offences was abolished.—Sel. Charters, 350.

² Sel. Charters, 61, 63. (*Laws of Alfred*, c. 38.)

³ Ibid. 66. (*Athelstan*, c. 20.)

⁴ Ibid. 63, 201.

Cynebot. a fine called *cynebot*¹ was due to the people, as well as the *wergild* to the King's relatives. When a man could not, or would not, pay the *wergild*, or the *bot*, he was put out of the King's peace, and those whom he had injured could take what vengeance they chose upon him. A promise to abide trial, or 'to perform any lawful obligation,' was called *wed*, the penalty for breaking which was forty days' imprisonment, besides spiritual punishments. In later times, fines were frequently inflicted with a view to filling the King's coffers; especially *temp.* Henry VII (who fined the Earl of Oxford £15,000 for keeping retainers in livery); *temp.* James I (by means of the Star Chamber); and *temp.* Charles I (who fined Lord Salisbury £20,000, Lord Westmoreland £19,000, and Sir C. Hatton £12,000, for trespassing on the royal forests). In 1684, a Mr. Hampden, grandson of the famous John Hampden, was fined £40,000 for being a partisan of the Duke of Monmouth; and in 1687, Lord Devonshire was fined £30,000 for an assault committed within the precincts of the Palace; the fine was however remitted. By Henry I's *Charter of Liberties*² (1100), fines were to be assessed according to ancient usage; excessive fines were likewise forbidden by *Magna Carta*, by the *Statute of Westminster* I (1275), and by the *Bill of Rights* (1689), which also forbade the infliction of cruel and unusual punishments.

Various
Punish-
ments.

(5) *Other punishments* were also inflicted for offences against the law, e.g. imprisonment, the pillory (abolished 1837), the stocks, which were in general use from about 1350, up to the beginning of the present century, and the ducking-stool, used as a punishment for scolds. Outlawry was also sometimes employed³ (p. 237).

Torture.

Torture, though contrary to the law of England⁴, was frequently employed during the Middle Ages by the exercise of the prerogative of the Crown, more especially for the purpose of manufacturing evidence, and extorting confessions.

¹ Sel. Charters, 65.

² Ibid. 100.

³ Ibid. 145 (§ 14), 151.

⁴ *Magna Carta*, 'Nullus liber homo aliquo modo destruetur.'

The first instance occurs in the reign of Edward II¹, when the King and Council, in answer to a request of Pope Clement V, allowed the Templars to be tortured. The Duke of Exeter (John Holland), *temp.* Henry VI, is said to have introduced the rack, which was, in consequence, known as 'the Duke of Exeter's daughter'; and *temp.* Edward IV there are instances of its employment. Under Henry VIII, Anne Askew was severely racked; and under Elizabeth, the victims of the Star Chamber (especially the Jesuits and Catholics) were frequently tortured when it was desired to elicit information, although torture was forbidden by the Queen. The case of Timothy Penredd, charged with forging the seal of the King's Bench, in 1571, deserves mention from the barbarity of the sentence: his ears were to be nailed on successive days to the pillory 'in such a manner that he, the said Timothy, shall, by his own proper motion, be compelled to tear away his two ears from the pillory.' The conspirators in the Gunpowder Plot of 1605 were all tortured, and Edmund Peacham was severely racked (1615)². Torture was declared illegal by Sir Edward Coke, and this opinion was expressed by all the Judges when it was proposed by the Privy Council to put John Felton, the assassin of the Duke of Buckingham, to the rack, in 1628. The last instance of torture in England occurred in May, 1640³, although it was not forbidden by Statute until 7 Anne, c. 21, § 8, 1709, which, however, provides for the continuance of the *peine forte et dure*. The usual modes of torture were the rack, the *Scavenger's daughter* (an instrument invented *temp.* Henry VIII by Sir William Skeffington, Governor of the Tower of London), the thumb-screws, and the boot.

Benefit of Clergy, originating in the early favour with which the Church was regarded, and in the power which

Benefit of Clergy.

¹ The French Admiral, Turbeville, captured at Dover, 1295, is said to have been tortured, but the facts of the case are uncertain.

² 'He was examined,' says Sir Ralph Winwood, 'before torture, in torture, between torture, and after torture.'

³ Jardine. Reading on the Use of Torture in the Crim. Law of England (1378).

churchmen exercised through their higher education, was the right of any clerk in orders, who was accused in a secular court, to claim his discharge at once into the bishop's court, where he was usually acquitted. This privilege, which had led to great abuses, was partially restricted by a statute of Henry VI, to the effect that the clerk must be convicted, or at least arraigned, before he could claim it; by that time the privilege had become extended to all who could read, whether clergy or not; and in 1489 (4 Hen. VII, c. 13) it was enacted that those not in orders should only be allowed to claim benefit of clergy once, and that they should be branded on the hand. In 1512 (4 Hen. VIII. sess. 2, c. 2) the privilege was taken away from murderers and felons; in 1536, and 1540, the distinction between laymen who could read, and clergy, was abolished, but revived 1547. In 1576 (18 Eliz. c. 7) the process of handing the offender over to the ecclesiastical courts was dispensed with, and in 1706 (5 & 6 Anne) the test of reading was no longer required, whilst other punishments, instead of the burning of the hand, might be inflicted at the discretion of the judge. The privilege of benefit of clergy was taken away in 1827 (7 & 8 Geo. IV, c. 28). By a statute of 1547 (1 Ed. VI, c. 12, § 14), peers of parliament were granted a privilege equivalent to benefit of clergy, 'although they cannot read, and without being branded in the hand, for all offences then clergyable to commoners¹.' This privilege of peerage was abolished in 1841 (4 & 5 Vict. c. 22).

Sanctuary.

Privilege of Sanctuary. There were certain spots set aside as sanctuaries, or places in which persons guilty of any crime, except sacrilege or treason, were safe from penalties. The custom is of very ancient origin, and appears in England in the laws of Ini, Alfred, and William the Conqueror. The Privilege of Sanctuary extended for forty days, within which time the person taking sanctuary had to confess his guilt before the coroner, and to abjure the realm. It was sometimes violated, *e.g.* the case of Hubert de Burgh, 1233, who was dragged out of sanctuary at Merton, and imprisoned in

¹ Blackstone.

the Tower, whence he was only liberated next day on the strong representations of Bishop Wells of Lincoln. Statutes were passed in regulation of sanctuaries *temp.* Henry III, and in 1378 (2 Ric. II. st. 2, c. 3); 1529 (21 Hen. VIII, c. 2, when felons, and murderers, in sanctuary were ordered to be branded); in 1534, and 1536, when the right was taken away from those guilty of treason or piracy; in 1536, also (27 Hen. VIII, c. 19), every one in sanctuary was forbidden to carry arms. In 1540 (32 Hen. VIII, c. 12) the number of sanctuaries was diminished, and the privilege taken away from many offenders. In 1624 (21 Jac. I, c. 28), sanctuaries were abolished, though they still continued to be used in London, in the case of debtors, until 1697, in which year the Savoy, Whitefriars, and other remaining-sanctuaries, were done away with by 8 & 9 Wm. III, c. 27, § 15.

Trial by Jury dates from the reign of Henry II, and may be traced to the *Inquest by sworn Recognitors* introduced by the Normans¹. It had no existence in Anglo-Saxon times. Anglo-Saxon compurgators gave general evidence relative to a man's character. Anglo-Norman recognitors decided facts on their own knowledge. When the Crown wished for information on local matters, each district was called on to elect twelve men, who swore to answer truthfully. Thus in 1070 twelve men were elected in every county to swear to their laws and customs², and the information on which Domesday was based was collected in the same fashion³. Henry I used the jury of recognition for fiscal purposes, and Henry II expanded the system by employing it for judicial matters.

(a) *The Jury in Civil Cases.*

By the *Grand Assize*, Henry II made use of recognition for the settlement of land disputes. By its provisions, any one whose claim to his freehold was disputed, could refuse trial by battle, and apply to the Curia Regis to stop all proceedings in the local courts. The Curia sent instructions to the

¹ 'Directly derived from the Frank capitularies.'—Stubbs, i. 613.

² Sel. Charters, 81.

³ Ibid. 86.

Sheriff to that effect, and the claimant then demanded the nomination of four knights of the neighbourhood. These chose twelve knights from the same district, who were bound to declare on oath which of the two disputants had the better claim. If they were not unanimous, or if some of them were ignorant of the facts, other knights were chosen until twelve unanimous recognitors were found¹. The same procedure was prescribed by the *Constitutions of Clarendon* (1164) for the settlement of disputes as to lay and clerical tenure², and by the *Assize of Northampton* (1176) for determining the property due to heirs³.

(b) Criminal
jury.

(b) *The Jury in Criminal Cases.*

Previous to 1166 the history of the criminal jury is obscure. In Anglo-Saxon times it was probably a duty of the local courts to present criminals for judgment⁴, and a law of Ethelred specially charges the twelve senior thegns of each wapentake with this task⁵. But we have no means of knowing what, if any, connection exists between such a body and the juries of Henry II's reign. In Anglo-Norman times, the criminal jury is first mentioned in the *Constitutions of Clarendon*⁶, and by the *Assize of Clarendon* (1166) inquest was to 'be held in each county, and hundred, by twelve lawful men of the hundred, and four lawful men of the township⁷,' to present all reputed offenders, who were thereupon to undergo the *ordeal by water*. By the *Assize of Northampton* (1176), all men accused before the King's justices of murder, theft, robbery, forgery, arson, and the like, by the oath of twelve knights of the hundred, or, if the knights are not present, the oath of twelve lawful freemen, and by the oath of four men from each town of the hundred, are to go to the ordeal of water⁸. In the 'form of proceeding for the judicial visitation,' of 1194, it is provided that four knights are 'to be chosen from the whole county, who are to choose, on their oath, two lawful knights from

¹ Stubbs, i. 616 Sel. Charters, 161.

² Sel. Charters, 139, § ix.

³ Stubbs, i. 618.

⁴ Ib. 139, vi.

⁷ Ib. 143.

⁵ Ib. 152, §§ 4, 5.

⁶ Sel. Charters, 72.

⁸ Ib. 151.

each hundred or wapentake, and these two are to choose, on their oath, ten knights from each hundred or wapentake, or, if there are no knights, lawful and free men, so that these twelve may answer together for all matters in the whole hundred or wapentake¹. This *Jury of Presentment* Jury of Presentment, Grand Jury. was the immediate ancestor of the modern *Grand Jury*, which now consists of from twelve to twenty-three, sworn out of twenty-four freeholders summoned by the sheriff. These grand jurymen receive indictments, and hear the evidence for the prosecution, to determine whether there is sufficient evidence to put the accused on his trial; if they are satisfied, they find a 'true' bill; if not, they 'ignore' the bill.

Criminals presented by the Grand Jury were sent to the ordeal, and even if they passed it successfully, were forced to go into exile, and treated as outlaws if they returned. But in conformity with a decree of the Lateran Council of 1215, ordeal was abolished in England in 1218, and no method remained of testing the truth of a criminal accusation². Accordingly the practice gradually obtained of allowing a second or *Petty Jury* Petty Jury to disprove the truth of the presentment. The accused, however, was not compelled to plead, though if he refused he suffered the penalty of *peine forte et dure* (p. 79).

All this time the jury were merely judges of fact, and based their decisions on their own previous knowledge, not on evidence given in court³. But by degrees it was found that the jurors often were too ignorant of the case to come to a decision, and the practice arose, *temp.* Edward I, of 'afforcing' the jury, by adding to it other recognitors familiar with the facts. This *Jury of Afforcement* Jury of Afforcement gradually developed into a sworn body of witnesses without any judicial functions,

¹ Sel. Charters, 259.

² The ordeal may have fallen into disuse some time before this. Bracton, a writer of Henry III's reign, does not mention it.

³ 'So entirely did the verdict of the recognitors proceed upon their own previously formed view of the facts in dispute, that they seem to have considered themselves at liberty to pay no attention to evidence offered in court, however clearly it might disprove the case which they were prepared to support.' Forsyth, Trial by Jury, 129.

whilst the first jury gradually confined themselves to acting as judges of fact. The exact date of the separation between the two bodies is unknown, but it was complete by Edward III's reign. Under Henry IV, the jury begin to hear evidence in open court, and the judges declared that when jurymen had once been sworn, they should not see nor take any evidence except that offered in court. About the time of Mary the principle obtained that the jury should have no previous knowledge of the case, and from then till now the chief features of the system have remained unchanged¹.

Immunity of
Juries.

Immunity of Juries.

Temp. Henry II, jurors giving a wrong verdict were subject to a writ of attain, *i.e.* an appeal was made, and a fresh jury of twenty-four tried the case again; if they found a different verdict, the original jury was severely punished. This severity was due to the fact that, when the jury were *witnesses of fact*, a wrong verdict convicted them of perjury. In 1495 (11 Hen. VII, c. 24), jurors who gave false verdicts were to be fined at the discretion of the judge, and to be incapable of serving again. A statute of 1571 (13 Eliz. c. 25) also confirmed the writ of attain for false verdicts; this writ, though long practically obsolete, was not abolished until 1825 (6 Geo. IV, c. 50, § 60).

Fining
Jurors.

Juries were frequently fined and imprisoned by the Star Chamber, for giving verdicts in opposition to the wishes of the sovereign, *e.g.* the jury which acquitted Sir Nicholas Throckmorton of treason, for having taken part in Wyatt's rebellion (1554), were fined and imprisoned. In 1666, a Grand Jury was reprimanded by the Court of King's Bench, for returning a true bill against a prisoner for manslaughter instead of murder. The absolute immunity of jurors returning a verdict against the evidence, or direction of the judge, was established in 1670 by *Bushell's case*². A jury, of which Bushell was foreman, acquitted William Penn, and William Mead, charged with a breach of the Conventicle Act (p. 291), contrary

Bushell's
Case, 1670.

¹ For the close connection between the jury system and the history of representation, see pp. 128-131.

² State Trials, vi. 999.

to the direction of the Recorder of London, who thereupon fined each juror forty marks. Bushell, in default of payment, was committed, but obtained his writ of Habeas Corpus, the return stating that he was imprisoned for giving a verdict 'against the full and manifest evidence, and against the direction of the Court.' This was held by Chief Justice Vaughan to be insufficient, on the ground that the judge is not competent to direct, unless he has a knowledge of the *facts* of the case; these *facts* he only learns from the verdict of the jury.

Assize of Novel disseisin was a writ issued to the Sheriff, at the request of the person *disseised*, or dispossessed, of land, commanding him to summon a jury to decide whether the dispossession has been lawful, and to report to the Justices of Assize¹. By *Magna Carta*, sec. 18, the assize is to be taken in each county four times a year, by two Justiciaries, assisted by four knights, elected by the county²; this was reduced to once a year by the Charter of 1217. By the *Statutes of Merton*, 1236 (20 Hen. III, c. 3), *Marlborough*, 1267 (52 Hen. III, c. 8), and *Westminster II*, 1285 (13 Edw. I, c. 26), 'frequent and vexatious disseisins' were checked. The writ of *Novel disseisin* was abolished in 1833 (3 & 4 Wm. IV, c. 27).

Assize of Mort d'ancestor, founded on the fourth article of the *Assize of Northampton*³, is a writ giving authority to the Sheriff to summon a jury to determine whether the plaintiff's ancestor was 'seised,' or possessed, of the land in question on the day of his death, and whether the plaintiff is the rightful heir, and to report to the justices. It did not apply to lands devisable by will. *Magna Carta* contains the same regulation as to the holding of the assize as it does in the case of *Novel disseisin*. The assize was rendered nugatory 1660 (12 Car. II), and was abolished by 3 & 4 William IV, c. 27, § 36 (1833).

Assize of Darrein Presentment, or last presentation, was a writ directing the Sheriff to inquire, by a jury, as to

¹ *Assize of Northampton*, 5th Article. Sel. Charters, 152.

² Sel. Charters, 299.

³ Ibid. 151. (See App. A.)

who was the last patron who presented to the living then vacant, with regard to which there was a dispute. The assize was regulated in the same manner as the preceding ones by *Magna Carta*¹. It became obsolete about the time of Anne, and was abolished in 1833.

The Crown
and the
Courts.

Relations between the Crown and the Courts.

The King, as the fountain of justice, was in early days supposed to be present in person at all judicial proceedings; as a matter of fact, he often did preside, and decided cases. By degrees, however, after the establishment of the Common Law Courts, the practice was discontinued (p. 61), and, in 1607 it was decided by Sir Edward Coke that the King had no power to hear cases. Although the King could not directly interfere in the course of justice, he could do so indirectly by influencing subservient judges, *e.g.* Richard II obtained by threats, 1387, an opinion from the judges, that the Commission of Regency was illegal, and those who supported it, traitors. The impartiality of the judges after the time of Richard II, in whose reign the Lord Chief Justice, Robert Tresilian, was convicted of treason for having supported the King against the Commission of Regency, is notable. 'The later judicial staff,' says Dr. Gneist², 'remained so far outside the great party feuds, that even at the change of dynasty under Henry IV, Edward IV, Richard III, and Henry VII, the former justices were confirmed.'

The Tudors never enforced their wishes in the Courts of Common Law, and in fact never interfered with the regular administration of justice. In the reign of Henry VIII the salaries of the judges were largely increased, with the result of increasing the independence of the Bench. In 1587 they refused to agree to the illegal disposal of an office by Elizabeth³, and in 1591 presented to the council an important remonstrance against illegal commitments⁴.

In the reign of James I the judges, led by Sir Edward

¹ Sel. Charters, 299, 403 (*Prov. West.* art. 7).

² Const. Hist. i. 391, note.

³ Gneist, ii. 191 note.

⁴ Hallam, i. 234.

Coke, attempted to take up the position of arbiters between the crown and the nation. This was opposed to the Stuart theory of government, which looked on them as 'lions, yet lions under the throne.' When in 1616 Coke refused to stay judgment in the case of *Commendams*, in accordance with the royal wishes, James dismissed him from the Chief Justiceship, and a like punishment was meted out to Chief Justice Crew in 1626 for refusing to acknowledge the legality of the forced loan. These blows were not struck in vain. Until 1701 the judges held office at the royal will, and showed themselves warm partisans of the prerogative. But after the Revolution of 1688 the independence of the Bench was secured by the *Act of Settlement*. For the future, judges were to hold office *quamdiu se bene gesserint*, and could be removed only on the address of both Houses of Parliament.

Appellate Jurisdiction.

Appellate
Jurisdiction

The supreme *Appellate Jurisdiction* was at first vested in the Witenagemot, subsequently, *temp.* Henry II (1178), in the *Concilium ordinarium*; thence it passed to the House of Lords, where it has remained ever since, in spite of the attempt of the Commons to deny the Lords the right of hearing appeals from Courts of Equity, 1675. (*Shirley v. Fagg*, App. B.)

Intermediate Courts of Appeal. From the Common Pleas, and the inferior Courts of Record, an appeal lay to the King's Bench, and thence to the Exchequer Chamber (erected 1357, and re-modelled 1585 and 1830). In 1534, certain Commissioners, called Delegates of Appeals, were appointed to hear appeals from the Ecclesiastical, Admiralty, and Baronial Courts; in 1832 their appellate powers were transferred (with the exception of those of the Judicial Committee in Colonial Appeals, and in certain Ecclesiastical Cases) to the Judicial Committee of the Privy Council (2 & 3 Wm. IV, c. 92), (p. 295); all these appellate powers, were transferred, by the Act of 1873, to the Court of Appeal, consisting of all the judges. Thence there is still a final appeal to the House of Lords (p. 128), the constitution of

the Court being regulated by the *Appellate Jurisdiction Act* of 1876 (39 & 40 Vict. c. 59). By the *Criminal Appeal Act* 1907 (7 Ed. VII. c. 23) the Court for the Consideration of Crown Cases Reserved was abolished and the Court of Criminal Appeal established. Every prisoner, except those dealt with summarily, has a right to appeal against either sentence or conviction. The prerogative of mercy and the duties of the Home Secretary have not been affected, but whereas the Crown can only pardon, the Court of Criminal Appeal can quash the conviction altogether or modify or increase the sentence as they deem fit, but cannot order a new trial.

Chief Enactments regulating Justice and Police up to Edward I:—

Laws of Ini, *circ.* 690. Stubbs, *Sel. Charters*, 61. (This book, p. 162.)

Laws of Alfred, *circ.* 890. *Ib.* 63 (p. 163).

„ Athelstan, *circ.* 930. *Ib.* 67 (p. 163).

„ Edgar, 959-975. *Ib.* 70 (p. 163).

„ Ethelred, 978-1016. *Ib.* 72 (p. 163).

„ Canute, 1017-1035. *Ib.* 73 (p. 163).

„ Edward the Confessor¹. *Ib.* 77 (p. 164).

Statutes of William I. *Ib.* 83 (p. 77).

Separation of the Spiritual and Temporal Courts by William I. Charter undated. *Ib.* 85 (p. 274).

Charter of Liberties of Henry I, 1100. *Ib.* 99, sq. (p. 15).

Charter regulating the County, and Hundred, Courts, *circ.* 1108-1112. *Ib.* 104 (pp. 69, sq.).

Constitutions of Clarendon, 1164. *Ib.* 137, sq. (p. 277).

Assize of Clarendon, 1166. *Ib.* 143, sq. (pp. 84, 94).

Inquest of Sheriffs, 1170. *Ib.* 148, sq. (p. 250).

Assize of Northampton, 1176. *Ib.* 150, sq. (p. 84, 87).

„ Arms, 1181. *Ib.* 154, sq. (p. 129).

„ the Forest, 1184. *Ib.* 157, sq. (p. 184).

Magna Carta, 1215. *Ib.* 296, sq. (p. 15).

Charter of the Forest, 1217. *Ib.* 348, sq. (p. 184).

¹ These laws are not found in record form until 1070.

Regulations for the Conservation of the Peace by Watch and Ward, 1233. *Ib.* 362.

Ditto, 1253 *Ib.* 374.

Provisions of Oxford, 1258. *Ib.* 387, sq. (p. 16).

„ Westminster, 1259. *Ib.* 401, sq. (p. 17).

Regulations for Conservation of the Peace, 1264. *Ib.* 411.

Dictum de Kenilworth, 1266; sec. 37, 38, 40. *Ib.* 425 (p. 18).

Statute of Marlborough, 1267 (52 Hen. III), (pp. 72, 87).

„ Westminster I, 1275 (3 Ed. I), (p. 211).

„ Rageman, 1276 (4 Ed. I).

„ Gloucester, 1278 (6 Ed. I, c. 8), (by which claims not exceeding 40s. were transferred to the local courts, p. 216).

Statute of Winchester, 1285 (13 Ed. I). *Sel. Charters*, 469, sq. (pp. 254, 307).

Writ of Trailbâton¹, 1305 (33 Ed. I), empowering special judges to go through the country, and to take severe and summary proceedings against swashbucklers or *trailbâtons*, *i. e.* ruffians armed with bludgeons.

NOTE. Summaries of most of the above enactments will be found in Appendix A.

¹ Rymer, R. I. 970.

CHAPTER III.

THE CENTRAL ASSEMBLY.

A. THE WITENAGEMOT.

Central
Assembly.
Witena-
gemot.

The assembly of *Witan*, or wise men, grew out of the old tribal assembly mentioned by Tacitus¹, and was the governing body of the nation under the Anglo-Saxon Kings. As Wessex established her supremacy, the folkmoets of the once independent tribes 'shrank into the shire courts of later times²,' while their witenagemots were absorbed in the West-Saxon assembly, and the latter became the National Council. It is a question whether the right of attendance at the Witenagemot was confined to those of higher rank³, or whether it was, in theory at least, open to all freemen⁴. It is possible that there was no legal limitation of the right, for we find meetings of the *Witan* held in London, and Winchester, attended by the citizens; but, however popular its constitution in theory, the difficulties of travelling, and the small weight attaching to the voice of an unknown freeman, caused it to assume in practice that aristocratic and non-representative character which is presupposed by the very name⁵ (*Witan*);

Composition. The meetings, which were usually held twice a year at various places, such as Oxford 1035, Gloucester 1051 (nearer the Norman Conquest three times, *i. e.* at Easter, Whitsuntide, and Christmas), were attended by members of the Royal Family, the archbishops, bishops, abbots, ealdormen, and the King's

¹ Sel. Charters, 56.

² Const. Essays, p. 6.

³ Dr. Stubbs' theory.

⁴ Professor Freeman's theory.

⁵ Thus reversing the statement of Tacitus:—'de minoribus rebus principes consultant, de majoribus omnes.'

thegns¹, the numbers varying from twenty to a hundred². In a Witenagemot held at Winchester, 934, which may be taken as a fair type of ordinary meetings, there were present the King, four Welsh Kings, two archbishops, seventeen bishops, four abbots, twelve ealdormen, and fifty-two thegns; that this assembly is said to have promulgated a law *totâ populi generalitate*, is a proof that the *Witan* were regarded as representing the feeling of the nation, though they were in no way representatives in the modern acceptance of the term³. Members of the Witenagemot received, by a law of Ethelbert, *circ.* 600, a special protection whilst on their way to and from the meetings⁴ (p. 103).

The powers of the *Witan*, though theoretically enormous, ^{Powers.} were practically greatly limited by a King of strong character, who, supported as he always was by his thegns, could lead them as he chose.

The *Witan* in theory--

(1) Elected the King, and had power to pass over unfit persons (p. 7).

(2) Could depose the King for misgovernment (p. 13).

(3) Consented to grants of *folcland* (p. 204).

(4) Declared war, and assented to treaties; *e.g.* the Peace of Wedmore, 878, was made by King Alfred and King Guthrum, and *the Witan of all the English nation*⁵.

(5) Taxes were levied, and laws made, with their counsel and consent; *e.g.* 'I then, Alfred, King of the West Saxons, showed these laws to all my *Witan*, and they said that it seemed good to them all to be holden⁶.'

(6) In conjunction with the King, they appointed, and removed, the great officers of state, both secular and ecclesiastical.

(7) Regulated ecclesiastical matters, *e.g.* tithes (p. 300).

¹ Women were admitted to the meetings, *e.g.* the King's mother; and abbesses were sometimes present.

² The largest number, as given by Mr. Kemble, is 106.

³ Kemble, Saxons in England.

⁴ *Sel. Charters*, 61.

⁵ *Ibid.* 63.

⁶ *Ibid.* 62.

(8) Raised, and superintended, defences of the realm (p. 305).

(9) Formed a Court of Final Appeal (p. 89), and dealt with powerful offenders, who could be reached by no other means. They often exercised the power of outlawry, *e.g.* Sweyn, and Godwin, 1051.

B. THE GREAT COUNCIL.

Under the Norman Kings, the Witenagemot became the *Great Council* (*Magnum, or Commune Concilium*), a feudal court attended by the tenants in chief. In theory, all the holders of land were entitled to attend, but they appeared only on very rare occasions, as at Salisbury, 1086; practically its members were the magnates, including the bishops, who, until the *Constitutions of Clarendon* declared them members by *tenure of barony*, still sat as *wise men*. Under William I it met thrice a year, but though, theoretically, its powers were as great as those of the Witenagemot had been, the despotism of the Norman Kings caused its assent to legislation and taxation to be merely formal. As a Court of Justice it tried offenders of rank, *e.g.* Waltheof, 1076, though many of its judicial functions were performed by its Committee, the *Curia Regis* (p. 57). It continued, like the Witenagemot, to elect the King, *e.g.* William Rufus, Henry I, Stephen, Henry II. Under Henry II, its feudal character was complete; it was attended by archbishops, bishops, abbots (all by *tenure of barony*), earls, barons, knights, and tenants in chief; on special occasions, *e.g.* at the *Assize of Clarendon*, 1166, all the tenants in chief appeared, whilst, in theory, the members were still all the landowners. The place of meeting varied as convenience suggested. Henry II summoned the National Council two or three times every year for general deliberation, and all the legislation of the period was with its counsel and consent. Previous to 1163 we have no record of any attempt to oppose the royal wishes, but in that year Becket resisted the King on a question of taxation, and seems to have gained his point. Henry also contrived to limit the numbers of the Council by issuing

The Great Council.

Composition.

Its Feudal character.

special summonses addressed to individuals, by which expedient he was enabled to introduce judges, and lawyers, who had not the qualification of tenure. By *Magna Carta*, it was provided that the archbishops, abbots, bishops, earls, and greater barons should be summoned 'by writ directed to each severally,' and all other tenants *in capite* by a general writ addressed to the Sheriff of the shire; forty days' notice of the time, place, and cause of meeting was to be given, and the vote of those present was to bind the absent. Under John, and Henry III, the powers of the Great Council in taxation, legislation, and deliberation increased largely, and its power at the time of Edward I's organisation was a real one.

Powers tenu/
John.

C. PARLIAMENT¹.

Parliament.

The idea of representation, which had long been familiar to the people for other purposes, became gradually connected with the central assembly. In 1213, representatives from the *towns* on the royal estates attended the great meeting at St. Albans, and in the same year, the King summoned 'four discreet men' from each *shire*, to meet him at Oxford '*ad loquendum nobiscum de negotiis regni nostri*²'; from this time the representative system gradually develops (p. 130), though Parliaments were frequently held to which representatives were not summoned at all, or were summoned imperfectly (see *House of Commons*). In 1295, however, assembled the famous 'Model' Parliament, the precedent of which has been followed ever since. A personal writ of summons was sent to archbishops, bishops, abbots, earls, and barons; the priors of every cathedral, and the archdeacons of each diocese, were directed to appear in person, by writs sent through the bishops; the chapter of each cathedral was to send one representative, the parochial clergy of each diocese were to send two representatives; two knights from each shire, two citizens from each city, and borough, were also to be sent, with full powers, on behalf of their constituents, '*ad faciendum*

Idea of
representa-
tion.

'Model' Par-
liament 1295.

¹ The name was first applied to the National Council by *Matthew Paris* 1246. Sel. Charters, 328.

² Sel. Charters, 287.

*quod tunc de communi concilio ordinabitur*¹. This Parliament was thus an assembly of the estates of the constituent classes of society, as well as representative of local interests, and the English Parliament has ever since combined a union of the two principles of class and local representation². To Edward I the organisation of our Parliament on a national basis is due³; *temp.* Edward III the division into two Houses took place; the knights of the shire, who at first sat with the barons, gradually drew off from them towards the burgesses, Division into two Houses. (p. 135), and in 1333, the division had definitely taken place; from this reign, too, the attendance of the clergy grew irregular (owing to their preference for Convocation, p. 296), and in the fourteenth century, ceased altogether (except in the case of the spiritual peers), the main body of the clergy being represented by the members of the Lower House, whom they had joined in electing⁴; by this action of the clergy, England has had two Bicameral system in England. legislative Houses only instead of three, and Parliament has thus attained a strength, and unity of organisation, denied to the assemblies of other countries.

Powers of Parliament.

The Powers of Parliament grew rapidly from 1295, especially the powers of the Lower House (pp. 114, sq.). They were:—

Taxative.

(a) *Taxative*. The acknowledgment of the fact that all who paid taxes ought to be consulted about the levying of them. In 1297 (*Confirmatio Cartarum*), and 1300 (*Articuli super cartas*), Edward I surrendered the power of arbitrary

¹ Sel. Charters, 486.

² The institution of the House of Commons marked the extinction of the ancient feudal idea that the Council of the King was merely the assembly of those who held their land under him. Stubbs, *Early Plantagenets*, p. 227.

³ 'He found it a Council occasionally meeting to grant supplies to the King, and to urge upon him in return the obligation of observing the charter to which he had sworn; he left it a body representing the nation from which it had sprung, and claiming to take part in the settlement of all questions in which the nation was concerned.'

⁴ In spite of this, the writs addressed to the spiritual peers still contain the clause summoning the lower clergy to Parliament. See Anson, i. 52.

taxation, whilst the two illegal methods of raising money by tallage on the royal demesne, and by levying import duties by special agreement with the merchants, were given up by Edward III in 1340, and 1362 (p. 192).

(b) *Legislative.* The necessity of the concurrence of both Houses in legislation was recognised in 1322, when it was declared that matters concerning the whole realm 'shall be treated, accorded, and established in Parliament by our lord the King, and by the assent of prelates, earls, and barons, and the commonalty of the realm¹.' Parliament has the supreme power of legislation, except over the Colonies, which are either, as in the case of conquered Colonies, governed by the King in Council, or have legislatures of their own. Legislative.

(c) *Judicial,* vested in the Lords alone, by a declaration of 1399. (See *Appellate Jurisdiction*, p. 89, *Impeachment*, pp. 150, sq.). Judicial.

(d) *Deliberative.* Parliament was frequently consulted by Edward III, on questions of peace and war. It frequently asserted its power to alter the succession (p. 13), and to appoint regencies (p. 29) on the occasion of the King's infancy or infirmity, and its power is clearly marked by the anxiety of Kings to obtain a Parliamentary title, whilst even Henry VIII was eager to win its sanction to his arbitrary measures. Deliberative.

Summons, Duration, and Dissolution of Parliament. Summons and Duration of Parliament.

It is the King's prerogative to summon Parliament, which is opened either by the Sovereign in person, or by commission under the Great Seal, a royal speech being made, or read, on the occasion. The only instances of Parliament meeting by its own authority were the *Convention Parliaments* of 1660, and 1688, both of which were subsequently legalised by Acts of Parliament. In January, 1789, and January, 1811, on the occasion of George III's insanity, the Parliament was

¹ It seems almost certain, however, that from time to time statutes or ordinances were passed by the King at the request of the clergy, and without the assent of the Commons. Stubbs, ii. 595.

opened by commission, to which the Great Seal was affixed by the Chancellor on the resolution of both Houses. In former times, it often happened that a King omitted to summon Parliament, especially if rich enough to dispense with supplies, and one of the *Ordinances* of 1311 is to the effect that Parliaments shall be held once or twice a year¹, whilst statutes were passed, 1330 (4 Ed. III, c. 14), and 1362, to the effect that Parliament should be held annually, or oftener if need be, for the redress of grievances. By the statute of 1330, it was provided that this annual Parliament need not be a new one²; there was also a petition on the subject presented by the Commons, 1376. Notwithstanding this legislation, there were frequently long intermissions, *e.g.* from 1474 to 1483 there was only one Parliament (sitting for forty-two days, 1478); during the last thirteen years of Henry VII, there was only one, 1504. In Henry VIII's reign, Parliament only met once between 1515 and 1528, and under James I only once from 1611 to 1621, while Charles I ruled for eleven years (1629-1640) without summoning the national representatives. The Long Parliament determined to render such a long intermission of parliamentary life impossible for the future, and in February, 1641, passed the *Triennial Act* (16 Car. I, c. 1), which provided that, if the King failed to call a parliament for three years, the Chancellor, or failing him the peers, or in the event of their neglect, the sheriffs and mayors might issue writs, and if all failed to perform this duty, the electors might proceed to choose representatives; the new Parliament was not to be prorogued for fifty days after meeting, except with its own consent. The Act, which had been already infringed by the Long Parliament itself, was repealed in 1664 (by 16 Car. II, c. 1, which, however, provided that Parliament must not be intermitted more than three years), and the 'Pensionary Parliament' sat for seventeen years. By the *Bill of Rights*,

¹ By the Provisions of Oxford, 1258, what was at that time the nucleus of Parliament was to meet three times a year.

² As a matter of fact, however, Parliaments continued to be elected annually with rare exceptions until Henry VIII.

Omission to
summon
Parliament.

Annual
Parliaments.

Long inter-
missions.

First Tri-
ennial Act,
1641.

Second
Triennial
Act, 1664.

1689, it was declared that 'for the redress of grievances, and for the amending, strengthening, and preserving of the laws, Parliament ought to be held frequently,' and in 1694, William III gave his consent, which he had withheld in the previous year, to a *Triennial Bill* (6 & 7 Wm. & Mar. c. 2). In May, 1716, the limit of three years was increased to seven, by the *Septennial Act* (1 Geo. I, st. 2, c. 28); this measure, though dangerous as the act of a body prolonging its own existence, was necessary at the time owing to the disturbed state of the country, and has since been found beneficial, though motions have occasionally been made for its repeal, e.g. Sir Francis Burdett, 1818, advocated annual Parliaments; Mr. O'Connell, 1830, triennial Parliaments. Formal motions were made for its repeal by Sir Robert Heron, 1818; by Mr. Tennyson, 1833, 1834, 1837; by Mr. Crawford, 1843; and by Sir Walter Foster, 1892, but were lost by large majorities. In 1878 Mr. Holms introduced a Bill to limit the duration of Parliaments to 'five years and no longer': it was however withdrawn without debate. At first, Parliament used to sit until dissolved by the King, except in the event of the demise of the Crown¹, but by an Act of 1696 (7 & 8 Wm. III, c. 15), in force until 1867, Parliament was to sit for six months after the death of the Sovereign, and by an Act of 1797 (37 Geo. III, c. 127), if the King died after Parliament was dissolved, and before a new one was elected, the old one was revived for six months. By the *Representation of the People Act*, 1867 (30 & 31 Vic. c. 102, s. 51) no dissolution of Parliament is necessary in future demises of the Crown. At the present day, an annual session of Parliament is necessary to vote, and appropriate, supplies, and to renew the *Mutiny Act* (p. 316).

Third Triennial Act, 1694.

Septennial Act, 1716.

Relations of Parliament to the Crown from 1295.

Temp. Edward I. The Crown comes into collision with Parliament on the subject of taxation (p. 18). Edward is obliged to issue the *Confirmatio Cartarum* (1297), the

Relations of Parliament to the Crown. Edward I

¹ The Long Parliament, however, was not dissolved at the death of Charles I, nor was the Parliament of James II after his abdication.

Articuli Super Cartas (1300), and the *Confirmation of the Charters* at Lincoln (1301).

Edward II. *Temp.* Edward II. Parliament, acting more immediately through the Baronage, appoints the twenty-one Lords Ordainers as a Committee of Reform, 1310, and in January, 1327, deposes the King as 'incompetent to govern,' at the same time renouncing its allegiance (p. 13).

Edward III. *Temp.* Edward III. Parliament, and especially the Lower House, consolidates its power; the King has to acknowledge the illegality of arbitrary taxation (1340, 1362), and the necessity of the concurrence of the two Houses in legislation established in 1322 is confirmed.

Richard II. *Temp.* Richard II. Parliament appoints a Committee of Regency, 1377, and a Committee of Reform, 1386; this is declared illegal by the judges when consulted by the King. In 1397, Richard violates Parliamentary privilege by his prosecution of Haxey (p. 106). The Parliament, which was probably packed, and possibly intimidated by the presence of troops, proves extremely servile, and grants the King a revenue for life. In 1398, the power of Parliament (sitting at Shrewsbury), is delegated to eighteen Commissioners (twelve peers and six commoners); these Commissioners were creatures of the King, whose absolutism grows so intolerable that on Sept. 29, 1399, he is forced to resign, and is formally deposed by the Parliament as 'useless and incompetent' (p. 13).

Henry IV. *Temp.* Henry IV. Distrust of the King is shown by a request (1404, 1406, 1410) that the King's Council should be nominated in Parliament (p. 39), and in 1401 was established the rule that the King must not take notice of matters pending in Parliament until a decision has been arrived at, and the matter formally brought before him. In 1406 the King accepts a petition of thirty-one articles 'hardly inferior to the Petition of Right¹.'

Henry V. *Temp.* Henry V. The relations between the King and Parliament were most cordial; the King agreeing, in 1414,

¹ Hallam, *Mid. Ages*, iii. 95.

that statutes should be made 'without alteration of the petitions on which they were based.'

Temp. Henry VI. The Commission of Regency named by Parliament, 1422, to govern during the infancy of the King, who was only nine months old at his accession. From this reign the legislative power of the Crown is confined to a formal approval or rejection of measures framed by Parliament. Henry VI.

Temp. Edward IV. 'The first Government under which no single statute was passed for the protection of personal liberty and for the redress of national grievances¹.' Parliament is unimportant, and its records 'mere registers of private bills and petitions of trade.' Edward IV.

Temp. Richard III. Parliament is rarely summoned, and 'showed activity only in the matter of penal prosecutions and private bills².' Richard III.

Under the Tudors, Parliament is at first entirely subject to the King; it is rarely summoned by Henry VII, or during the first part of the reign of Henry VIII. Henry VIII, however, indirectly acknowledges the power of Parliament in the State by seeking to obtain its sanction to his arbitrary acts, and in 1539 Parliament declares that the King's proclamations have the force of law (repealed 1547). After Edward VI, the Parliament gradually begins to reassert itself, and the Commons come into collision with Elizabeth on several occasions, *e.g.* on the question of the Queen's marriage and the settlement of the succession, 1566; on ecclesiastical matters, 1571, 1593 (*Strickland's Case and Morice's Case*, pp. 107, 108); and on Monopolies (p. 201), 1601. Tudors.
Henry VIII.
Elizabeth.

Under the Stuarts, Parliament gradually becomes more dissatisfied and more rebellious, and is in perpetual collision with the King (who tries ineffectually to govern without it), *e.g.* the Remonstrance against the Book of Rates (p. 192), the abuse of Proclamations (p. 170), and of the High Commission Court, 1610 (p. 55); the imprisonment of members by the King, 1614; the Great Protest against the violation of the liberties of Parliament, torn out of the journals of the The Stuarts.
James I.

¹ Gncist, ii. 78, note.

² *Ibid.* 79.

- House by the King himself, Dec. 1621 (p. 108); the violation of liberties by Charles I, leading to the *Petition of Right*, 1628; the Grand Remonstrance, Nov. 1641; the supremacy of the Parliament, and the death of the King.
- Charles I. At the Restoration, the power of the House of Commons had become very great. But the reaction in favour of monarchy, the creation of rotten boroughs, the bribery of members and the remodelling of the borough corporations enabled the Crown to retain its control over Parliament.
- Charles II. However, the bigoted policy of James estranged all parties, and resulted in the Revolution of 1688.
- James II. Under William III, the *Bill of Rights* (App. A) contains several provisions for the limitation of the prerogative, and the increase of the power and independence of Parliament, though the King three times asserted his right to refuse his assent to obnoxious bills. Under Anne occurred the last instance of the royal assent being refused to a bill, *i.e.* to the Scotch Militia Bill, 1707 (p. 169). The first two
- Anne. Hanoverian Kings had little influence over Parliament; George III, however, made several attempts to assert the supremacy of the Crown, and endeavoured to control Parliament both by bribery (p. 142) and coercion. In 1763-4 several members of the Commons were deprived of pensions, and commissions, for voting against the King, and in 1770, George actually declared that he would have recourse to the sword 'rather than yield to a dissolution of Parliament.' In 1780, Mr. Dunning carried, by 233 to 215, his famous motion that 'the power of the crown has increased, is increasing, and ought to be diminished.' Since the *Reform Act* of 1832 (2 & 3 Wm. IV, c. 45) (p. 145) the relations of the Crown and Parliament have been most cordial, and indeed, since the Revolution of 1688, the development of ministerial government has rendered any serious collision between the two impossible; it is now the established maxim that 'the King can do no wrong'; 'the King reigns, but the Ministers govern' (see *Party Government*, p. 147).
- The Hanoverians.
George III.

PRIVILEGE OF PARLIAMENT.

A. Common to both Houses.

1. *Freedom from arrest and molestation*, originating in a law of Ethelbert, *circ.* 600¹, and, for long, necessary to secure the personal safety of members on their way to and from Parliament, extended formerly to members, their servants, and their goods. Though valid against all civil process, this privilege did not apply to cases of treason, felony, or breach of the peace; its duration is from forty days before to forty days after the session, in the case of a member of the lower House; in the case of a peer it is valid 'during the usual times of privilege of Parliament.' The privilege, as extended to the servants of members, was so much abused that in 1770 (10 Geo. III, c. 50) it was confined to the persons of members themselves, and by the same Act actions might be commenced at any time against members, or their servants. It had previously been found necessary to curtail the application of the privilege in certain cases by 12 & 13 Wm. III, c. 3, 1701; 2 & 3 Anne, c. 18, 1704; and 11 Geo. II, c. 24, 1738.

In 32 Hen. VI, the judges refused to give an opinion as to the 'extent of the personal privileges of the High Court of Parliament.'

Historical illustrations and instances—

1290. Edward I refused to allow the *Master of the Temple* to distrain for the rent of a house held of him by the *Bishop of St. David's*, as 'not fitting in time of Parliament.'

1315. Edward II declared the arrest of the *Prior of Malton* during the session to be 'to the prejudice of the crown.'

1404. The Commons petitioned Henry IV for treble damages in case of molestation; this was refused, though the right of immunity was recognised.

Privilege of Parliament.
Common to both Houses.
Freedom from Arrest.

Instances.

Master of the Temple, 1290.

Prior of Malton, 1315.

¹ 'If the King call his people to him, and any one there do them evil, let him compensate with a two-fold *bot*, and 50/. to the King.'—Sel. Charters, 61. See also *Laws of Canute*, cap. 83 (Sel. Charters, 74).

1405. *John Savage* mulcted in a double fine for assaulting *Richard Chedder*, a member's servant.
- Richard Chedder, 1405.
1429. *William Lark*, a member's servant, imprisoned for damages, was released during the session at the petition of the Commons, though the King refused their petition asking for statutory recognition of the privilege.
- William Lark, 1429.
1433. A statute declared double damages due for an assault on a member going to Parliament.
1453. *Thomas Thorpe*, Speaker, arrested at the suit of the Duke of York, fined, and sent to the Fleet. The Commons demanded his release from the King and Lords. The Lords consulted the judges, who, while admitting that in such cases release was usual, to enable the member to attend to his Parliamentary duties, declined to answer on the ground that the High Court of Parliament was 'so high and mighty in its nature that it may make law, and that that is law it may make no law.' The Lords, however, refused to give effect to the privilege, owing to Thorpe being the Duke of York's enemy, and a Lancastrian¹.
- Thomas Thorpe, 1453.
1460. *Walter Clerk*, member for Chippenham, arrested for a fine due to the King, and damages to private individuals. He was imprisoned and outlawed, but released on petition of the Commons.
- Walter Clerk, 1460.
1477. *John Atwyll*, member for Exeter, arrested for debt, released, on petition of the Commons, by a writ of *supersedeas* (*i. e.* to discharge the prisoner from custody).
- John Atwyll, 1477.
- Previous to 1543, imprisoned members, and their servants, were released, (1) by special Act of Parliament, if imprisoned in execution of judgment; (2) by writ of privilege, issued by the Chancellor, if imprisoned on *mesne process* (*i. e.* on any writ issued between the beginning and end of a suit). In 1543, however, in the famous case of *George Ferrers*, a member imprisoned as surety for a debt, the Commons demanded the release *on their own authority through their serjeant*; the
- Mesne process.
George Ferrers, 1543.

¹ Parliament subsequently characterised these proceedings as 'be-gotten by the iniquity of the times.'—Taswell-Langmead, Eng. Const. Hist. 343.

sheriffs refused the demand, and were imprisoned for contempt by the House, which likewise held a writ of Privilege from the Chancellor to be unnecessary, declaring that the orders of 'the nether House' could be carried out without a writ by the serjeant 'whose mace was his warrant.' The action of the Commons was supported by Henry VIII.

1575. *Smalley*, the servant of Mr. Hall, member for Grant-ham, was imprisoned for debt, but released by the serjeant; he was subsequently fined, and imprisoned, for having obtained his arrest fraudulently as a means of escaping the debt.

1603. *Sir Thomas Shirley*, imprisoned on execution for debt; on the meeting of Parliament (1604), the House demanded his release, which was refused by the Warden of the Fleet, who feared that he would become liable for his prisoner's debt. The Warden was committed for contempt, but would not give up Shirley until the King interfered. An Act was consequently passed in 1604 (1 Jac. I, c. 13), which provided that those who had the custody of a member of Parliament, released by privilege, should not be liable to his creditors, or subject to an action for escape, and that a new writ of execution might be sued out by the creditor at the expiration of the privileged period; this statute gave a legal recognition to the privilege of freedom from arrest, and to the right of Parliament to release privileged persons, and punish those to whom the arrest is due.

1625. *Earl of Arundel*, imprisoned by order of Charles I, for allowing his son to marry a lady of royal blood without the King's permission; the Lords denied the legality of the imprisonment of a member of their body, by any other authority than that of the House, except for treason, felony, or breach of the peace; and the King had to give way.

In Jan. 1642, the attempted arrest of the Five Members (Hampden, Sir Arthur Hasilrigge, Denzil Holles, Pym, and William Strode) by the King precipitated the crisis; the Commons declared the King's action a breach of privilege and his conduct 'false, scandalous and illegal.'

This privilege does not necessarily extend to the offence of

Contempt of Court.

Lord Cromwell, 1572.

Contempt of Court; in 1572, *Lord Cromwell*, arrested for contempt, was released by the Lords, who, however, declared that the case was not to be a precedent; in 1757, the Lords declared that privilege did not cover the refusal to obey a writ of *Habeas Corpus*; in later times Parliament has not interfered in the case of members punished for Contempt of Court, e.g. Mr. Wellesley 1831, Mr. Charlton 1837, Mr. Whalley 1874, though its right to do so, if necessary, is retained. In 1763 the Commons held, in the case of Wilkes, that seditious libel was not covered by privilege.

Wilkes.

Considerable limitations were placed on the extent of this privilege by the statute of 1770 (10 Geo. III, c. 50). It enacted that a suit might be commenced and prosecuted at any time against a member or his servant: that no process was to be stayed by reason of privilege, and that only the persons of members should be free from arrest and imprisonment¹. Thus at the present day neither the servants nor the goods of members are protected by Parliamentary privilege, and in cases of treason, felony, breach of the peace, seditious libel or bankruptcy², it cannot be pleaded by members themselves.

Freedom of speech and debate.

2. *Freedom of speech and debate* existed from very early times, and has been frequently confirmed by legislative and judicial sanction.

Henry Keighley, 1301.

Peter de la Mare, 1376.

The violation of the privilege was foreshadowed in the arrest of *Henry Keighley*, the Speaker, 1301, for presenting articles of reform to Edward I; and in the imprisonment of *Peter de la Mare*, 1376, by John of Gaunt, for his conduct as Speaker of the Good Parliament.

Thomas Haxey, 1397.

In 1397, *Sir Thomas Haxey* was imprisoned, by order of Richard II, and found guilty of treason, for having introduced a Bill to regulate the expenses of the royal household; the proceedings against him were reversed in 1399, by Henry IV,

¹ Anson, i. 145.

² The Bankruptcy Act of 1883 disqualifies a bankrupt for sitting or voting in either House, or serving on any Parliamentary Committee, but the Act of 1890 limits such disqualification to a period of five years from the date of his discharge.

and the Lords, and the privilege of freedom of discussion was expressly recognised; being again confirmed in 1407.

In 1451, *Thomas Young* was imprisoned for introducing a motion to declare the Duke of York heir to the Crown; having complained to the Commons of his arrest on a favourable opportunity, 1455, when the Duke of York was Protector, the case was referred to the Lords, and reasonable compensation was decreed by the King.

Thomas
Young, 1451.

1512. *Richard Strode*, having moved for the regulation of the tin mines in Cornwall, was proceeded against in the Stannary Court (p. 66), fined, and imprisoned; he was released by writ of privilege, and an Act passed, 4 Hen. VIII, c. 8, declaring all suits in consequence of words spoken in Parliament void.

Richard
Strode, 1512.

From 1541, the privileges of free discussion, free access to the King¹, and freedom from arrest, were formally claimed by the Speaker at the commencement of each Parliament, and were formally recognised by the Sovereign. Elizabeth, however, frequently violated the rights; in 1566, she forbade the settlement of the succession to be discussed, but had to withdraw the prohibition, on its being moved contrary to privilege by *Paul Wentworth*. On the Speaker making the usual claim for liberty of speech in 1571, he was told by Sir Nicholas Bacon, the Lord Keeper, that it was the Queen's will that the Commons should 'meddle with no matters of State but such as were propounded to them,' and *Mr. Strickland*, having introduced bills for ecclesiastical reforms, was forbidden by Elizabeth to attend Parliament. *Christopher Yelverton*, however, a celebrated lawyer, successfully maintained that this was a breach of privilege, and the Queen was forced to give way in the same Session. In the same year *Mr. Bell* was summoned before the Council for introducing the subject of monopolies. In 1588, *Mr. Cope* was imprisoned by the Queen for advocating ecclesiastical reform, and at the same time *Peter Wentworth* was sent to the Tower for demanding whether a member

Elizabeth's
Action.

Mr. Strick-
land, 1571.

Mr. Bell,
1571.

Mr. Cope,
1588.

Peter Went-
worth, 1588.

¹ Freedom of access was first claimed in 1536. Stubbs, iii. 455 note.

might not discuss points of grievance freely and without danger.

Sir Edward
Hobby, 1589.

In 1589, *Sir Edward Hobby* was reprimanded for introducing a bill to prevent various exactions made by the officers of the Exchequer. In 1593, *Lord Keeper Pickering*, in answer to the usual demand by the Speaker, for freedom of debate, replied, on the Queen's behalf, that the privilege of the House consisted in saying *aye* or *no*, and was not 'to speak every one what he listeth, or what cometh in his brain to utter.' In the same year *Peter Wentworth*, and *Sir Henry Bromley*, were imprisoned for a petition on the succession, and *Morice*, a lawyer, for a Bill for the reform of the Ecclesiastical Courts.

Sir H. Brom-
ley, 1593.
Morice, 1593.

Thos. Went-
worth and
others, 1614.

1614. *Thomas Wentworth*, *Christopher Neville*, and *Sir Walter Chute* were imprisoned for words spoken in the House, and other members were dismissed from the Commission of the Peace.

Sir Edwin
Sandys, 1621.

1621. James I committed *Sir Edwin Sandys*, ostensibly for speeches in the House, forbade the House to meddle with the mysteries of State, and declared that the privileges of Parliament were derived from 'the grace and permission of his ancestors.' In Dec. 1621 the Commons drew up a Protest that freedom of debate is necessary to treat 'the arduous and urgent' affairs of the State; in consequence of this, James dissolved Parliament, tore the Protest out of the journals with his own hand, and imprisoned *Sir Edward Coke*, *Sir Robert Philipps*, *Mr. Pym*, and *Mr. Selden*.

Protest of
1621.

Sir John
Eliot and
others, 1629.

In 1629, *Sir John Eliot*, *Denzil Holles*, and *Benjamin Valentine* were imprisoned by the King's Bench for seditious speeches in Parliament and for an assault on the Speaker, and *Strode's Act* was declared to apply only to his particular case; these proceedings were reversed by an Act of 1667, which made *Strode's Act* general; the judgment of the King's Bench was also formally reversed by the Lords, on a writ of error, 1688. By the *Bill of Rights* it is declared that 'the freedom of speech and debates, or proceedings in Parliament, ought not to be impeached, or questioned, in

any Court or place out of Parliament.' From this time, interference with liberty of speech was indirect, *e.g.* the cancelling of the commission of *General Conway*, who, in 1764, voted against the government on the question of General Warrants (p. 243), and the dismissal of *Col. Barré*, Adjutant General, in 1763. Burke tells us that 'the dangerous and unconstitutional practice of removing military officers for their votes in Parliament' was abolished by the Rockingham ministry of 1765¹.

3. *Secresy of Debate.*

Secresy of
Debate.

In early times, it was very important that the King should not know what was being debated.

The Long Parliament of 1641 was the first to prohibit the printing of speeches without the leave of the House, and Sir E. Dering was expelled and imprisoned for failing to comply with this rule. It however permitted its proceedings to be published under the title 'Diurnal Occurrences in Parliament.' In 1680, votes and proceedings were ordered to be printed under the direction of the Speaker, and in spite of the prohibition, reports of debates frequently appeared. These were necessarily very imperfect, since notes had to be taken by stealth.

Publication
of Debates.

After the Revolution, Parliament made frequent attempts to restrain the publication of debates, and in 1738 characterised it as a 'notorious breach of privilege' and resolved to deal sternly with offenders². However, the practice still continued, the reporters being careful to suppress the speakers' names, or to attribute their speeches to characters in Roman history. Had the reports been impartial, Parliament would probably have been less anxious to assert its privileges. But this was by no means the case. Speakers were wilfully misrepresented, offensive epithets were attached to their names, and their arguments were often perverted or suppressed. In 1771, the names of the speakers having been given in several papers, a complaint was made to the House by Col. Onslow; and six printers were summoned to appear

¹ Anson, i. 149.

² May, ii. 36. Anson, i. 152.

Miller's case, before the House; one, by name *Miller*, failed to attend, and was arrested by a messenger, who was in his turn arrested for assault, and both were brought before Lord Mayor Crosby, and Aldermen Oliver, and Wilkes, the latter of whom was encouraging the resistance of the printers to Parliamentary privileges by every means in his power; the magistrates discharged Miller, and committed the messenger; for this, they were sent to the Tower by the House, though in the face of popular opinion. This was the last occasion on which the House of Commons asserted this privilege, and from this time the publication of debates has been permitted. In theory however, it is still a breach of privilege, and liable at any moment to be forbidden. The publication of division lists was declared a breach of privilege 1696, but they have been regularly published by the Commons since 1836, and by the Lords since 1857. In 1868, in the case *Wason v. Walter*, the right of a newspaper to publish fair reports of debates was established (see *Libel*, p. 245).

Division Lists.

Wason v. Walter.

Exclusion of strangers.

Exclusion of strangers was at first very strict, owing to the fear that a stranger might inform the King of the proceedings in Parliament. After the Restoration, the rule was somewhat relaxed, though strangers could be excluded on the motion of one member; in 1770, they were excluded from the Lords, during a discussion on the impending war with Spain, on grounds of expediency; they were frequently excluded from Parliament during the American war, thus interrupting the report of debates. In 1845 strangers were allowed to be present in the galleries, and since 1875 can only be excluded by a resolution of the House.

Freedom of access to the Sovereign.

4. *Freedom of access to the Sovereign.*

The Peers, as hereditary counsellors of the Crown, enjoy an *individual* right of access at any moment; the Commons have only a *collective* right through the Speaker. This privilege, which is of very early origin, has since 1541 always been claimed by the Speaker, together with those of freedom from arrest, and of debate (p. 107, note).

Favourable construction.

5. The Sovereign is bound to put *the most favourable con-*

*struction*¹ on everything done in Parliament, and can take notice of nothing pending in Parliament until a decision has been arrived at, and the matter brought officially before him, (1401).

6. *Right of deciding Contested Elections.*

Contested
Elections.

(1) Decided
by Crown,

In the mediæval period the House of Commons made no claim to examine disputed returns. 'Until the Act of 1406, the Sheriff had to return the writ in full Parliament, and the King in or out of Parliament, took direct cognisance of complaints?' By the statute of that year, writs were to be returned to Chancery, and by an Act of 1410, the justices of assize were empowered to examine undue returns. But it would still seem to be for the King, with the help of the Lords or the judges, to settle the validity of a return. The chief cases are in 1319, when *Sir W. Martin*, a duly elected knight of the shire of Devon, complained to the Council that another name had been substituted by the Vice-Sheriff in the return; in 1362, a dispute about the Lancashire election was settled by the King. In 1384, a petition was presented by the borough of Shaftesbury to *the Kings, Lords, and Commons*, complaining that the Sheriff of Dorsetshire had made a false return by substituting the name Thomas Camel for Thomas Seward.

In 1404, the Commons demanded an inquiry into an alleged false return by the Sheriff of Rutland; the Lords held the inquiry, and declared Thomas Thorpe, for whom the Sheriff had substituted William Ondeby, duly elected.

In the reign of Elizabeth, the Commons asserted their right to decide disputed cases.

In 1553, a committee of the Lower House had declared *Dr. Nowell* incapable of sitting in Parliament, and in 1586, in spite of the Queen's prohibition, the House of Commons settled the case of a disputed return for the county of Norfolk.

(2) by House
of Commons,
1586.

1604. James I arrogated to himself power over elections,

¹ This, says May, 'is not a constitutional right, but a personal courtesy.'—Parliamentary Practice, p. 59.

² Stubbs, iii. 423.

even so far as to decide what kind of man should be chosen. The electors of Buckinghamshire returned *Sir Francis Goodwin*, an outlaw; James had a second writ issued, and *Sir John Fortescue* was elected; the Commons, however, declared Goodwin's election valid, but after much pressure, consented to confer with the judges. In the end the King admitted the claim of the Commons to be a judge of returns, but claimed a corresponding jurisdiction for the Chancery; eventually the matter was settled by a compromise, the previous elections being regarded as void, and a new writ issued. The right of the Commons was never afterwards called in question, nor that of Chancery asserted¹: it was further legally recognised in 1674, in the case of *Barnardiston v. Soame*, in *Onslow's case* 1680, and in *Prideaux v. Morris* 1702, as well as by a statute of 1696.

Goodwin's
case, 1604.

Barnardiston
v. Soame,
1674.

In 1674, the Sheriff of Suffolk, *Soame* by name, made a double return for the county, upon which *Barnardiston*, one of those returned, sued the Sheriff for damages, and obtained a verdict; this verdict was quashed, on a writ of error, both by the Court of Exchequer Chamber, and by the House of Lords, but the Commons nevertheless committed *Soame* for making the double return. In 1696, the illegality of a double return was declared by statute, 'but the practice of making such returns is sanctioned by the law and usage of Parliament².' Thus in 1878, the Sheriff made a double return for South Northumberland. From 1672, the Commons decided all election questions by Committees of the whole House; the right was much abused for party purposes, and in 1770, *Grenville's Act* (10 Geo. III, c. 16) transferred the settlement of controverted elections to a Select Committee of thirteen sworn members, selected by the sitting members and the petitioners, from forty-nine chosen by ballot; to these thirteen, each side then added one nominee; it was found possible, however, to influence the construction of the Committee, and the abuses continued. By an Act of Sir Robert Peel, 1839, the Committee was reduced to six, and afterwards to five, nominated by a general Committee

Grenville's
Act, 1770.

Peel's Act,
1839.

¹ Anson, i. 159.

² May, Parliamentary Practice, p. 165.

of Elections. In 1868, the right was surrendered by the Commons (31 & 32 Vic. c. 125), and vested in the common law judges, an Act of 1880 (42 & 43 Vic. c. 75), providing that cases must be tried by two judges; the Peers, however, still retain the privilege.

In 1702-4, in the cases of *Ashby v. White*, and of the *Aylesbury men*, the Commons claimed the privilege of determining the rights of *electors*, as well as of deciding contested elections; this led to a quarrel between the Lords and the Commons, the Upper House condemning the conduct of the Lower in committing the Aylesbury burgesses for bringing actions against the returning officer; the dispute was ended by a prorogation, though the question was left undecided (App. B).

Ashby v. White,
1702-4.

7. *Right of settling the order of business* in their respective Houses. The question arose under Richard II, when the judges declared that this right did belong to Parliament. It was formerly important, as, if it had belonged to the Crown, the King might have obtained his supplies at the opening of the Session, and then dissolved.

Right of determining the order of business.

B. Special privileges of the Lords.

1. *Voting by proxy*. In early times this right was granted by licence from the King, and, up to the 17th century, Peers were often represented by men who were not members of the House; but from that time the proxy of a temporal Peer could only be given to another temporal Peer, and that of a spiritual Peer to a spiritual Peer, whilst the number of proxies to be held by any one individual was restricted to two. The right was given up in 1868, as it was found to encourage Peers to absent themselves from Parliament.

Special Privileges of the Lords.
Voting by Proxy.

2. *Right of dissentients to record a protest* against any Act, in the journals of the House. The general practice of protests¹ by the Lords dates from the 17th century², but earlier instances may be found in the protests of the lords spiritual against the Statutes of *Provisors* and *Praemunire*.

Protests.

¹ A standing order of the House of Commons could confer this right on the members of the Lower House; Anson, i. 221. ² Stubbs, iii. 489.

Peerage
Bills.

3. *Rights of originating Bills* concerning the Peerage, such as the restitution of honours.

Writ of
Summons.

4. Every member of the House of Lords is *entitled to receive his writ of summons*. Settled by Lord Bristol's case (Feb. 1626), to whom a writ was refused by Charles I. The Peers, however, would not sit without him, and the King had to send the writ, though he privately forbade the Earl to obey it.

Trial by
Peers.

5. All Peers, except spiritual Peers¹, have the right of being tried by their Peers in cases of treason and felony; the trial is by the whole House if sitting; if not sitting, by the Court of the Lord High Steward (p. 65). On a charge of misdemeanor a Peer is tried by an ordinary jury.

Privileges
peculiar to
the Com-
mons.
Money Bills.

C. Privileges peculiar to the Commons.

Powers over money.

(1) *The right of originating all Money Bills.* This was established as early as the reign of Richard II, and formally recognised 1407, when the Lords named certain subsidies as necessary for the defence of the kingdom, and the Commons declared their action a breach of privilege. In 1593, a suggestion of the Lords that three subsidies should be granted to the Queen, called forth considerable hostility from the Commons, and in 1625 they began the practice of omitting the name of the Lords from the preamble of Bills of supply. In 1640, at a conference of the two Houses, the Commons maintained their sole right to originate money grants, and in 1661 refused to assent to a Bill for paving the streets of Westminster, which had begun in the Lords, on the ground that, as it laid a charge on the people, it ought to have originated with them. By degrees, the Commons increased their privilege by establishing that the Lords could not amend a Money Bill in any way, but had only the power of acceptance or refusal. In 1671, the Lords having altered the rate of duty on sugar, the Commons resolved 'that in all aids given to the King by the Commons,

¹ In 1341, however, the Lords held that John Stratford, Archbishop of Canterbury, must be tried by his Peers.

the rate or tax ought not to be altered by the Lords¹, and in 1678 declared that all Bills of supply ought to begin in the Lower House and 'not be changed or altered by the House of Lords²,' 'all aids and supplies, and aids to his Majesty in Parliament are the sole gift of the Commons.' They subsequently established that all Bills, which either directly, or *indirectly*, deal with taxation or supply, are Money Bills. An outcome of this privilege was the unconstitutional process of '*Tacking*,' *i.e.* of tacking on to a Money Bill another '*Tacking*.' Bill, which they feared would otherwise be thrown out by the Lords; when this course was adopted, the Lords were obliged to pass the obnoxious Bill, unless they chose to refuse the supplies altogether, which would have greatly inconvenienced the King and the nation; this course of action, which occurred in 1692, and 1699, was declared by the Lords to be dangerous to the constitution (1702). The right of the Upper House to reject Money Bills, though rarely exercised, was not called in question till 1860. In that year, a Bill for the repeal of paper duties was sent up by the Commons, but failed to pass the Lords. This induced the former to draw up three resolutions, affirming that the Commons possessed the sole right of granting aids and supplies: that the power of the Lords to reject Money Bills 'was justly regarded by this House with particular jealousy,' and that to guard against the undue exercise of such power, 'this House has in its own hands the power so to impose and remit taxes . . . that the right of the Commons as to the matter, manner, measure or time, may be maintained inviolate³.' In 1861 the financial measures for the year were included in one Bill, which the Lords could not amend and were forced to accept or reject as a whole⁴.

Resolutions
of 1860.

(2) *Appropriation of Supplies*. During the reign of Henry III, various attempts were made to deprive the King of his control over the expenditure of the public money, but it was not till Edward III's reign that Parliament showed

Appropriation
of Supplies.

¹ Hallam, iii. 30.

² Anson, i. 254

³ May, Parliamentary Practice, pp. 649, 650. ⁴ Anson, i. 255, note.

a strong wish to apply its grants to special purposes. The royal consent was readily yielded¹, and the practice was observed in the following reign and under Henry IV and his successors. The larger sums were usually assigned to the defence of the kingdom, tunnage and poundage was set aside for the navy, and the produce of the Crown lands for the expenses of the household².

But the system fell into abeyance during the 15th and 16th centuries, and though revived in 1624 and 1641 did not become a recognised Parliamentary practice till the close of the 17th century. In 1665 a sum of £1,250,000 was set aside for the Dutch war, and the principle became firmly established after the Revolution of 1688. At the present day, the House goes into Committee of Supply to settle what sums shall be granted to the Crown: the Committee of Ways and Means then determines in what way the amount shall be raised. The *Appropriation Act*, passed at the end of the session, assigns about two-thirds of each year's revenue to specific purposes.

Audit of
Accounts.

(3) *Audit of Public Accounts*. In 1341, commissioners were appointed at the request of Parliament to audit the accounts of the collectors of the subsidy on wool; in 1376, and 1377, auditors were demanded, and, in the latter year, the first Parliamentary treasurers, John Philipot and William Walworth, were appointed. In 1379, Richard II voluntarily presented the accounts for audit, and after some objection by Henry IV, the right was clearly established in 1406, but subsequently fell into disuse. During Elizabeth's reign, accounts were systematically audited³; but the practice does not appear to have been re-established till the reign of Charles II. Between 1714 and 1802, no regular statement of the financial condition of the country was drawn up, and it is only since 1822, that a 'balanced annual account of the public income and expenditure' has been laid before

¹ e.g. in 1346 the contribution paid by the northern counties was applied to defending the border against the Scots, and in 1353 the whole grant was appropriated to the prosecution of the war.—Stubbs, ii. 565.

² Ibid. iii. 265.

³ Anson, ii. 317.

Parliament¹. In 1785 a body of five Commissioners was appointed to audit the public accounts, but by the *Exchequer and Audit Act* of 1866 (29 & 30 Vic. c. 39, § 3), they were replaced by the Comptroller and Auditor General, who both controls the issue of money, and audits the accounts of its expenditure.

Method of enforcing Privileges of Parliament.

Method of enforcing Privilege.

The Privileges of Parliament can be enforced by fine² and imprisonment; and, in the case of members, by expulsion. Imprisonment by the House of Lords, which is a Court of Record (p. 57 note), may be for a fixed period; imprisonment by the Commons ends with the Session.

(1) *Chief instances of Members being punished by the House*; first noticeable under the Tudors. Members.

John Storie (Jan. 1548), committed, probably for violent language, released on submission. John Storie, 1548.

Mr. Copley (1558), committed for speaking disrespectfully of Mary. Mr. Copley, 1558.

Thomas Long (1571), member for Westbury, expelled for bribery to secure his return (p. 143). Thomas Long, 1571.

Arthur Hall (1572), member for Grantham, and the master of Smalley (p. 105), reprimanded at the bar of the House for 'lewd speeches'; (1581), expelled, and sent to the Tower, for publishing a book derogatory to the authority of Parliament. Arthur Hall, 1572, 1581.

Peter Wentworth (1576), committed for using strong language against Elizabeth. Peter Wentworth, 1576.

Dr. Parry (1585), expelled for stigmatising the bill against the Jesuits as 'bloody.' Dr. Parry, 1585.

Peter Wentworth, and Mr. Cope (Feb. 1588), committed for certain questions put to the Speaker with regard to the liberties of Parliament. Mr. Cope, 1588.

Mr. Palmer (1641), committed for protesting against the Grand Remonstrance (p. 113). Mr. Palmer, 1641.

¹ Anson, ii. 318.

² No fine has been imposed by the Commons since 1666. May, Parliamentary Practice, p. 90.

Lord Shaftesbury, 1677. *Lord Shaftesbury* (1677), with three other peers, sent to the Tower by the Lords, and imprisoned there for a year.

Robert Walpole, 1712. *Robert Walpole* (1712); expelled and committed to the Tower for corruption.

Richard Steele, 1714. *Richard Steele* (1714), expelled for abusing the Ministry in the 'Crisis.'

Aislabie, 1721. *Aislabie*, the Chancellor of the Exchequer, was expelled for being concerned in the frauds of the South Sea Company (1721).

John Wilkes, 1764. *John Wilkes* (1764), expelled for seditious libel (p. 245), re-elected 1768, again expelled and declared incapable of re-election; on his being elected a third time, the Commons gave his seat to the second on the poll, Col. Luttrell, who had only 296 votes, to 1143 polled by Wilkes. Such action was unconstitutional, because it created a disability unknown to the law, and in 1782, the records of the proceedings were expunged from the journals of the House.

Non-Members. (2) *Chief instances of persons not members being punished for contempt.*

Bland, 1586. *Bland*, a currier, was in 1586 fined 20s. for speaking contemptuously of the House.

On the supplies being delayed by Parliament in 1701, the Grand Jury of Kent petitioned that the loyal addresses of the Commons should be turned into Bills of Supply. The petition was voted scandalous, insolent, and seditious, and its presenters were imprisoned.

Aylesbury men, 1704. In 1704, the Commons committed the five *Aylesbury men* to prison for bringing actions against the returning officer.

Alexander Murray, 1751. *Alexander Murray* (1751), committed to Newgate for insulting a returning officer; he sued out his writ of *Habeas Corpus* (p. 240), but the judges declared they had no power to admit him to bail¹.

¹ It had hitherto been customary to make prisoners kneel at the bar of the House when called up for judgment. Murray refused to do so, and in 1772 this practice was abolished by a resolution of the Lower House. In the Upper House it was 'silently discontinued,' but the 'entries in the Lords' Journals still assume that prisoners are "on their knees" at the bar.'—May, Parl. Practice, p. 116, and Const. Hist. ii. 74.

In 1810, the House committed to Newgate the publisher of a certain placard; *Sir Francis Burdett* in Parliament denied their power to do so, and was sent to the Tower for contempt; he brought an action against the Speaker (Abbott), which he lost, the Lords confirming the decision (App. B).

Burdett's
Case, 1810.

The above were all legal commitments, as the power of the House to punish for contempt, and breach of privilege, was early recognised. Occasionally, however, the House has acted illegally, *e.g.* in *Floyd's case*, 1621, where the Commons ordered one Floyd, a barrister, to pay £1000, and to be put in the pillory, for speaking against the Elector Palatine; this they had no right to do, the offence not being a breach of privilege.

Cases of
Illegal Pun-
ishments.
Floyd, 1621.

And in 1721, the printer of *Mist's Journal*, a Jacobite paper, was committed to Newgate, though no breach of privilege had taken place.

Mist's
Journal, 1721.

Although the Commons have occasionally vainly attempted to create new privileges, they must show that the privilege claimed has always been customary; *e.g.* in *Ashby v. White*, 1702-4, the Commons claimed the power of determining the rights of electors, as well as the legality of elections; coming into collision on the subject with the Lords, the matter was ended, though not settled, by a prorogation.

Ashby v.
White,
1702-4.

In 1836-40, *Stockdale v. Hansard*, the Courts held that the Commons could not authorise the publication of libellous matter. Thereupon the Lower House resolved 'that this House has the sole jurisdiction upon the existence and extent of its privileges.' The resolution was ignored by the Law Courts, and a serious quarrel seemed imminent. The question was settled by the passing of an Act (3 & 4 Vic. c. 9) which provided that all proceedings against persons for publishing reports under the authority of either House of Parliament, should be stayed on production of a certificate stating that such publication was by Parliamentary order¹.

Stockdale v.
Hansard,
1836-40.

¹ See May, Parl. Practice, p. 182, and Const. Hist. ii. 78 sqq.

Collisions
between the
two Houses.

Instances of collision between the Lords and Commons.

1407. 1407. The Commons asserted that the King's request to them to send a deputation to the Lords to hear, and report on, the reasons for granting subsidies was 'to the prejudice of their liberties,' and established the rule that neither House should make any report of any grant to the King, until passed by Lords and Commons.
1621. In 1621, the Lords protested against the illegal punishment of *Floyd* by the Commons. The latter agreed that he should be tried by the Lords, but declared that the case should 'not be a precedent towards the enlarging or diminishing of the privileges of either House¹.'
1640. In 1640, the Lords voted, in accordance with the King's wish, that supplies should be granted before grievances were discussed; this was voted a breach of privilege by the Commons.
- Skinner v. The East India Company, 1667. In 1667, in the case of *Skinner v. The East India Company*, the Lords claimed an original jurisdiction as a court of justice, which the Commons denied². The quarrel lasted for fifteen months, being finally settled by the mediation of the King, at whose instance all proceedings were expunged from the journals.
- Shirley v. Fagg, 1675. In 1675, in the case of *Shirley v. Fagg* (App. B), the Commons declared that there was no appeal to the Lords from Courts of Equity. The dispute was ended by a prorogation, but the Lords continued to hear appeals.
1701. In 1701, the Commons quarrelled with the Lords about the impeachment of Lord Somers (p. 156), and resolved that the Lords had attempted 'to overturn the right of impeachment lodged in the House of Commons by the ancient constitution of the kingdom.'
- Aylesbury men, 1704. In 1704, the two Houses came into collision on the *Aylesbury* case. Ashby, a burgess of Aylesbury, had sued

¹ Lords' Journals, iii. 119.

² This action on the part of the Lords 'was probably a result of the disappearance of the Privy Council Jurisdiction, which, in the Court of Star Chamber, had from time to time been exercised in a salutary manner for the bringing to justice of great offenders.'—Auson, i. 336.

a returning officer at common law, and obtained a verdict against him ¹. But the Queen's Bench gave judgment for the defendant, and its verdict was in turn reversed by the Lords on a writ of error. The Commons denied the jurisdiction of the Lords, and the latter appealed to the Queen. The quarrel was ended by proroguing Parliament.

In 1860, the Lords rejected a Bill for the repeal of the Paper Duty. Lord Palmerston moved in the Commons that the power of the Lords to reject taxation Bills is 'regarded with peculiar jealousy as affecting the right of the Commons to grant supplies, and to provide ways and means for the service of the year' (see *Money Bills*, pp. 114-5).

Dispute on
the Paper
Duty Bill,
1860.

HOUSE OF LORDS.

Origin. Peerage depends neither on tenure nor nobility of blood². Although thirteen and a third knights' fees created an obligation of barony, the holder was not a baron from the mere fact of possession. Originally a member of the Magnum Concilium owed his seat to *tenure*, but Magna Carta introduced the new qualification of *summons*. A distinction had grown up between the majores and minores barones, and by article 14 of the Charter, the former³ were to receive a special, the latter a general writ, calling them to Parliament. But since the greater barons were not yet a strictly defined class⁴, there were certain individuals who might be summoned or passed by at the royal discretion. Henry III and Edward I availed themselves of this power, and its careful employment by the latter has won for him the title of 'creator of the House of Lords⁵.' But from this time the right was seldom exercised, and the year 1295, says Bishop Stubbs, may be adopted 'as the era from which the

House of
Lords.
Origin.

¹ *v.* also *Ashby v. White*, App. B.

² Nobility of blood is unknown to the English law. The eldest son of a peer is a commoner, and bears a title by courtesy only.

In 1547, the Earl of Surrey, son of the Duke of Norfolk, was tried by a common jury on a charge of high treason.

³ The greater barons were those who in their military, fiscal and legal transactions dealt directly with the King; the lesser barons, those who transacted their business with the Sheriff. Stubbs, i. 567; ii. 182.

⁴ Freeman, *Essay on the House of Lords*, Hist. Essays, Fourth Series, p. 452.

⁵ Stubbs, ii. 203.

baron, whose ancestor has been once summoned and has once sat in Parliament, can claim an hereditary right to be so summoned¹; in such cases the Crown cannot refuse a summons (*e.g.* Lord Bristol's case 1626, p. 114).

Creation of Peers.

Creation of Peers.
Tenure by Barony.

Although *tenure by barony* had been the original qualification for summons, it is clear that from 1295, at the latest, it was no longer sufficient in itself to create a Peer. Various attempts have, however, been made in later times to claim barony by tenure; *e.g.*—

Fitzalan's Case, 1433.

1433. Sir John Fitzalan claimed the earldom of Arundel as 'united and annexed to the castle and lordship of Arundel.' The claim was admitted 'saving the rights of the King, of the Duke of Norfolk, the heir general of the Earls of Arundel, and of every other person².'

Neville's Case, 1598.

1598. Sir Edward Neville claimed the barony of Bergavenny, 'not as has been generally supposed on the sole ground that the dignity was attached to the barony of Bergavenny, but that he, as being seised of that castle, and as heir male of the last lord, was the more eligible person³.'

The Fitz-Walter Case, 1660.

In 1660, the barony of Fitz-Walter was claimed as a barony of tenure by Mr. Cheeke; in 1669, the claim, which was opposed by Mr. Mildmay, the heir-general of Robert Fitz-Walter summoned by writ 1295, was heard by the Privy Council, and it was decided that barony by tenure was obsolete, and 'for weighty reasons not to be insisted on,' and a summons was sent to Mr. Mildmay. '*At no period since the reign of Henry III,*' says Sir Harris Nicolas, '*has tenure per baroniam been deemed to constitute a right to a writ of summons.*

Baronies by Writ.

Baronies by Writ, originating *temp.* Henry III, soon superseded the qualification of tenure; *e.g.* in 1295, out of

¹ Stubbs, ii. 184. Lord Redesdale fixes the date at the fifth year of Richard II, but the Statute of that year seems merely declaratory of existing practice. Anson, i. 186.

² Nicolas' *Historic Peerage*, p. xx. Sir H. Nicolas remarks on this case that in the reign of Henry VI more anomalies are to be found with respect to the Peerage than in any which preceded it.

³ Nicolas, p. xxi.

fifty-three barons summoned, eleven did not hold lands *per baroniam*; in 1299, out of forty-five persons summoned for the first time, only twenty-four were barons by tenure, and, says Sir Harris Nicolas, 'it is certain that the number of barons by tenure, during the reign of Edward I, greatly exceeded the number of persons summoned to Parliament'.¹

In 1387, occurred the first instance of a barony being created by *Letters Patent*, when Sir John Beauchamp of Holt was made Lord Beauchamp of Kydermynster; the next was in 1433, when Sir John Cornwall was created Lord Fanhope; from this time Letters Patent became the usual form of creation. Letters Patent must contain a limitation to heirs male, or female; a Peer created by Letters Patent need not take his seat to be ennobled. The method of creation at the present day is by Letters Patent, followed by a writ of summons.

Although during the minority of Richard II, Peers were created by Parliament, the sole right of creation has remained vested in the King, and has occasionally been dangerously employed, *e.g.* Anne, in 1711, created twelve Peers at once, to obtain a majority in the Upper House for the Tories.

In 1719, the Peerage Bill was introduced by the Dukes of Somerset, and Buckingham, with the approbation of the King; by it the Crown was not to increase the existing number of 178 by more than six, although it might create a new peerage for every one which became extinct. The Bill, which was violently opposed by Walpole, was fortunately thrown out by the Commons; had it passed, it would have unduly limited the royal prerogative, and might eventually have imperilled the very existence of the House of Lords. For if the latter reject a measure which is warmly supported by the House of Commons and by the nation, their opposition can be overcome by a fresh creation of Peers. Thus in 1832 the knowledge that ministers were prepared to resort to this extreme measure, secured the passage of the Reform

¹ In some cases Edward I appears to have issued writs to persons who did not hold by baronial tenure at all. Stubbs, ii. 204; Anson, i. 184.

Bill in the House of Lords. A peerage cannot be resigned, or alienated, by its holder; it can only be taken away by Parliament.

Composition
of the Lords.

Composition of the House.

1. *Lay Peers.*

(a) *Dukes.* First created in 1337 (the Black Prince made Duke of Cornwall).

(b) *Marquises.* Counts of the Marches. First introduced in 1385, when Robert de Vere, Earl of Oxford, was made Marquis of Dublin.

(c) *Earls.* This title was derived from the Danish Jarl, and began to supplant that of Ealdorman in the reign of Ethelred¹.

(d) *Viscounts.* First introduced in 1440. John, Lord Beaumont, created Viscount Beaumont.

(e) *Barons.* The word *baron* signified chronologically—

(1) A tenant-in-chief.

(2) The holder of a barony of $13\frac{1}{3}$ knights' fees.

(3) A man who held such a barony, *and* received a writ.

(4) A man who received the summons, *whether the holder of a barony or not.*

(5) A man entitled to receive the writ, either by creation or prescription².

Spiritual
Peers.

2. *Spiritual Peers*, who formerly far outnumbered the Lay Peers: *e.g.* 1295, there were ninety Spiritual Peers, and only forty-five Lay Peers; in 1509, forty-eight Spiritual Peers, and thirty-six Lay Peers. The abbots and priors were summoned by virtue of their tenure *per baroniam*, the bishops by virtue of their ecclesiastical position. From 1341 the number somewhat diminishes, owing to the burden of attending. After the dissolution of the monasteries, 1539, the archbishops and bishops numbered only twenty-one; this number was subsequently increased to twenty-six. At the present day, in addition to the two archbishops, the Bishops of London, Winchester, and Durham have seats in the House of Lords, in right of their sees; the remaining bishops, with the single exception of the Bishop of Sodor and Man, are summoned

¹ See Stubbs, *Sel. Charters*, 485, *Summons of an Earl*.

² *Sel. Charters*, 37. Stubbs, i. 366.

to Parliament according to seniority of consecration, until the full complement is made up; these twenty-six Spiritual Peers sit 'in virtue of their spiritual office, and not of the temporalities of their see'.¹ In 1801, one archbishop and three Irish bishops were added to Parliament, and sat until the disestablishment of the Irish Church, 1869. In 1642, the Bishops Exclusion Bill deprived the Spiritual Lords of their seats in the Upper House, and they did not regain them till 1660. Unsuccessful motions to exclude them from Parliament were brought forward in 1834 and 1836. Spiritual Peers do not vote on questions of life and death (p. 155), and, by a resolution of the House of Lords in 1692, have no right to be tried by the Peers².

3. *Life Peers*, occasionally created *temp.* Richard II to Life Peers Henry VI: e. g. Guichard d'Angle, Earl of Huntingdon (1377); Thomas Beaufort, Duke of Exeter, (1416). There have been occasional creations since, e. g. the baronies of Hay (1606), and Reede (1644), but these did not carry with them a seat in the House. There was no doubt that the Crown had the power of giving life peerages, and in 1856, Sir James Parke was created Baron Wensleydale for life by Letters Patent. The opposition to this was great; it was argued that the Crown's power had not been exercised for four hundred years, and was therefore obsolete, and that, in any case, it could not give a right to sit in Parliament; it was answered that '*nullum tempus occurrit regi*,' and that lapse of time is of no effect. The question was referred to the Committee of Privileges, and in the result it was declared that 'neither the Letters Patent, nor the Letters Patent with the usual writ of summons issued in pursuance thereof, can entitle the grantee to sit and vote in Parliament.' In consequence, Lord Wensleydale was made an hereditary Peer. Lord Wensleydale's Case, 1856

In 1876, by the *Appellate Jurisdiction Act* (39 & 40 Vic. c. 59), two law Lords were added as Life Peers to the Upper House, to strengthen its judicial side as a Court of Appeal.

¹ Anson, i. 213.

² This resolution, says Bishop Stubbs, is of no historical authority. The doctrine of ennobled blood, by which it is sometimes supported, is historically a mere absurdity. Const. Hist. iii. 443, note 2.

The Law Lords have now been increased to four, and by 50 & 51 Vict. c. 70, s. 2 they do not lose their right to sit and vote when they cease to exercise their judicial functions. The Act of 1887 permits them to keep their seats for life.

Representative Peers.
Scotch.

4. *Representative Peers.*

(a) *Scotch.* Added at the Union, 1707; they are sixteen in number, and are elected for each Parliament by the Peers of Scotland, who assemble at Holyrood for that purpose. Proxies are allowed. After election, the Scotch representative Peers receive no special summons, but take the oath as duly elected representatives. By accepting an English peerage, they forfeit their seats as representative Peers. As no more Scotch Peers can be created, the existing Scotch peerages will all in time become extinct, or be merged in the peerage of Great Britain. Scotch Peers have all the rights of peerage, except a seat in Parliament. They cannot sit in the House of Commons.

Irish.

(b) *Irish.* Added at the Union, 1801; they are twenty-eight in number, and are elected for life by the whole of the Irish Peers. One Irish peerage may be created for every three which become extinct, or are transferred to the peerage of Great Britain, until the number is reduced to 100, when a peerage can be created for every one that dies out; the number is never to sink below 100. Irish non-representative Peers may sit in the Commons, but, by so doing, forfeit their rights as Peers; they cannot represent any Irish constituency.

Numbers.

Numbers. The numbers of the Upper House have varied much at different times, *e.g.* in Dec. 1299, ninety-nine barons were summoned, besides earls and spiritual Peers. The ranks of the peerage were so thinned by the wars of the Roses that only twenty-nine lay Peers were called to the first Parliament of Henry VII (1485). Under Henry VIII, we find as many as fifty-one temporal Peers; in this reign, after the dissolution of the monasteries, the number of spiritual Peers was reduced to twenty-six, at which number it has ever since remained (except during the period when the four Irish prelates were added, 1801-1869, p. 125). Many creations were made by the Stuarts, by whom peer-

ages were frequently sold. In Feb., 1649, the Commons voted that the House of Lords was 'useless and dangerous, and ought to be abolished,' and it did not meet again until the Restoration. In 1657, Cromwell, being authorised to create a new House, sent writs to sixty persons, who met in the following January; the Commons, however, refused to recognise them, and the House was dissolved, Feb. 4, 1658. In 1688, there were one hundred and fifty-eight lay Peers, and *temp.* Anne, one hundred and sixty-eight. The lavish creation of Peers by George III, drawn chiefly from the wealthy middle classes, introduced a new element into the Upper House, which became 'the stronghold not of blood, but of property'; peerages were frequently given (especially at the instigation of Lord North and Mr. Pitt) as rewards, and to strengthen the Court party; the number of peerages, including promotions, conferred during the reign was three hundred and eighty-eight. At the present day (1910) the House of Lords consists of 546 hereditary Peers of the United Kingdom, 5 life Peers, 26 archbishops and bishops, 16 Scotch representative Peers, and 28 Irish representative Peers: total, 621. There are, however, at present 12 minors in the Peerage of the United Kingdom and one case of contested succession, making the total voting strength 608.

Functions of the Lords.

Functions of
the Lords.

The House of Lords is a Court of Record¹ (p. 57, note), and, as such, has the power of inflicting fines and imprisonment. Its functions are—

Legislative. In theory, it has a co-ordinate power with the King and the House of Commons; practically, however, it does not initiate important measures, but confines itself to amending, and revising, Bills sent up from the Commons; it is thus a most useful check on hasty legislation, whilst, on

¹ The Lower House is probably not a Court of Record, although the position has often been claimed by it, *e. g.* in Floyd's Case (p. 119), and in the Case of Fortescue and Goodwin (p. 112), and has been asserted by Sir E. Coke in the words 'no question but this is a House of Record, and hath power of judicature in some cases.' The claim has latterly been virtually abandoned, although never strictly renounced. May, *Parl. Practice*, p. 89.

a matter on which the nation has really made up its mind, the Lords are compelled to yield, *e.g.* the Reform Bill, 1832. It has the sole power of initiating Bills relating to the peerage, but cannot initiate, or amend, a Money Bill.

Deliberative. *Deliberative and Consultative.* The Peers are the hereditary counsellors of the King, and, as such, have the individual right of access to the Sovereign (see *Seven Bishops' Case*, App. B). When Parliament is not sitting, they are the permanent counsellors of the Crown, and may give advice.

Judicial. *Judicial.* Derived from the judicial functions of the King's Council (p. 41). The House of Lords is the Supreme Court of Appeal from the Courts of Common Law, and also from the Equity Courts. In cases of impeachment (p. 150) the Commons act as accusers, the Lords as judges. The Lords have no jurisdiction as a Court of first instance, except in trying a member of their House for treason or felony [*Skinner v. East India Co.* (p. 120), *Floyd's Case* (p. 119)]. The Speaker of the House of Lords is the Lord Chancellor, who has, however, no authority, and no casting vote, in the exact sense of the term, though in cases of equal voting he gives his decision (in accordance with immemorial custom) in the negative; he is not excluded from the debate¹.

**House of
Commons.
Origin.**

HOUSE OF COMMONS.

Origin. The House of Commons was composed of representatives elected by the shires, the towns and the clergy. Its origin may be traced to the Anglo-Saxon system of local representation which was developed by the Norman and Angevin Kings and gradually based on the principle of election. In the 13th century, the Crown, instead of despatching officials to consult the representatives in their various localities, began to summon the latter to some central point and consult with them in person. Thus we gradually come to the Model Parliament of 1295, which marks the institution of the House of Commons. The process of development must now be traced in detail.

¹ The woolsack on which the Lord Chancellor sits is outside the limits of the House of Lords, so that a commoner may discharge the functions of the office.—Anson.

Representation. The earliest representation in England was ecclesiastical, and is to be traced in the Church Councils. Representation.
As used for fiscal and judicial purposes, it was familiar to the nation long before it was used politically; *e.g.* in the *shire moot* (p. 68) the hundreds were represented by the twelve lawful men, the boroughs by the reeve and four men.

In the *hundred moot* (p. 70) the townships were represented by the reeve, the priest, and four men, whilst the laws of Ethelred¹ appoint a representative committee of the twelve senior thegns to present criminals.

In 1070, the ancient laws and customs were drawn up from the declaration of twelve knights, elected for each county in the Shire Court. Early instances of Representation, 1070.

In 1085, the information for the compilation of Domesday (p. 195), was obtained from the oaths of the Sheriff and of representatives of each hundred and by the witness of the reeve, priest, and six villeins as representatives of each township². Domesday, 1085.

In 1164, 1166, 1176, and 1194, regulations were passed concerning representative juries.

In 1181, certain lawful men were, by the *Assize of Arms*, to swear to all who possess sixteen marks, or ten marks in chattels and rent³. Assize of Arms, 1181.

In 1188, in the Saladin tithe, four, or six, lawful men of the parish were to declare on oath the proper amount which ought to be paid by those who appear to have given less than their due⁴. Saladin Tithe, 1188.

In 1198, a carucage of 5*s.* was collected by officials, in conjunction with sworn representatives of the county as assessors⁵. Carucage, 1198.

By *Magna Carta* (c. 18), it was provided that the Assizes should be held for each county four times a year, before two justices and four knights, chosen in the County Court⁶. Magna Carta.

By clause 48 of the Charter, evil customs were to be enquired into by twelve sworn knights of each county, chosen in the County Court.

In 1231, twelve burgesses were to represent each borough in the County Court of Yorkshire before the itinerant justices⁷. 1231.

¹ Sel. Charters, 72.

⁴ Ib. 160.

² Ib. 86.

⁶ Ib. 299.

³ Ib. 155.

⁷ Ib. 358.

Political
Representa-
tion.

Political Representation.

By degrees, the local representatives were no longer consulted locally, but were summoned to a central point ;

Instances.

e.g. Aug. 4, 1213, the reeve, and four men, from each township in the King's demesne were summoned to the Council at St. Alban's, to consult about the restitution to be made to the bishops ; this was more than a financial question¹.

St. Alban's,
1213.

Oxford, 1213.

In Nov. 1213, four discreet knights were summoned to Oxford from each county, by writs directed to the Sheriffs, to consult with the King about State affairs² ; they were probably elected in the County Court.

From 1213 to 1254, although representation continues to be employed for purposes of assessment and the like, there is a break in the continuity of Parliamentary representation, owing to the minority of Henry III, and his personal government.

1254.

In 1254, however, two lawful and discreet knights of the shire were ordered to be elected in the County Courts, and to be sent to Westminster to confer about a grant³.

1261.

In 1261, three knights from each shire were summoned by the barons to St. Alban's, 'to treat of the common business of the kingdom' ; the King thereupon ordered them to repair to Windsor⁴.

1264.

In 1264, four knights from each shire were summoned to Parliament by Simon de Montfort⁵.

Parliament
of 1265.

In Dec. 1264, Simon de Montfort issued writs for a Parliament to meet in Jan. 1265, at London ; to it were summoned two knights from every shire, two citizens from each city, and two burgesses from each borough⁶. Simon de Montfort, by thus bringing together for the first time representatives from counties and towns, took an important step towards the formation of a representative Parliament⁷.

During the earlier years of Edward I's reign, representation

¹ Sel. Charters, 276.

² Ib. 287.

³ Ib. 376.

⁴ Ib. 405.

⁵ Ib. 412.

⁶ Writs were also sent to the Archbishop of York, 12 bishops, 107 inferior clergy, and 23 peers.

⁷ Sel. Charters, 415.

does not develop much. In 1273, four knights from every ¹²⁷³ shire, and four burghers from every borough, join the magnates in swearing allegiance to Edward ¹.

In 1275, the commonalty of the land assist in passing the ¹²⁷⁵ *Statute of Westminster* ².

In Jan. 1283, four knights from every county, and two ¹²⁸³ burghers from every town, were sent to York, or Northampton, '*ad audiendum et faciendum ea quæ sibi ex parte nostra faciemus ostendi*' ³.

In Sept. of the same year, two knights from the counties, and two representatives from London and twenty other towns, met at Acton Burnell ⁴.

In 1290, two knights only from each shire met at West- ¹²⁹⁰minster. In this Parliament the Statute *Quia Emptores* (p. 214) was passed before the Commons had arrived ⁵.

In 1294, four knights from each shire were summoned ⁶. ¹²⁹⁴

In 1295, in what has been called the *Model Parliament*, ⁷ we get a perfect representation of the three estates ⁷; from this date the representatives of the counties and boroughs attend regularly. ^{'Model' Parliament, 1295.}

At first, *temp.* Edward I, the idea existed, that 'what concerned all should be approved of by all,' and the various interests were fairly represented up to the time of the Tudors.

After that, representation grows worse and worse up to the Reform Bill of 1832; in the eighteenth century, the Parliament did not represent the nation at all, owing to the rotten and close boroughs, where the election was often in the hands of a few individuals, and to the fact that many large towns were entirely without members, *e.g.* Manchester and Leeds.

County Franchise.

County representation in Parliament sprang, as we have seen, from the practice of appointing representative knights

County Franchise.

¹ Sel. Charters, 429.

² Ib. 465.

³ Ib. 468.

⁴ Sel. Charters, 481.

⁵ Ib. 450.

⁶ Ib. 478; Stubbs, ii. 122.

⁷ Ib. 483 sq.

for local purposes; these local knights were elected by the whole County Court, at which all freeholders were present; at first the knights of the shire were elected, in the same way, in full County Court. In 1376, in answer to a petition, it was declared that they were to be elected by the assent of the whole county, and all who attended could vote¹. By degrees, the election fell into the hands of the Sheriff, or landowners; *e.g. temp.* Richard II, the King ordered the Sheriffs to return his candidates, and this was one of the charges brought against him at his deposition.

Parliament was 'packed' by John of Gaunt in 1377; and was again packed in 1397 by the King; the Sheriffs also sometimes returned their own candidates, instead of those elected by the County Court.

In 1406 (7 Hen. IV, c. 15), it was provided that elections should be in full County Court, and that the return was to be made by indentures; four years later, 11 Hen. IV, c. 1 provided that a Sheriff convicted of making a false return should be fined £100, whilst Justices of Assize were empowered to inquire into returns (repealed 1774).

In 1413 (1 Hen. V, c. 1), it was provided that the voter must be resident in the county, and in 1432, that the land on which the vote is claimed must be situated in the county; the necessity of residing in the county was abolished in 1774 (14 Geo. III, c. 58). In 1427, the election of knights of the shire was still further regulated, and in 1430 (8 Hen. VI, c. 7), was passed the first disfranchising statute², providing that county electors must be resident freeholders, worth at least 40s. a year; the amount could be determined by the Sheriff on oath. This statute was confirmed in 1445, and a complaint was made of the conduct of the Sheriffs. In

First Disfranchising Statute, 1430.

¹ There are instances of some classes of freeholders petitioning to be exempted from the burden of election, which proves that they had a right to the franchise.

² This statute was intended 'to secure orderly elections, and to impose a qualification which should exclude the casual crowd attending the County Court.' 'It does not seem to have altered the character of the representation.' Anson, i. 98.

1653, the *Instrument of Government* conferred the county franchise on persons possessing real or personal property worth £200, but no further alteration was made until 1832. The *Reform Act* of that year (2 & 3 Will. IV, c. 45), added to the 40s. freeholders and occupiers, £10 freeholders if not occupiers, £10 copyholders, £10 leaseholders for sixty years, £50 leaseholders for twenty years, and occupiers of the yearly rental of £50. Reform Act,
1832.

By the *Reform Act* of 1867 (30 & 31 Vic. c. 102), the county franchise was given to occupiers of £12 rateable value, £5 freeholders without occupation, £5 copyholders, and £5 leaseholders for sixty years, or £50 leaseholders for twenty years. To enjoy the franchise it is necessary to be placed on the register, for which certain qualifications of residence and rate-paying are required. Reform Act,
1867.

By the *Representation of the People Act*, 1884 (48 Vic. c. 3), the property qualifications for the county franchise remain the same; the occupation qualification is reduced to £10. Representa-
tion of
People Act,
1884.

Borough Franchise.

At first the boroughs were, as a rule, indifferent to the honour of returning members, whilst the writs were sent to the Sheriff in the County Court, not, as since 1853, to the Returning Officer; the members were nominated in the borough assembly, and the return was sent to the Sheriff in the County Court, where the election was formally made, and the returns sent in with those of the knights of the shire. Borough
Franchise.

In London the election was at first made by the Mayor, Aldermen, and four, or six, men from each ward; from 1375 to 1485, by the Common Councilmen, and subsequently by the liverymen of the City Companies. In some of the towns which were regarded as counties, *e.g.* York, Nottingham, and Bristol, the franchise was enjoyed by the 40s. freeholders.

In the towns generally, the franchise was variously regulated; *e.g.* it belonged

(1) To the holders of particular tenements on *burgage tenure* (p. 211); or

(2) To all freemen of the borough, or gild (p. 262); or

(3) To all householders paying *scot and lot*, *i. e.* the local rates; or

(4) To corporations (p. 269)¹.

In 1413 (1 Hen. V, c. 1) residence was required in order to obtain a vote; this provision was however evaded, and the statute was repealed in 1774 (14 Geo. III, c. 58). In 1445 (23 Hen. VI, c. 14), the returns were to be made by indenture as in the counties.

With the granting of new charters by the Tudors, and by Charles II, care was taken so to vest the franchise in close bodies and corporations that Court nominees only were returned. Great abuses arose in consequence, *e. g.* the franchise in Bath was exercised only by the Mayor, ten Aldermen, and twenty-four Common Councilmen; in Buckingham, by the Bailiff and twelve burgesses; in St. Michael, by all inhabitants paying *scot and lot* (these were seven in number); in Tavistock, by all freeholders (seven in number).

Reform Act,
1832.

By the *Reform Act* of 1832, the old franchise qualifications were abolished, with the exception of the 40s. qualification in towns which were counties, and the qualification arising from being a freeman of a chartered town, if such freeman-ship would have given a vote before the *Reform Act* of 1832; the borough franchise was given to all owners, or occupiers, of houses of the annual value of £10, subject to certain conditions of residence, and payment of rates.

Reform Act,
1867.

By the *Reform Act* of 1867, it was extended to all householders rated to the poor rates, resident one year, and on the register; and to all lodgers occupying unfurnished lodgings of the annual value of £10, if they remained in the same lodgings for twelve months.

Lodger
Franchise.

By an Act of 1878 (41 & 42 Vic. c. 26), a lodger may change his rooms, provided he remains in the same house; and may be a joint occupier, if the total rent is of the value of £10 each.

The *Representation of the People Act*, 1884 (48 Vic. c. 3),

¹ For an account of the varieties in these different qualifications, see Anson, i. 99-104, and Stubbs, iii. 413-421.

enacts a uniform household franchise, and lodger franchise, for all counties and boroughs, and assimilates the occupation qualification in counties and boroughs, fixing it at £10 annual value. It is estimated that by this Act more than two million persons, chiefly of the agricultural and labouring classes, have been enfranchised.

Composition of the House.

Knights of the Shire. First summoned to Parliament in 1213 (p. 130), although they had been frequently elected before that for local purposes; for some time they sat and granted aids with the barons, with whom they were more closely connected than with the burgesses, many of them being the younger sons of nobles. It seems quite clear that they represented the freeholders of the county (by whom they were elected in the County Court), and not merely the lesser barons¹. Though granting aids with the barons, the knights are recorded as voting apart from them in 1332, and they sometimes joined the burgesses in petitions; gradually they drew off from the barons, and joined the burgesses, with whom they sat in 1333, and with whom they were completely fused by 1347. The reasons for their union with the burgesses were—

Composition
of the House.
Knights of
the Shire.

Their union
with the
Burgesses.

(a) Their common representative character; both bodies appeared, not in their own personal right, but as delegates.

(b) Common business in the County Court; of which the citizens were as much members as the landed proprietors.

(c) Common form of summons; through the Sheriff.

(d) Common powers; both bodies were summoned, not to initiate national measures, but to consent to measures already decided on by the nobles.

(e) Community of local and commercial interests.

The fusion of the county and borough element was most important, inasmuch as it brought great strength and influence to the Lower House.

From 1322 (16 Ed. II) up to the end of Elizabeth's reign, knights of the shire received 4s. a day as wages; these wages

¹ Const. Essays, pp. 188-192.

were regulated by Acts of 1388, and 1544 (35 Hen. VIII, c. 11). They were not abolished until the present reign.

In 1372, lawyers were declared ineligible to sit for counties (repealed 1871, 34 & 35 Vic. c. 116); as were Sheriffs during their term of office.

In 1382, it was ordered that knights refusing to attend Parliament should be fined.

By a Statute of 1413 (1 Hen. V, c. 1), confirmed 1430, knights must be resident; repealed 1774 (14 Geo. III, c. 58).

In 1445, (23 Hen. VI, c. 14) it was provided that knights must be of gentle birth, and must be able to take up their knighthood, *i. e.* must hold land to the annual value of £20 (=£300 now).

In 1710, a Statute was passed (9 Anne, c. 5) to exclude rich merchants from the House, making it necessary for county members to have a property qualification of £600 a year from freehold, or copyhold; repealed 1858, by 21 & 22 Vic. c. 26.

Burgesses.

Burgesses. First summoned to the Parliament of Jan. 1265. In 1322, their wages were fixed at 2s. a day, regulated in 1544. By 6 Hen. VIII, c. 16, 1514-15, members leaving Parliament, without permission, before the end of a session, were to forfeit their wages. In 1710 (9 Anne, c. 5, repealed 1858) they were to have a property qualification of £300 a year (*supra*).

Numbers.

Numbers.

In the 'Model' Parliament of 1295, 74 knights and 332 burgesses sat¹; the numbers of the latter class fluctuated considerably, as the Sheriffs frequently omitted to send on the writs they had received to the boroughs, which did not wish to incur the burden of returning members; or to boroughs from which, for some fraudulent reason, they desired to withhold the writ. Whilst some boroughs obtained dispensations from enfranchisement, others were frequently, especially in later times, created for court nominees by royal charter; the last instance of the creation of a Parliamentary

¹ Stubbs, ii. 235.

borough by royal charter was that of Newark, 1673. A debate was held on the subject in the House, and it was decided that such a creation was legal. *Temp.* James I, the Commons decided that a borough, which had once been represented in Parliament, was ever after entitled to a writ. In 1529, 236 burgesses sat. In 1536, Henry enfranchised Wales (the only previous instances of Welsh representation had been in 1322, and in 1327); and in 1544, the County Palatine of Chester sent representatives for the first time. Durham was not represented until 1675¹. Edward VI created 14 new boroughs and revived the representation of 10 others. Mary and Elizabeth added respectively 21 and 60 members, the latter creating 8 new boroughs in a single year (1563); James I added 12 (of which one, Bewdley, returned one member), and the Universities (27 members). Under Charles II, the number of the Lower House was 513, made up of 92 county members, 417 borough members, and 4 University members; this was subsequently increased by 45 Scotch members, added in 1707, and 100 Irish, added in 1801.

Last creation
of a Borough
by Royal
Charter,
1673.

By the *Reform Act* of 1832 (2 & 3 Wm. IV, cc. 45, 65, 88), the number of members for English and Welsh constituencies was reduced to 500, while Scotland sent 53 members, and Ireland 105. From 1868 to 1885 the numbers were—England and Wales 493, Scotland 60, Ireland 105.

The *Redistribution of Seats Act* of 1885 (48 & 49 Vic. c. 23) has deprived of their members 79 English, 22 Irish, and 2 Scotch boroughs; one English county (Rutland) has lost one member, and 36 English boroughs, and 2 Irish, have lost one member apiece. Unlike previous acts, which were based on the principle of local representation, it attempted to distribute seats according to the number of population; thus, towns with a population of more than 15,000, and less than 50,000, return one member; those with more than 50,000,

¹ The first writ for Durham county was issued in May, 1675, and for the city in Feb. 1678.

and less than 165,000, two members; for still greater populations, every extra 50,000 inhabitants secures an additional member.

The number of members of the present House of Commons (1910) is 670, distributed as follows—

England. County members 234, borough members 164, London members 62, Universities 5; total, 465 seats.

Wales. County members 19, borough members 11; total, 30 seats.

Scotland. County members 39, members for burghs 31, Universities 2; total, 72 seats.

Ireland. County members 85, borough members 16, Universities 2; total, 103 seats.

Persons disqualified as Members.

Disqualifica-
tions for
sitting.

(1) *Aliens*, unless naturalised, 33 & 34 Vic. c. 14, s. 2, 1870 (p. 235).

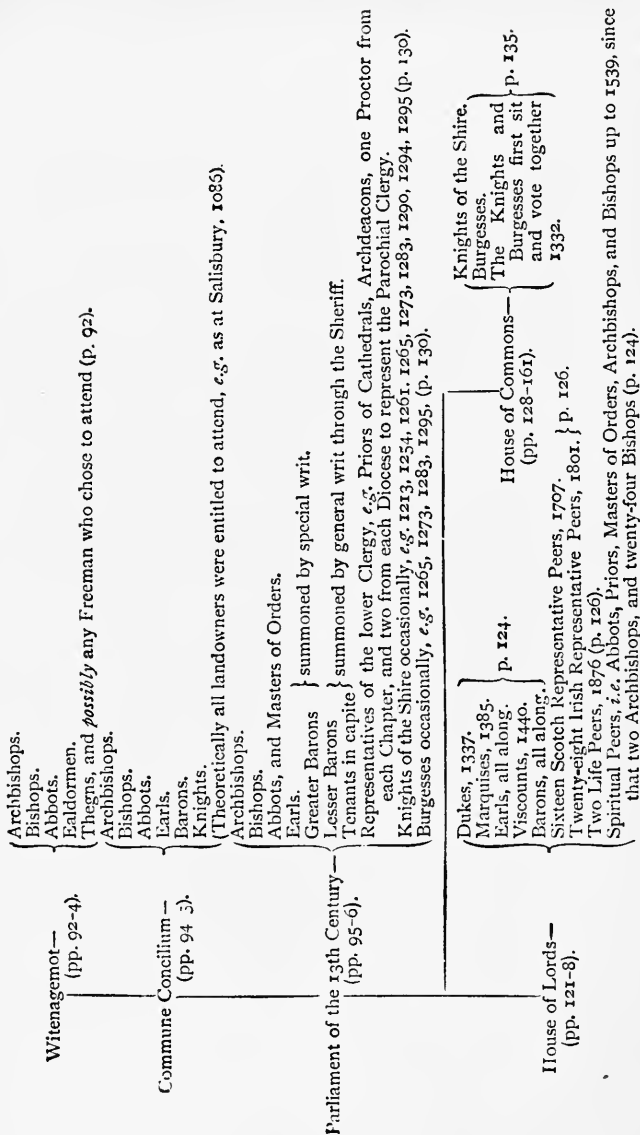
(2) *Minors* (7 & 8 Wm. III, c. 25, s. 7, 1696). The disqualification of minority has sometimes been evaded, *e.g.* Mr. Fox sat for Midhurst when only nineteen, 1768.

(3) *Clerks in Orders*, *e.g.* when Mr. Horne Tooke was returned for Old Sarum in 1801, a special Act was passed (41 Geo. III, c. 63) to render clergymen ineligible in future. Mr. Horne Tooke sat until the dissolution in 1802. This Act disqualified clergy of the Established Church, and ministers of the Church of Scotland; ordination after election voids a seat immediately. Roman Catholic priests are forbidden to serve as members of the House of Commons by the *Roman Catholic Relief Act* (10 Geo. IV, c. 7, s. 9). By the *Clerical Disabilities Act* of 1870 (33 & 34 Vic. c. 91) any clergyman of the Church of England may relinquish his Orders, and thus render himself eligible for election.

4. *Judges* (including the Master of the Rolls since 1875).

5. *Holders of pensions* (with the exception of diplomatic and civil service pensions), *government contracts, or offices created since Oct. 25, 1705* (p. 143). By the Act of 1707

THE CENTRAL ASSEMBLY.



NOTE.—The original qualification for summons to Parliament was *tenure by barony*; temp. Henry III, *baronies by writ*, at the King's pleasure, began to supersede tenure and; by 1295, *tenure alone does not create a peerage*. 1387, peerages are first created by Letters Patent. They are now created by Letters Patent followed by a writ of summons (p. 123).

(6 Anne, c. 7), if a member accepts an office created before 1705, he has to offer himself for re-election. This does not apply to naval or military commissions (sec. 28).

6. *Insane persons.* In proved cases of insanity, the custom is for the seat to be declared vacant by the House.

7. *Bankrupts* (1869). A member made bankrupt vacates his seat, unless the bankruptcy is at an end within six months. Bankruptcy is not a bar to election, but the bankrupt can neither sit nor vote unless he obtains an annulment of adjudication in bankruptcy, or a grant of discharge together with a certificate stating that misconduct was not the cause of his bankruptcy (46 & 47 Vic. c. 52, § 32).

8. *Persons convicted of treason, or felony, or attainted, e.g.* Smith O'Brien 1848, O'Donovan Rossa 1870, John Mitchell 1875, 'Colonel' Arthur Lynch 1902. This disqualification is removed by serving the sentence, or by a pardon under the Great Seal.

9. *Peers of England, and Scotland, and Irish representative Peers.* Irish non-representative Peers may sit for any constituency in Great Britain, but not for Irish constituencies; e.g. Lord Castlereagh, on becoming Marquis of Londonderry, lost his seat for County Down, but was at once returned for an English constituency.

The eldest son of a Peer can sit in the Commons; the first instance is the son of the Earl of Bedford, 1549.

10. *Persons convicted of Corrupt Practices in connection with Parliamentary elections* are disqualified from sitting at any period for the place where the bribery took place, and for seven years as member for any other place (46 & 47 Vic. c. 51).

11. *Women.* At the election of 1885, the Returning Officer of Camberwell refused to receive Miss Helen Taylor's nomination paper. (See *Law Journal*, Nov. 28, 1885).

12. *Persons not taking the Oath of Allegiance, or affirming;* e.g. the House of Commons excluded Mr. Bradlaugh in 1880, on the ground that having, avowedly, no religious belief he could not take the oath, and the Courts held that he was not

entitled to affirm instead¹. The *Oaths Act* of 1888 (51 & 52 Vic. c. 46) allows an affirmation to be substituted for an oath on all occasions.

There were formerly other disqualifications, such as *non-residence*, repealed 1774 (14 Geo. III, c. 58); and *lack of property*, repealed 1858 (21 & 22 Vic. c. 26). See also *Roman Catholics*, admitted 1829 (10 Geo. IV, c. 7); and *Jews*, admitted 1858 (21 & 22 Vic. c. 49). Sheriffs could not sit for their own shires, and appointing obnoxious members as Sheriffs was a method occasionally employed by the Crown to exclude its enemies from Parliament; e.g. by Charles I, Feb. 1626. In 1372, Edward III forbade lawyers to sit in Parliament, and this Act, though long obsolete, was not formally repealed until 1871 (34 & 35 Vic. c. 116); in 1404 they were entirely excluded from the 'Unlearned Parliament' (p. 160), whilst up to a very recent date, lawyers were not supposed to sit as knights of the shire, though, as a matter of fact, they frequently did sit for counties.

Oaths to be taken by Members. Since 1534 it has been usual for members of both Houses to take the Oath of Allegiance, and since 1558, the Oath of Supremacy.

In 1563, by 5 Eliz. c. 1, sec. 16, the Oath of Supremacy had to be taken by all members of the Lower House; and in 1610, by 7 Jac. I, c. 6, sec. 8, the Oath of Allegiance, both before the Lord Steward. In 1678, by 30 Car. II, c. 1, members of both Houses had to take the oaths before taking their seat; since that date there have been alterations in the form of the oath, and in 1858 (21 & 22 Vic. c. 48), a single Oath of 'True Allegiance' took the place of the Oaths of Supremacy and Allegiance. By 3 & 4 Will. IV, c. 49, Quakers, Moravians, and Separatists were allowed to 'affirm' instead of taking the oath, and in 1858 a special form was also provided for Jews. Finally, in 1888, the Oaths Act (51 & 52

¹ Mr. Bradlaugh was re-elected for Northampton in 1886. The Speaker refused to allow a motion to be made restraining him from taking the Oath. He accordingly took it, and sat and voted, subject to the risk that the law officers of the Crown might proceed against him under the Parliamentary Oaths Act of 1866. Anson, i. 86.

Vic. c. 46) allows any person to make an affirmation who states that he has no religious belief or that he has conscientious objections to taking an oath. If a member fails to take the oath, or to make an affirmation, he enjoys all the rights of a member except 'sitting within the bar of the House, taking part in its debates, and voting in its divisions'.¹ If he does any one of these three, he is liable to a fine of £500.

Bribery of
Members.

Bribery of Members. One of the main results of the Revolution had been to make the House of Commons the predominant factor in the constitution. It could grant or refuse supplies, and maintain or disband the army. The Crown could no longer control its proceedings by the methods in vogue under the Tudors and early Stuarts, and yet government could not be carried on without its continuous support. An assembly which could not be terrified had to be cajoled, and throughout the greater part of the 18th century, the Crown and its ministers obtained a working majority by systematic and unblushing bribery. For a long time all direct attempts to check this practice proved futile, and it is only owing to the growth of various political interests, the reform of the representative system, and the publicity of debate, that bribery has ceased to be a prominent feature of political life.

Direct.

(a) *Direct bribery* by means of money, described as 'secret service' money, was first employed by Lord Danby *temp.* Charles II; it was continued under William III, Anne, and the Hanoverians, and was reduced to a regular system by Walpole and Henry Pelham. Under George III, who encouraged the practice, the abuse increased, and in 1762, during Lord Bute's ministry, £25,000 was spent in one day in buying the votes of members; bribery was continued by Lord North, but ceased after the American war.

Indirect.

(b) *Indirect bribery*, by giving pensions, places, and titles²,

¹ Anson, i. 60.

² Titles were frequently conferred during the reign of George III, especially by Pitt, in return for the political interest of borough-owners.

was much employed by William III. In 1693, the Commons passed a Bill to the effect that no member subsequently elected could accept any office under the Crown. This was rejected by the Lords, but passed by them in the following year; William, however, refused the royal assent. In 1701, the *Act of Settlement* provided that 'no person who has an office, or place of profit, under the King, or receives a pension from the Crown, shall be capable of serving as a member of the House of Commons¹.' This was repealed in 1705 (4 Anne, c. 8), and by 6 Anne, c. 7 (1707) it was enacted that no one holding an office created after October 25, 1705, could sit, whilst members accepting an office which had existed before, were to vacate their seats, and offer themselves for re-election. In 1742 (15 Geo. II, c. 22), the *Place Bill*, passed after great opposition, disqualified clerks and many other Government officials, and in 1782 the number of places available for members was still further reduced by Lord Rockingham's *Civil List Act* (22 Geo. III, c. 82). Subsequently indirect bribery was carried on by State loans and lotteries, shares in which were given away to members, whilst in 1782, Lord Rockingham found it necessary to pass the *Contractors' Act* (22 Geo. III, c. 45) to disqualify Government contractors.

Act of Settlement, 1701.

Place Bill, 1742.

Civil List Act, 1782.

Contractors Act, 1782.

Bribery at Elections. The first known instance is that of Thomas Long, who, in 1571, bribed the borough of Westbury to return him (p. 117). Bribery of electors was first systematised *temp.* Charles II, and increased rapidly, owing in great measure to the prizes to be obtained in Parliament. The *Bill of Rights*, in 1689, declared that the election of members ought to be free, and Acts were passed to check the abuse in 1695, and 1729 (2 Geo. II, c. 24), but it increased to an enormous extent under George III. The sale of seats was effected quite openly; if the voters were independent, they

Bribery of Electors. Westbury, 1571.

Bribery Acts, 1695, 1729.

¹ This provision in the *Act of Settlement* against place-holders never was in force, as the Act itself did not come into operation till after Anne's death; so in point of fact, the place-holders did sit in the period between 1701-1706.

were bribed individually, if the borough was a 'nomination' borough, or in the hands of the Corporation, it was bought outright; there were regular borough brokers, the price of a seat ranging from £2,500 to £9,000. In 1768, the Mayor and ten Aldermen of Oxford were imprisoned for offering the seat of Oxford for sale for £5,670. Bribery at county elections was also notorious; e.g. in 1768, Cumberland and Westmoreland cost £40,000, and in 1779, Gloucestershire cost £30,000. The growth of the abuse was due to the 'Nabobs,' or Indian merchants (who had amassed large fortunes, and came home with the idea of buying a seat), and to the encouragement of the King. In 1762, bribery was declared punishable by fine, and subsequent Bills were proposed to remedy the evil in 1768, 1782, and 1786, but were not passed. In 1782, the revenue officers, who controlled seventy elections, were disfranchised, and in 1809 the sale of seats was checked by an Act (42 Geo. III, c. 118). Bribery¹ however continued rife until the *Reform Act* of 1832 was passed.

Disfranchise-
ment of the
Revenue
Officers,
1782.

Attempts to
introduce
Reform Bills,
1745, 1770.
Parlia-
mentary
Reform.

Reform in the representation of Parliament had been advocated as early as 1745, by *Sir Francis Dashwood*; and in 1770, *Lord Chatham* proposed that a third member should be added to each county, to counterbalance the corruption of the boroughs.

Wilkes, 1776.

In 1776, *Wilkes* proposed to disfranchise the rotten boroughs, to extend the county franchise, and to give members to certain unrepresented towns, such as Manchester and Leeds. No division.

Duke of
Richmond,
1780.

In 1780, the *Duke of Richmond* brought in a motion for annual Parliaments, universal suffrage, and equal electoral districts. No division.

Mr. Pitt,
1783.

In 1783, *Mr. Pitt* proposed to disfranchise corrupt

¹ Laws were passed against bribery in 1841, 1852, 1854, 1858, and 1863. By the *Corrupt and Illegal Practices Prevention Act* of 1883, a candidate guilty of corrupt practices is incapacitated for ever representing the constituency in which the offence took place, and may not be elected for any other for seven years. Persons convicted of bribery are liable to a fine of £100 and a year's imprisonment.

boroughs, and to increase county and metropolitan members. Lost by 293 to 149.

In 1785, *Mr. Pitt* again proposed to amend the representation by redistributing the seats of the rotten boroughs amongst the counties, and by extending the county franchise to copyholders. The owners of the condemned boroughs were to be compensated by the State. Lost by 248 to 174.

In 1790, *Mr. Flood* moved for the addition of one hundred members, to be elected by resident householders of counties. No division. Mr. Flood,
1790.

In 1793, and 1797, *Mr. Grey* moved to increase the number of county members, to extend county franchise, and to have uniform household franchise in boroughs. Lost by 232 to 41, and by 256 to 91. Mr. Grey,
1793, 1797.

In 1809, 1817, 1818, 1819, *Sir Francis Burdett* moved for reform, and proposed electoral districts, annual Parliaments, and universal suffrage. All lost by large majorities. Sir F. Burdett, 1809,
1817, 1818,
1819.

In 1820, *Lord John Russell* moved to disfranchise the corrupt boroughs, and to give the seats to large towns, and proposed means to check corruption; he brought in other motions on the subject in 1821, 1822, 1823, 1826, and 1830, whilst in 1829 Lord Blandford proposed a measure. Lord John
Russell, 1820.

In March, 1831, the First Reform Bill, a measure of *Lord Grey's* ministry, was brought forward by Lord John Russell; its provisions were to disfranchise 60 small boroughs, to take away one member from 47 others, and to give the seats to certain counties and towns. This Bill was lost by a sudden dissolution. First Reform
Bill, 1831.

In the new Parliament which met in June, 1831, the Bill was passed (Sept.) by 345 to 236, but was rejected by the Lords by 199 to 158. Second
Reform Bill.
Sept. 1831.

In December of the same year a Third Reform Bill was brought in, and passed, March 1832, by 355 to 239; in June it passed the Lords (who had been intimidated by the threat of a fresh creation of peers) by 106 to 22. Third
Reform Bill,
passed 1832.

By the *Reform Act* of 1832, fifty-six rotten boroughs were disfranchised, thirty boroughs lost one member, and Its provisions.

one constituency (the united boroughs of Wycombe and Melcombe-Regis) lost two members; twenty-two large towns had two members given them, twenty had one member; the number of county members was increased from 94 to 159. A £10 franchise was given to the boroughs, and the county franchise was extended to copyholders and leaseholders.

Reform Bill
1867.

Further Reform Bills were introduced by the Earl of Derby in 1859, and by Lord John Russell in 1852, 1854 and 1860, but they failed to become law, mainly owing to the unwillingness of the middle classes to share their political privileges with the artisans and working men. However, in 1867 the Conservative ministry of Lord Derby succeeded in passing a Reform Bill, which gave an additional member to Leeds, Liverpool, Birmingham and Manchester, created 10 new boroughs, and restricted 38 existing ones to one member. The county franchise was reduced to £12, and a lodger franchise was added; a household franchise of all ratepayers on the register was created, and the franchise was given to all lodgers occupying for a year lodgings of the annual value of £10. One great result of the Act was to enfranchise skilled and to some extent, unskilled, labour, and thus to deprive the middle classes of that monopoly of political influence which they had enjoyed since the Reform Act of 1832. (For *Representation of the People Act, 1884*, and *Redistribution of Seats Act, 1885*, see pp. 133, 137.)

Ballot.

The **Ballot**. As early as 1641 the lesser gentry in the Scotch Parliament asked for permission to give their votes by ballot¹, and in 1646 the Presbyterians made an unsuccessful attempt to introduce the system into the English House of Commons². Vote by ballot for the election of members of Parliament seems to have been first proposed in the reign of William III³, but nothing more is heard of it till a century later, when it was advocated by Sir Francis Burdett in 1818, and Mr. O'Connell in 1830.

¹ Gardiner, *Hist. of England, 1603-42*, x. 21.

² *Ibid.* Great Civil War, ii. 529. ³ *Dict. of Eng. Hist. art. Ballot.*

In 1833, Mr. Grote's motion for its adoption was rejected by 211 to 106, and his subsequent motions in 1835, 1836, 1838, and 1839 were all lost by large majorities. The Ballot, which was one of the five points of the 'Peoples' Charter' 1838-48 (see *Chartists*, p. 248), was again proposed by Mr. Ward (1842); Mr. Hume (1848), and Mr. Berkeley (1849, 1852, 1860). A committee, appointed to inquire into elections (1869), recommended its adoption, and in 1871 a Ballot Bill was passed by the Commons, and thrown out by the Lords. It was, however, passed in the following year (35 & 36 Vic. c. 33). Ballot Act
1872.

Party Government. Parties¹ may be traced as far back as the reign of Elizabeth, when the Puritans appear as a body of men holding the same views on definite religious and political questions, and trying to secure their establishment in opposition to the wishes of the Queen and her ministers. Definite *Parliamentary parties* date from the Long Parliament of 1641, which contained men 'opposed to one another in the House of Commons . . . on a great principle of action, which constituted a bond between those who took one side or the other².' The opponents of arbitrary government in Church and State became known as Roundheads, while the supporters of the King received the name of Cavaliers. Party
Government.
Puritans.

At the Restoration, the Cavaliers were entirely in the ascendant, but by the time of the dispute on the Exclusion Bill, 1679, the other party had revived, and the two opposing factions obtained the names of '*Petitioners*,' *i. e.* those who petitioned the King to summon a new Parliament as soon as possible, and '*Abhorrrers*,' who were the supporters of the Crown, and expressed their abhorrence of the petitions, as calculated to coerce the King. Shortly afterwards these two parties received the names of Whigs Roundheads
Cavaliers.
Petitioners.
Abhorrrers.
Whigs and
Tories.

¹ Party, is a body of men united for promoting by their joint endeavours the national interest, upon some particular principle in which they are all agreed.—Burke, Present Discontents.

² 'A party is a body of citizens who agree in desiring to see the business of legislation and government carried on in a particular way.'—Raleigh, Elementary Politics, p. 78.

³ Gardiner, Hist. of England, ix. 281.

and Tories. The term Whigs¹, or Whiggamores, had been applied to the Scottish Covenanters in 1648, and was 'now transferred to those English politicians who showed a disposition to oppose the Court, and to treat Protestant Nonconformists with indulgence².' The Tories were so called from the name of certain Irish robbers, 'because,' says May³, 'the supporters of the Duke of York, as Catholics, were assumed to be Irishmen.' Roughly speaking, the Tories were the upholders of absolute monarchy, the Whigs desired a monarchy limited by Parliament. 'To a Tory the Constitution, inasmuch as it was the Constitution, was an ultimate point, beyond which he never looked, and from which he thought it impossible to swerve; whereas a Whig deemed all forms of Government subservient to the public good, and therefore liable to change when they should cease to promote that object⁴.' After the Revolution of 1688, the more extreme Tories developed into Jacobites, who continued to disturb the country until after the crushing of the rebellion in 1745. After that, the Tory party became the supporters of the King of England. During this period, remarks Sir T. Erskine May, 'the Whigs, installed as rulers, had been engaged, for more than forty years after the death of Anne, in consolidating the power and influence of the Crown, in connection with Parliamentary government. The Tories, in opposition, had been constrained to renounce the untenable doctrines of their party, and to recognise the lawful rights of Parliament and the people⁵.' Party government, however, cannot be said to have been established until the reign of George I; *e.g.* although William III, between 1693 and 1696, chose his ministers from the Whigs, the ministry, from their unity, being popularly known as 'the Junto,' yet, on the loss of their majority at the election of 1698, they refused to resign. By degrees, however, the present ministerial system became established,

¹ Another derivation of Whig is a Lowland term for sour whey.

² Macaulay's Hist. i. 257.

³ ii. 135, note 2.

⁴ Hallam, iii. 200.

⁵ ii. 137.

by which, as the nation, and consequently the Parliament, is divided broadly into two great parties, one of which must have the control of the executive, the ministers are bound to be of the same party as the majority in the House of Commons, and to stand or fall together. The great advantage of party government lies in the 'Opposition,' which forms a safeguard against any infringement of liberty. To trace the history of party during the latter half of the eighteenth and during the present century, would be to write the whole Parliamentary history of the period. (See *Cabinet and Ministry*, (pp. 46-8 sq.)

The Opposi-
tion.

Coalition Ministries. It has occasionally been thought necessary for the two parties to combine, and to form Coalition Ministries, either in opposition to the influence of the Crown or Court party, or because neither party by itself is strong enough to form a government, and therefore the two parties agree to sink for a time their minor differences to carry out some important line of policy on which they are at one. In 1744, Henry Pelham, whose policy was 'to conciliate and unite under himself every man whose displeasure could be feared,' formed a Coalition Ministry, which lasted until his death in 1754. This ministry, which was a successful one, is known, from the variety of its composition, as the *Broad-bottomed Administration*. In 1873, after the death of Lord Rockingham (1782), a coalition was formed by the parties of Lord North and Mr. Fox (who had been bitter enemies), against the government of Lord Shelburne, who was forced to resign, Feb. 21, on a question relating to the conduct of the American War. The King's policy of dividing and weakening the parties had made this coalition necessary. It was headed by the Duke of Portland; the King, however, found himself strong enough to dismiss it in December of the same year, on the defeat of Fox's India Bill in the Lords. As the coalition had a large majority in the Commons, a crisis was imminent, and was only obviated by the genius of Pitt, who in a few days formed a ministry which was practically

Coalition
Ministries.

Broad-
bottomed
Administra-
tion, 1744-54.

Coalition of
1783.

a coalition. On the dissolution of Parliament in March, 1784, 160 of the supporters of the coalition lost their seats¹, and Pitt obtained a large majority.

Coalition of
1806.

In 1806, the Whigs, under Fox, formed a coalition with Lord Grenville and Windham, and with Lord Sidmouth and the King's party. This ministry was known as the ministry of 'all the Talents.' 'It was,' says Sir T. Erskine May, 'a coalition between men as widely opposed in political sentiments and connections as Mr. Fox and Lord North had been twenty-three years before, but it escaped the reproaches to which that more celebrated coalition had fallen a victim².' The ministry fell in 1807, in consequence of its support of a Catholic Relief Bill.

Coalition of
1852.

In 1852, a Coalition Ministry of the Whigs and the followers of Sir Robert Peel was formed under Lord Aberdeen; it fell in January, 1855, owing in great measure to the charge of mismanaging the Crimean war, brought against it by Lord Derby.

Impeach-
ment.

Impeachment is the prosecution of an offender by the Commons in Parliament, before the Lords, who act as judges, the judicial power of Parliament having been declared to lie with the Upper House alone; (1399 p. 128). The Commons deliver the accusation at the bar of the Lords, adducing evidence in support of their case, which is conducted by managers; articles of impeachment are drawn up, and the trial takes place in Westminster Hall before the Lords, acting as judges, and presided over, in the case of the trial of a peer, by the Lord High Steward (p. 258), in the case of a Commoner, by the Lord Chancellor; the Lords pronounce the accused 'guilty' or 'not guilty,' but cannot give judgment unless the Commons demand it. By omitting to demand judgment, the Lower House can exercise an indirect power of pardon. Impeachment has been used by the Commons chiefly as a means of controlling the actions of the ministers of the Crown. A peer may be impeached for any offence, but until 1689 it was uncertain whether

¹ They were known as 'Fox's Martyrs.'

² ii. 178.

a commoner could be impeached for a capital offence (see *Fitzharris' case*, p. 155). The first instance of impeachment was that of Lords *Latimer* and *Neville* (the Chamberlain and Steward), and certain commoners (chief of whom was one *Richard Lyons*, a trusted agent of the King), by the Good Parliament, 1376. The accusation was that of having bought up the King's debts, and of having used various means of extortion; they were all convicted, and sentenced to imprisonment, fine, and banishment. This action on the part of the Commons established their right of impeaching the King's ministers for conduct prejudicial to the welfare of the State.

Lords
Latimer and
Neville,
1376.

The next instance was *Michael de la Pole, Earl of Suffolk*, the Chancellor, 1386, who was charged with misappropriation of revenue to his own use, with having lost the town of Ghent by his negligence, and with various acts of maladministration; he was condemned to imprisonment and forfeiture. His impeachment was due to political causes; 'it is quite clear,' remarks Dr. Stubbs, 'that in his administrative capacity he was equitably entitled to acquittal, and that it was not for the reasons alleged that his condemnation was demanded¹.' This impeachment clearly established the fact that ministers are responsible to the nation as well as to the King.

Earl of
Suffolk,
1386.

Other important instances are—

1388. The judges, who, in answer to Richard, declared the Commission of Reform illegal, 1387, were impeached and exiled. At the same time, Sir Simon Burley, Sir James Berners, Sir John Salisbury, and Sir John de Beauchamp of Holt, were impeached for treason, and executed.

Sir Simon
Burley, &c.,
1388.

In February, 1450, *William de la Pole, Duke of Suffolk*, being impeached, threw himself on the King's mercy, and was exiled for five years.

Duke of
Suffolk,
1450.

From this time, until the reign of James I, no regular instance of impeachment occurs (although the proceedings against *Wolsey* in 1529, are somewhat analogous), owing to the subserviency of Parliament under the Tudors, and to the preference shown for *Bills of Attainder* (p. 157).

¹ ii. 475.

Mompesson
and Mitchell,
1621.

In 1621, however, *Sir Giles Mompesson* and *Sir Francis Mitchell* were impeached for exactions and frauds connected with certain monopolies held by them, and were condemned to fine and imprisonment (p. 201).

Bacon, 1621.

In the same year, several other impeachments took place, the most important being that of *Lord Chancellor Bacon*, which re-asserted the right of the Commons to hold ministers responsible for their acts. He was charged with receiving bribes, found guilty, and sentenced to imprisonment, and to pay a fine of £40,000.

Middlesex,
1624.

In 1624, another minister, *Lionel Cranfield, Earl of Middlesex*, Lord Treasurer, was impeached for bribery, and convicted. His impeachment is noticeable as having been brought about by Prince Charles, and the Duke of Buckingham, from motives of private enmity; it finally confirmed the constitutional right of the Commons to impeach ministers of the Crown. From this time forth, owing to the bitter complaint of Middlesex, counsel were allowed to aid the accused.

Bucking-
ham, 1626.

In 1626, *George Villiers, Duke of Buckingham*, was impeached for accumulating offices, lending ships to be used against the Huguenots, and administering medicine to the late King. He was saved by the King dissolving Parliament.

Dr. Main-
waring, 1628.

In 1628, *Dr. Mainwaring* was impeached for preaching in favour of the King's absolutism, and power to levy illegal taxes. He was condemned to a heavy fine, and imprisonment. He was subsequently rewarded by the King, who gave him the see of St. David's.

Strafford,
1640.

In November, 1640, *Thomas Wentworth, Earl of Strafford*, was impeached of high treason, for violating the Irish laws, instigating the King to make war on the Scots, raising an army of Irish Papists, and conspiring to subvert the fundamental laws and established government of the realm. None of these charges amounted to treason as defined by 25 Edw. III, for Strafford was guiltless of any act against the person or authority of the King. The Parliamentary managers therefore took up a new position, asserting that

an attack on the constitution was practically an attack on the Crown, since the latter was thereby exposed to great danger. It would have been grossly unjust to condemn the earl on such a charge, for it enunciated a principle which was entirely new, and rested on the baseless assumption that Strafford had deliberately intended to alter the constitution. When it became clear that the Lords would probably acquit the accused, the Commons brought in a Bill of Attainder (April 1641), which passed the Lords by a narrow majority, and received the reluctant consent of the King. The earl was executed on May 12, 1641¹.

In December, 1640, *Archbishop Laud* was impeached of Laud, 1640. high treason for attempting to alter the religion and fundamental laws of the realm. The articles were voted by the Lower House in February, 1641, and Laud was committed to the Tower. The actual trial began in March, 1644, but as none of the charges fell within the existing law of treason, it seemed probable that the Lords would acquit the prisoner. The Commons accordingly dropped the impeachment, and brought in an ordinance of attainder, which passed the Lords in January, 1645. Laud produced a royal pardon, dated 1643, but it was not accepted, and on January 10 he was beheaded.

In 1667, *Edward Hyde, Earl of Clarendon*, the Chancellor, Clarendon, 1667. was impeached of high treason for betraying the King's counsel to his enemies, selling Dunkirk to the French, violating the liberty of the subject, and designing to govern the country by a standing army. The first article was the only one which amounted to high treason. The Lords refused to commit the accused on a *general* charge, and Clarendon fled to France. He was forbidden to return under pain of incurring the penalties of high treason, and died at Rouen in 1674.

In 1678, *Thomas Osborne, Earl of Danby* (afterwards Danby, 1673. Duke of Leeds), was impeached of high treason, for having, by the King's order, written a letter to Montague, the

¹ See Gardiner, Hist. of England, 1603-1612, ix. 235-370.

English minister at the Court of Versailles; in this letter the King offered for six million livres 'to keep a neutrality, to recall his troops from Flanders within two months, and not to assemble his Parliament for six months.' The Lords refused to commit Danby, on the ground that the charge was general, not specific, and a dissolution of Parliament ended the matter for a time. The impeachment was revived in the next Parliament, and Danby, in spite of his plea of the King's pardon, was sent to the Tower, April, 1679. After lying in prison for some years, waiting for his case to be decided, he was discharged by the Lords, May 1685, and subsequently rose to high honours under William III. Danby's impeachment is of the greatest constitutional importance¹, the chief points being—

(1) The letter, which formed the chief charge against him, was written at the King's command, and bore the endorsement '*this letter is writ by my order, C. R.*' This was held to be no excuse; and the principle was clearly established that *a minister cannot plead the royal commands in justification of an unconstitutional, or illegal act.* (See *Lord Oxford's case*, p. 156, and *Ministerial Responsibility*, p. 46.)

(2) A question was raised as to whether the dissolution, or prorogation, of Parliament put an end to an impeachment. In 1673 it had been decided, on the report of the Committee of Privileges of the Lords, that Appeals, not decided 'in one Session of Parliament, continue *in statu quo* until the next Session.' In 1679, the Committee of Privileges held that the same rule applied to impeachments; in 1685, this resolution was reversed by the Lords, and the impeachment, which had been hanging over Danby for six years, was consequently terminated. In the case of Warren Hastings, 1788-92, it was finally *decided that an impeachment pending in the House of Lords is not terminated by a dissolution* (p. 157).

(3) The Commons held that *the royal pardon could not be pleaded in bar of an impeachment.* The question was not settled at the time, but in 1701 the *Act of Settlement* provided

¹ See Hallam, *Const. Hist.* ii. 410-420.

'that no pardon under the great seal of England be pleadable to an impeachment by the Commons in Parliament.' The Crown can pardon offenders *after conviction*, but to have allowed it to do so before judgment had been pronounced would have been subversive of the doctrine of ministerial responsibility.

(4) The practice of impeachments on a *general, and not a specific, charge of treason* (as in the cases of Strafford and Clarendon), was checked by the refusal of the Lords to commit Danby at the beginning of the impeachment, 1678, on a general charge of treason.

(5) The Commons objected to the votes of the Bishops in questions of life and death, even in the preliminary stages of the inquiry which might influence the subsequent issue. The Lords, however, decided that the Bishops had a right to sit, and vote, in Parliament *in capital cases 'until judgment of death shall be pronounced.'* This decision was in accordance with the eleventh article of the Constitutions of Clarendon (App. B), which provided that Bishops should vote until it came to the question of 'life or limb'.¹ It should be noted that when the Bishops withdraw before the verdict is given, they invariably enter the protest 'saving to themselves, and their successors, all such rights in judicature as they have by law, and by right ought to have' (p. 125).

In 1681, *Edward Fitzharris* was impeached of high treason, ^{Fitzharris, 1681.} for having promulgated a treasonable libel. An action had been already commenced against him in the Court of King's Bench, and the Lords voted that, as a Commoner, he should be proceeded against at Common law. The Commons resolved that 'it is the undoubted right of the Commons in Parliament assembled to impeach before the Lords in Parliament any Peer, or Commoner, for treason, or any other crime or misdemeanor, and that the refusal of the Lords to proceed in Parliament upon such impeachment is a denial of justice, and a violation of the constitution of Parliaments'.² There were several precedents for the impeachment of Com-

¹ Sel. Charters, 139.

² Commons' Journals, March 26, 1681.

moners, *e.g.* *Sir Simon Burley* and others, 1388, *Sir Giles Mompesson* and others, 1621. 'A Commoner,' says Blackstone, 'cannot be impeached before the Lords for any *capital* offence but only for high misdemeanors.' *Chief Justice Scroggs* was, however, impeached (1681), of high treason, and in 1689, *Sir Adam Blair*, and four other Commoners, were also impeached of high treason, and the Lords resolved to proceed in the impeachment. The case of *Sir Simon de Beresford*, 1331 (4 Ed. III), is not a case in point; he was not impeached, but charged with treason *by the Crown* before the 'earls, barons, and peers'; the Lords at first refused to try the case on the ground that he was not a Peer; they subsequently complied, in violation of the thirty-ninth article of *Magna Carta*, declaring, however, that 'the aforesaid judgment now rendered be not drawn to example or consequence in time to come, whereby the said Peers may be charged hereafter to judge other than their Peers, contrary to the laws of the land, if the like case happen, which God forbid¹.' Before the dispute on Fitzharris' case was ended, Parliament was dissolved, and the accused was convicted in the Court of King's Bench, his plea that an impeachment was pending against him not being allowed.

Portland and
Somers,
1701.

In 1701, the Whig Lords, *Portland*, *Orford*, *Somers*, and *Halifax*, were impeached of high treason by the Tories; the two Houses came into collision about the trial, and the Commons refused to appear on the day appointed (p. 120).

Oxford and
Bolingbroke,
1715.

In 1715, the Tory Lords, *Oxford*, and *Bolingbroke*, and the *Duke of Ormond*, were impeached for acts prejudicial to the national welfare, *e.g.* their share in the peace of Utrecht. Oxford in vain pleaded the Queen's commands, and was imprisoned for two years until the Commons stayed proceedings. Bolingbroke and Ormond fled to the Continent, and were attainted.

From this time, the development of the principle of ministerial responsibility to Parliament has prevented any case of political impeachment, the only instances of impeach-

¹ Rot. Parl. ii. 54, quoted in Hallam, ii. 444.

ment at all being those of *Warren Hastings*¹, 1788, on charges connected with his conduct of affairs in India, a case which established the fact that prorogation, or dissolution, does not terminate an impeachment, and that of *Henry Dundas, Lord Melville*, 1806, 'for alleged malversation of his office'². The accusation was peculation whilst Secretary of the Admiralty. By 45 Geo. III, c. 125, it was ordered that the dissolution, or prorogation, of Parliament should not affect this case of impeachment.

Warren
Hastings,
1788.

Melville,
1806.

Bill of Attainder is a Bill passed by Parliament for the attainder of any person. It passes through the stages of an ordinary Bill (p. 168), receiving the royal assent when it has passed both Houses. Bills of Attainder were freely used during the wars of the Roses (*e.g.* a Bill of Attainder was passed 1461, against Henry VI, and his Queen), and under the Tudors; *temp.* Henry VII, they were employed largely against the supporters of Perkin Warbeck, who claimed to be Richard, Duke of York; *temp.* Henry VIII, the practice of passing Bills of Attainder without hearing the accused in his defence arose (*e.g.* *Thomas Cromwell*, 1540), and led to great abuses. It was frequently employed *temp.* Edward VI, and the abuses grew to such an extent that proceeding by Attainder was forbidden by 1 & 2 Phil. & Mar. c. 10. Under the Stuarts, Bills of Attainder were not employed so frequently, being generally only brought in when the Commons thought the impeachment would fail, *e.g.* in the cases of Strafford, and Laud (p. 152). A Bill of Attainder was last employed in the case of Sir John Fenwick (1696). One of the two witnesses on whom the prosecution relied had been induced to leave the country, and since the evidence of one man is insufficient to prove a charge of high treason, the Commons decided to proceed by Bill of Attainder (p. 6). Speaking of Bills of Attainder, Sir William Anson very appositely remarks (*Law and Custom of Const.* i. 341), 'An Act of Parliament

Bill of
Attainder.

¹ The impeachment of Warren Hastings was decided upon, on the motion of Burke, 1786. It commenced on Feb. 13, 1788, and ended in an acquittal April 23, 1792.

² May, ii. 93.

can, as we know, do anything. It can make that an offence which was not when done an offence against any existing law: it can assign to the offender, so created, a punishment which no Court could inflict.'

Some of the more important dates of Parliamentary history.

Representatives from the boroughs on the royal demesne summoned by John to St. Alban's in 1213, to estimate the compensation due to the Bishops.

Shire representatives *summoned* to a Great Council at Oxford in 1213 (p. 130).

Two knights from each shire, and two burgesses from several cities and boroughs are summoned to Simon de Montfort's Parliament of 1265 (p. 130).

Complete representation of all estates in the Model Parliament of 1295 (p. 131).

The *Confirmatio Cartarum* prohibits the levy of certain taxes by the Crown without the consent of Parliament, 1297.

The Commons assert their right to assent to legislation, 1322 (15 Ed. II), (p. 20).

Division of Parliament into two Houses, 1332 (p. 135).

First instance of Appropriation of Supplies, 1346, not finally established till 1665 (p. 115).

First instance of impeachment, 1376 (p. 150).

Right of auditing public accounts, granted in 1406 (p. 116).

Sole right of Commons to originate Money Bills, first recognised, 1407 (p. 114).

The Abbots cease to sit in the House of Lords on the dissolution of the monasteries, 1539 (p. 124).

Parliament gives the King's proclamations the force of law, 1539 (31 Hen. VIII, c. 8), repealed 1547 (1 Ed. VI, c. 12), (p. 170).

Right of Commons to control their elections clearly established, 1604 (p. 112).

The 'Great Protest,' Dec. 1621 (p. 108).

The Petition of Right, June 1628 (3 Car. I, c. 1), (App. A).

The Grand Remonstrance, Nov. 1641 (p. 102).

The first Triennial Act, Feb. 1641 (16 Car. I, c. 1), repealed 1664 (16 Car. II, c. 1), (p. 98).

Abolition of the House of Lords as useless and dangerous, Feb. 1649; does not meet again until 1660 (p. 127).

Cromwell summons a new House of Lords, 1657 (p. 127).

The Bill of Rights, 1689 (1 Wm. & Mar. st. 2, c. 2), (App. A).

The third Triennial Act, 1694 (6 & 7 Wm. & Mar. c. 2), (p. 99).

The Act of Settlement, 1701 (12 & 13 Wm. III, c. 2), (App. A).

Act against pensioners and placemen, 1707 (6 Anne, c. 7), (p. 143).

The Septennial Act, 1716 (1 Geo. I, st. 2, c. 38), (p. 99).

The Peerage Bill, 1719 (p. 123).

The 'Place Act,' against placemen, 1742 (15 Geo. II, c. 22), (p. 143).

The Bribery Act, 1762 (p. 144).

The Grenville Act regulating Election Committees, 1770 (10 Geo. III, c. 16), (p. 112).

The Reform Act, 1832 (2 & 3 Wm. IV, *England* c. 45, *Scotland* c. 65, *Ireland* c. 88), (pp. 137, 145).

Lord Derby's Reform Act, 1867 (*England* 30 & 31 Vic. c. 102, *Scotland* 31 & 32 Vic. c. 48, 1868, *Ireland* c. 49), (pp. 137, 146).

The Ballot Act, 1872 (35 & 36 Vic. c. 33), (p. 147).

The Corrupt Practices Act, 1883 (46 & 47 Vic. c. 51), (p. 144, note).

Representation of the People Act, 1884 (48 Vic. cc. 3, 15), (p. 135).

Redistribution of Seats Act, 1885 (48 & 49 Vic. c. 23), (p. 137).

Names of Parliaments.

The Mad Parliament, met at Oxford, 1258, and passed the Provisions of Oxford; so called by the supporters of Henry III (p. 16).

Names of
Parliaments
'Mad,' 1258

- 'Great' or
'Model,'
1295. The '*Great*,' or, as Dr. Stubbs has well called it, the '*Model*,' Parliament, 1295; the first *complete*, or model, Parliament (p. 131).
- 'Good,' 1376. *The Good Parliament*, 1376, so called from its attempt under the Black Prince to end abuses, and initiate reform; its efforts were ineffectual, owing to the death of the Black Prince, and to the return of John of Gaunt to power (pp. 47, 151).
- Wonderful'
or 'Merci-
less,' 1388. *The 'Wonderful' or 'Merciless' Parliament*, 1388, so called from the proceedings of the Lords Appellant, and its impeachment and execution of Sir Simon Burley, Sir John de Beauchamp of Holt, and others of the King's friends (p. 151).
- 'Unlearned.'
or 'Lay-
men's,' 1404. *The Unlearned Parliament*, 1404, from the fact that lawyers were entirely excluded; also called the *Laymen's* Parliament, as very many lawyers at this time were clergy.
- 'Of Bats,'
1426. *The Parliament of Bats*, 1426, derived its name from the 'bats,' or clubs, carried by the two hostile factions which supported Gloucester and Bedford.
- 'Reforma-
tion,' 1529. *The Reformation Parliament*, 1529, from its abolition of the Papal Supremacy in England, and reform of the English Church (pp. 285-7).
- 'Addled,'
1614. *The Addled Parliament*, 1614, from its sitting only two months, and passing no Bill at all.
- 'Short,' 1640. *The Short Parliament*, 1640, April 13th to May 5th.
- 'Long,' or
'Blessed,'
1640-1660. *The Long Parliament*, Nov. 1640-1660, also called by the Presbyterians the *Blessed Parliament*, owing to its having put an end to Episcopacy.
- 'Rump,'
1648. *The Rump Parliament*, 1648, consisted of the members of the Long Parliament remaining after the Presbyterian party had been driven out by Colonel Pride; about fifty remained.
- 'Little' or
'Barebone's'
Parliament,
or 'Assembly
of Notables,'
1653. *The Little Parliament*, or *Barebone's Parliament* (also called *The Supreme Assembly of Notables* or *The Assembly of Nominees*), 1653, was chosen by Cromwell and his officers, from a list of names submitted by the ministers of the various independent Churches. It consisted of 139 members, subsequently raised to 144, and took its name from Praise God Barbone, one of the members for London.

The First Convention Parliament, 1660, so called from meeting without a summons from the King. First 'Convention,' 1660.

The Second Convention Parliament, Jan. 1689, for the same reason. Second 'Convention,' 1689.

The Pensionary Parliament, May 1661—Jan. 1679, so named from the fact of most of its members being bribed by either France or Spain; also called *The Drunken Parliament*. 'Pensionary' or 'Drunken,' 1661—1679.
 During the session of 1674 not a single Bill was passed, although it is said that £200,000 was expended in bribery.

CHAPTER IV.

LEGISLATION.

Anglo-Saxon
Legislation.

ANGLO-SAXON laws were enacted *by the King with the counsel and consent of the Witan*, and were proclaimed in the shire-moot (p. 68); they usually took the form of recording, and amending, existing customs, previously handed down by oral tradition, and are often difficult to explain, owing to our ignorance of the customs referred to. Some of the more ambitious attempts at legislation, *e.g.* by Alfred, Ethelred, and Canute, have been dignified by the name of *Codes*, or *Dooms*.

Codes and
Dooms.

Anglo-Saxon Legislation ¹.

There are some famous laws ascribed to *Dyvnwal Moel-Mud* of Wales (*circ.* 600).

Ethelbert,
Lothaire and
Edric.

Ethelbert of Kent (*circ.* 600), *Lothaire*, and *Edric of Kent* (*circ.* 680), issued laws chiefly concerned with judicial matters, *e.g.* fixing of penalties. Ethelbert's laws were probably a summary: they commence with a clause for the protection of Church property.

Wihtred.

The laws of *Wihtred of Kent* (*circ.* 696) granted freedom from burdens to Church lands, forbade Sunday labour, and idolatry, as well as regulated matters of justice.

Ini.

The laws of *Ini of Wessex* (*circ.* 690) dealt with the miscarriage of justice; these laws contain the first mention of the King's prerogative of mercy, *e.g.* a man compounding a felony, if an ealdorman, is 'to forfeit his shire, *unless the King is willing to be merciful to him.*' Some laws,

¹ Sel Charters, pp. 61-64.

which have been lost, were issued by *Offa of Mercia* (*circ.* Offa. 780).

Alfred (*circ.* 890) was not an original legislator, but Alfred. 'gathered the laws together' which previously existed, and embodied them in a Code. They refer mainly to *bots*, *wites*, *wers*, and the like (p. 79). One is an anticipation of the Law of Entail¹, and one makes treason deathworthy (p. 3).

*Edward the Elder*² (*circ.* 920) issued laws concerning the Edward the Elder. 'ranks of the people'; they declare the amount of land necessary for a ceorl to become thegnworthy, and give privileges of thegnhood to successful scholars, and merchants (p. 232).

Athelstan's laws³ (*circ.* 930) issued at Greatley, Faversham, Athelstan, Exeter, and Thundersfield, were chiefly against theft, and for 925-940. the establishment of associations of mutual responsibility (p. 74). The laws against theft were very severe, the penalty being usually death.

*Edgar*⁴ (959-975) issued an 'Ordinance of the hundred,' Edgar, 959-975. ordered justice to be done to all, and that 'one money, one measure, and one weight pass, such as is observed at London and Winchester.' Edgar gave the Danes the privilege of making 'such good laws as they may best choose.'

*Ethelred II.*⁵ (979-1016), at Woodstock, established *borhs* Ethelred II. or sureties, issued a law on the presentment of criminals 979-1019. which closely resembles later procedure⁶ (pp. 74, 84 sq.), enforced the *fyrdwite* (p. 305), and decreed 'mild punishments' instead of death (p. 77).

*Canute*⁷ (1016-1035) confirmed the laws of Edgar, and Canute, 1016-1035.

¹ 'The man who has bocland and which his kinsmen left him, then ordain we that he must not give it from his mægburgh (kindred), if there be writing or witness that it was forbidden by those men who at first acquired it.' Sel. Charters, 63.

² Sel. Charters, 64-65.

³ Ib. 66, 67.

⁴ Ib. 70-72.

⁵ Ib. 72, 73.

⁶ 'And that a gemot be held in every Wapentake; and the twelve senior thegns go out, and the reeve with them, and swear on the relic that is given them in hand, that they will accuse no innocent man, nor conceal any guilty one.'—Sel. Charters, 72.

⁷ Ib. 73, 74.

afterwards issued a Code at Winchester. No one was to apply to the King for justice unless he had been first denied it in the lower courts. Every man was to be in a hundred, and in a tithing, and the burdens of *heriots* were to be lightened. This code also contains an enactment against *purveyance* (p. 179), and the earliest *forest law* (p. 183). The Danes continued to have separate laws under Canute.

Edward the Confessor.

It is now generally admitted that the *Laws of Edward the Confessor*, so often demanded by the popular voice during a time of bad government, merely represent the sum of Anglo-Saxon customary law at the middle of the 11th century¹.

‘As a rule,’ says Dr. Stubbs, ‘the publication of laws is the result of some political change, *e.g.* Alfred’s code marks the consolidation of Wessex, Kent, and Mercia; Edgar’s that of the whole of England.

Charters.

Norman Legislation.
Charters.

Legislation by the Norman Kings took the form of *Charters*, issued by the King, and assented to by the barons; these Charters usually confirmed customs and liberties, and made grants. William I separated the spiritual and temporal courts by Charter (p. 274); Henry I, in his Charter of Liberties, 1100 (App. A.), endeavours to remedy the abuses introduced by his predecessor; the Charters of Stephen, and Henry II, were simply confirmations.

William I.

Henry I,
1100.

Stephen.

Henry II.

Assizes.

Angevin Legislation.
Assizes.

The Angevin Kings legislated by *Assizes*, a word which at that time meant *edict*, or *statute*. They were issued by the advice and consent of the national Council², were proclaimed by the Sheriffs in the county courts, and were usually temporary measures which remained in force during the pleasure of the Crown³.

¹ Gneist, i. 166, note. As William of Malmesbury says, ‘non quod ille *statuerit*, sed quod *observaverit*.’

² The Assize of Clarendon for instance was issued ‘*de assensu archiepiscoporum, episcoporum, abbatum, comitum, baronum, totius Angliæ*.’ Sel. Charters, 143.

³ See Stubbs, i. 573-5.

Provisions.

In the reign of Henry III, in addition to the old forms of legislation, that of *Provisions* was added, e.g. *Provisions of Oxford*, 1258, and of *Westminster*, 1259 (re-enacted as the *Statute of Marlborough*, 1267) (App. A.).

From the reign of Edward I, legislation was by *Statute and Ordinance*. The right of the Commons to assent to *taxation* was successfully asserted long before their right to take part in *legislation* was recognised, and even under Edward I legislation was frequently carried out in assemblies to which the Commons were not summoned, e.g. the Statute *Quia Emptores* was passed in such an assembly 1290; but from the 'Model' Parliament of 1295, the words *ad faciendum* 'to enact,' always formed part of the summons of the Commons to Parliament; from 1318 to 1327 Statutes were enacted 'by the assent of the prelates, earls, barons, and the commonalty of the realm,' and in 1322 Edward II provided that 'all matters concerning the estate of the King, the realm, and the people should be treated of in Parliament by the King, and by the assent of the prelates, earls, barons, and commonalty of the realm according as it hath been heretofore accustomed'; this was on the occasion of the repeal of the *Ordinances* passed 1311, which were an exceptional form of legislation, and did not receive the consent of the King.

Statutes founded on Petitions.

From the time of Edward III, Statutes were usually founded on petitions of the Commons, the form of an act being 'at the request of the Commons, and by the assent of the prelates, earls, and barons'; from this arose the power of the Commons to initiate legislation. Petitions to the King (which might also be presented by the clergy, and by private persons)¹, were referred to a Committee of the Lords, and answered by the Sovereign according to their advice; the judges then framed a Statute from the petition and its answer. But the petitioners were not always fairly dealt by. Sometimes the

¹ Legislation does not ever seem to have followed on the petition of private individuals. Stubbs, ii. 591.

Crown would not vouchsafe an immediate reply, and the petition was forgotten in the interval between two Parliaments: sometimes the wording of the Statute did not correspond to the petition on which it was based, while at others the introduction of a saving clause robbed the act of its value. Even when honestly drafted, the Statute might contain no provisions for execution, and was liable to be suspended¹ or possibly revoked² by the Crown.

The Commons made strenuous efforts to remedy these defects. They demanded clear and immediate replies, devised numerous expedients to prevent the alteration of their petitions, prayed that Statutes already granted might be kept, and (1351) that no Statute should be changed at the petition of a single person. Such efforts were only partially successful; and it was not until they made supply depend on redress, and sent up their petitions in the form of Bills, that the Commons could secure themselves against the malpractices of the Crown³.

Ordinances.
Difference
between
Ordinance
and Statute.

Ordinances.

But the Statute was not the only form of legislation during this period. The King in Council had the power of issuing *Ordinances*, i. e. prerogative enactments which did not require the sanction of Parliament. They were usually of a tentative and temporary nature⁴, could be recalled by the King, and were not enrolled in the Statute book, though they might ultimately be converted into Statutes⁵. A Statute, on the other hand, was enacted by the King in Parliament, and claimed to be a permanent addition to the law. 'The Statute is primarily a legislative act, the Ordinance is primarily

¹ Edward I suspended the Statute of Carlisle, 1307.

² Edward III revoked the Statutes of 1341.

³ See Stubbs, ii. 572-584.

⁴ In 1363 the King asked the Commons whether the matter under discussion should be dealt with by Ordinance or Statute. They decided in favour of the former, 'so that if there be anything to amend it can be amended in the next Parliament.' Rot. Parl. ii. 280.

⁵ E.g. in 1349 was issued the Ordinance of Labourers. This was subsequently converted into a Statute.

an executive one¹. In the reign of Edward I, the two are scarcely to be distinguished, but as the legislative and executive functions were gradually separated, a distinction began to appear which made itself clearly felt in the reign of Edward III. The Commons realised how important a weapon the King possessed in the Ordinance, and from the middle of the 14th century began to regard its employment with considerable jealousy. In 1353 they protested against the Ordinance of the Staple, saying that so important a matter ought to have been dealt with by Parliament, and in 1389 presented a petition praying that no Ordinance might be made contrary to the law of the land. Legislation by Ordinance disappeared in the 15th century only to reappear in the 16th under the form of Proclamations (p. 169). At the present day, the Crown formally expresses its wishes by means of *Orders in Council* and *Proclamations*, but these are only made subject to the assent of Parliament, and are revocable by Statute.

Orders in
Council.

Initiation of Legislation.

Initiation of
Legislation.

Previous to the reign of Edward II, almost all reforms in the law had been initiated by the King and the Council, or the Magnates. But the Commons had always possessed the right of petitioning the Crown for the removal of grievances, and this developed into a right to initiate legislation. To prevent the alteration of their petitions (p. 166), the Commons adopted the practice of introducing their requests as *Bills*² drawn as Statutes. These were sent to the Lords for consideration and if passed were laid before the King to accept or reject. Procedure by Bill is mentioned as early as 1429, and it became general in the reign of Henry VI.

Aided chiefly by their control over supply, the Commons exercised an increasing influence on legislation during the later mediaeval period. In 1322 their claim to a voice in national affairs was recognised by Statute: in 1377 they petitioned that no Statute might be made at the request of the

¹ Stubbs, ii. 585.

² Defined as *Billa formam actus in se continens*.

clergy until it had received their assent, and the act of 1382 against heretic preachers was repealed in the following Parliament because it did not fulfil this condition. Their influence is further shown by the change which was made in the enacting words of a Statute: the formula '*at the request of the Commons*' is supplemented by '*by the authority of Parliament*,' and after 1485 the former phrase disappears altogether.

Bills. **Bills.**

Legislation by *Bills* is at present as follows, the procedure having remained unaltered since the Revolution of 1688. Bills may originate in either House, with the exception of *Money Bills* (p. 114), which must come from the Commons, and Bills affecting the Peerage, which must come from the Lords; the Crown has the power of initiating general pardons alone. Public Bills must be introduced by a Member of the House, who first obtains leave; the Bill is then brought in, and read a first time; a motion is subsequently made that it be read a second time, and, if passed, the Bill is discussed by the House in Committee¹ (*for the purpose of freer debate*). After passing through Committee, the amended Bill is considered by the House, and if further alterations are suggested it may be referred again to Committee. A motion is then made for the third reading, and the question put that it pass; if passed, it is sent to the other House, where it goes through the same process; if amended there, it is returned to the originating House for its assent to the alterations, and, if the amendments are not agreed to, a conference takes place between deputations from the two Houses, called managers, for the purpose of coming to terms; or the reasons of disagreement are drawn up, and sent to the other House for consideration. This has been the course adopted since 1836. If they cannot agree, the Bill is dropped. If, how-

¹ When the House is in Committee, it is presided over, in the Commons, by the Chairman of Ways and Means instead of the Speaker; in the Lords by the Chairman of Committees; a Member may speak as often as he pleases on the same question.

ever, they agree, or the Bill is passed without amendment, it is presented for the *royal assent*, which is given by the words *la reyne le veult*; if the royal assent is refused, the formula is *la reyne s'avisera*, and the Bill does not become law. Owing, however, in a great measure to the development of the idea of Ministerial responsibility, the royal assent has not been refused since the time of Anne, who, in 1707, refused her assent to the Scotch Militia Bill. When a Bill has received the royal assent, it becomes an *Act of Parliament*.

Royal Assent.

Private Bills, originating in the old petitions from private persons, and in later petitions (*temp.* Henry IV) from the Commons on private matters, refer to private and local rights, such as those of Corporations, Counties, Railways; they are referred to *Select Committees*, instead of to a Committee of the whole House. The arguments of the promoters and opponents of the particular Bill are then heard before the Committee, which acts more or less in a judicial capacity. If passed by the Select Committee, the Bill becomes law in the same manner as a Public Bill, except that the royal assent is given in the words '*soit fait comme il est désiré*'.¹ Private Bills were first separated from Public Bills in 1539.

Acts of Parliament.
Private Bills.

Legislative powers of the Crown.

The Crown has attempted at various times, more especially under the Tudors and Stuarts, to arrogate to itself all power of legislature.

1. *Indirectly*, by influencing the House of Commons by bribery, and intimidation (pp. 142 sq).

2. *Directly*, by Ordinances, Proclamations, and the abuse of the Dispensing and Suspending power.

(a) *Proclamations*². Proclamations were issued by the Crown in Council by virtue of the discretionary power resident in the executive. They were intended to supplement or explain statute law, and to deal with matters on which no legislation existed.

¹ The royal assent to a money bill is given in these words 'La Reyne remercie ses bons sujets, accepte leur benevolence et ainsi le veult.'

² Vide Anson, i. 292-296.

But in 1539 they were placed on an entirely new footing by the Act of 31 Hen. VIII, c. 8, which provided that Proclamations made by the Crown with the consent of the Council should have the force of law, and might be enforced by such penalties as the King and Council thought fit: the Crown however might not repeal or suspend existing Statutes, set aside the common law, or punish any man with death or unlimited fine or imprisonment. Although this act, by which 'the legislative power won for the Parliament from the King was used to authorise the King to legislate without a Parliament¹,' was repealed by 1 Ed. VI, c. 12, § 4, the Crown showed no inclination to give up the use of Proclamations.

In 1534 (26 Hen. VIII, c. 10), Henry had been empowered by Statute to employ royal Proclamations for the regulation of trade. By virtue of this act, the King 'without interference from Parliament modified the duty on sweet wines, and imposed a new custom².' In the same way Mary prohibited the import of French, and increased the duty on sweet wines, while Elizabeth raised the duty on the former. James I used the royal control over trade as a means of increasing his revenue: impositions were placed on currants and tobacco, and, fortified by the decision of the Exchequer in Bate's case, a new book of rates was issued in 1608. Proclamations such as these could at any rate claim a show of legality by virtue of the Statute of 1534, but when the Tudors employed this form of legislation to introduce ecclesiastical charges, suppress heretical books, fix the price of provisions, prohibit the building of houses round London, and to commit 'tellers of vain tales' to the galleys, it was felt that the Crown was exceeding its powers. The validity of such Proclamations was questioned in Mary's reign, and the judges laid down 'that the King may make a 'Proclamation to put the people in fear of his displeasure, but not to impose any fine, for-

¹ Stubbs, ii. 588.

² Prothero, Statutes and Const. Documents. Introduction p. lxxiii.

feiture, or imprisonment: for no Proclamation can make a new law, but only confirm and ratify an ancient one¹.

Notwithstanding this decision, James I did not hesitate to curtail the liberty of the subject, levy impositions, limit the choice of the electorate, and regulate trade, by means of Proclamations. But he met with little support from the Bench. In 1610, in the *Case of Proclamations*, Sir E. Coke laid down: that a royal Proclamation could admonish men to keep the law, but *could create no new offence*: and that no offence not already punishable in the Star Chamber, could be made so by Proclamation. But the independence of the Bench was counteracted by the existence of the Star Chamber. As long as the Crown could rely on the sanctions attached to its decrees being enforced by a prerogative court, judicial decisions were not of much avail. Charles I frequently issued illegal Proclamations², but complaints on this head are rarely heard after the abolition of the Star Chamber in 1641.

At the present day all Proclamations derive their ultimate authority from Parliament. In a case of emergency, the ministry would advise the Crown to issue a Proclamation on its own authority, and would endeavour to pass a Bill of Indemnity as soon as Parliament met³.

(b) *The Dispensing power* consisted in the right of the Crown to dispense with the operation of particular Statutes in individual cases. The right of the sovereign to exercise such power seems to have been undoubted, and at one time it may have served as a useful corrective to hastily drafted Statutes. But the petitions of the 14th century show that it was often grossly abused. In 1347 and 1351 the Commons complain that the King had pardoned so many criminals before indictment that the county authorities were afraid to proceed against evil-doers. By 13 Ric. II, 2, no

Dispensing
power.

¹ Hallam, i. 337.

² *Ib.* ii. 25.

³ In 1766 Lord Chatham's ministry interfered by Proclamation with the export of wheat, in order to meet the scarcity caused by a bad harvest. When Parliament met an Act of Indemnity was passed after 'acrimonious debates.' Anson, i. 296.

pardon was to be valid in cases of treason, murder or rape, unless the offence was specified in the pardon; and in 1444, when a Statute was passed limiting the Sheriff's tenure of office to one year, a clause was inserted providing that the Crown should not dispense with the penalties incurred by breaking the act¹. Attempts were also made by the courts of law to limit this branch of royal prerogative, but they were not very successful.

Thomas v.
Sorrell, 1674.

Under the Tudors and Stuarts the dispensing power was frequently exercised, and was recognised both in the law courts and in Parliament². In 1674, in *Thomas v. Sorrell*, Chief Justice Vaughan decided that the Crown could grant a dispensation for the breach of a penal Statute which merely touched its own rights: but that general penal Statutes, and cases in which the rights of a third party were affected, might not be thus dealt with³.

Godden v.
Hales, 1686.

In giving judgment in the collusive action of *Godden v. Hales*, Chief Justice Herbert said that the laws of England were the King's laws, and could be dispensed with at his pleasure. Armed with this decision James conferred Church dignities on Roman Catholics, and admitted them to his Council.

Bill of
Rights.

The Bill of Rights declared that 'the pretended power of dispensing with laws, *as it hath been exercised of late*,' was illegal, and that in future dispensations from any Statute should be void, unless a permissive clause had been inserted at the time the act was passed. As a result, the Crown at the present day can dispense with no Statute except by authority of Parliament, and though the Bill of Rights did not trench on the royal prerogative of pardon, even this is only exercised on the advice of a responsible minister.

Suspending
power.

(c) *The Suspending power* was the right claimed by the King to suspend the operation of any Statute or body of Statutes: following the example of the Popes in their Bulls,

¹ In the reign of Henry VII, the judges declared that the Crown could dispense with this Act in spite of the prohibitory clause.

² See Prothero's Statutes and Const. Documents, p. 111, 113, 179; and the Introduction, p. lxviii.

³ An-on, i. 297 S.

grants and Proclamations were sometimes made, notwithstanding (*non obstante*) any law to the contrary. The practice originated in the reign of Henry III, and was frequently adopted by the Plantagenets; e.g. Edward I in 1307 suspended the *Statute of Carlisle*, and his successors the *Statute of Provisors*. The right was claimed by the Tudor and Stuart kings, and its lavish use by Charles II and his brother was one of the chief causes of the Revolution of 1688. When Charles in 1672, and James in 1687, suspended all the penal laws relating to religion, it was clear that the legislative authority of Parliament was seriously threatened. The Bill of Rights accordingly declared 'that the pretended power of suspending the laws as assumed and exercised of late by royal authority without consent of Parliament, is illegal.'

Chief legislative Acts to 1295.

For details of the various Charters and Statutes see *Appendix A*.

Laws of Ethelbert, 600.	} p. 162
„ Ini, <i>circ.</i> 690.	
„ Alfred, <i>circ.</i> 890.	} p. 163.
„ Edgar, <i>circ.</i> 959-975.	
„ Canute 1016-1035.	

Charter (undated), separating the ecclesiastical and temporal Courts, William I (p. 274).

Charter of Liberties, Henry I, 1100.

„ „ 1st	} Stephen, 1136.
„ „ 2nd	
„ „ of Henry II, 1154.	

Constitutions of Clarendon, 1164

Assize of Clarendon, 1166	} <i>temp.</i> Henry II a period of legal reform.
Assize of Northampton, 1176	
Assize of Arms, 1181	
Assize of the Forest, 1184	

Magna Carta, June 15, 1215 (p. 15).

Charter re-issued by William Marshall, Earl of Pembroke, 1216, 1217 (p. 15).

Charter of the Forest, 1217.

Statute of Merton, 1236 (20 Hen. III).

Provisions of Oxford, 1258 (p. 16).

„ Westminster, 1259 (p. 17).

Statute of Marlborough, 1267 (52 Hen. III), (p. 18).

Statute of Westminster I, 1275 (3 Ed. I).

„ Rageman, concerning the appointment of Justices, 1276 (4 Ed. I).

Statute of Gloucester (*quo warranto*), regulating an inquiry into the titles by which lands were held, 1278 (6 Ed. I).

Statute of Mortmain (*de religiosis*), 1279 (7 Ed. I, c. 2), (p. 280).

Statute of Merchants (*de Mercatoribus*), or Acton Burnell, 1283 (11 Ed. I); another 1285 (13 Ed. I, c. 3), (p. 233).

Statute of Wales, 1284 (12 Ed. I, cc. 1—14).

Statute of Westminster II (*de donis conditionalibus*), 1285 (13 Ed. I), (p. 213).

Statute of Winchester, 1285

Statute of Westminster III (*quia emptores*), 1290 (18 Ed. I, c. 1), (p. 214).

CHAPTER V.

TAXATION AND FINANCE.

Ordinary Revenue of the Crown.

1. *Crown Lands.* In Anglo-Saxon times the estates of the Crown could not at first be alienated without the consent of the Witan, though about the time of Alfred this restriction seems to have been relaxed; they were enlarged by the confiscations which followed the Norman Conquest, diminished by Stephen's lavish grants, resumed by Henry II in 1155, granted again by John, and resumed by the Earl of Pembroke for Henry III, 1217, and by Hubert de Burgh, 1220. Under Edward II, alienation of Crown lands was forbidden, owing to the lavish grants to favourites, and a resumption was effected by the *Ordinances*, 1311, (repealed 1322). During the wars of the Roses, many lands were forfeited to the Crown, but granted out again immediately, and under Henry VI, the revenue from royal demesne sank to £5,000. In consequence, *Acts of Resumption* were passed, 1450, 1456, 1467, 1473, 1495 (11 Hen. VIII, cc. 28, 29), and 1515 (6 Hen. VIII, c. 25). Crown lands increased greatly under Henry VII and Henry VIII, owing to forfeitures, and to the dissolution of the monasteries, 1539; the gain was, however, more than counterbalanced by the lavishness of Henry VIII. Much was sold by Charles I to raise money, and what he left was sold by the Parliament; the Parliamentary sales were, however, declared void at the Restoration. In 1702, it became necessary to restrain the alienation of Crown lands by Statute, owing to the lavish gifts of Charles II, and William III;

Ordinary
Revenue of
the Crown.
Crown Lands.

Lands.
Acts of
Resumption

¹ Sel. Charters, 128. *Will. Newb.* ii. c. 2.

absolute grants were entirely forbidden, but in spite of this, and of the forfeitures during the rebellions of 1715, and 1745, the annual revenue from this source, during the first 25 years of George III, was only £6,000. George III surrendered to the nation his interest in the Crown lands in return for a Civil List of fixed annual amount, and his example was followed by his successors. In 1794 their management was improved by Act of Parliament, and in 1810 they were put under the control of the *Commissioners of Woods and Forests*; in 1908-9 the net income from Crown lands was £530,000.

Commissioners of Woods and Forests.

Since their surrender, the Sovereign has been able to hold, and dispose of, private property in the same way as an ordinary person¹.

Civil List.

The Civil List, first established at the accession of William and Mary, for the support of the royal household, the personal expenses of the King, and the payment of civil offices and pensions², consisted of £700,000, £300,000 of which was raised by Excise duties (p. 192), the rest being from the hereditary revenues of the Crown. Under Anne, and George I, debts on the Civil List were incurred, and had to be paid by Parliament. George II was to have a Civil List of at least £800,000, Parliament engaging to make up any deficiency in the hereditary revenues; in spite of this, however, in 1746, a debt of £456,000 had to be paid off. George III surrendered the hereditary revenues for a fixed sum of £800,000, relinquishing all claim to any surplus; in 1769, and again in 1777, debts were paid by Parliament, and on the latter occasion, the list was increased to £900,000. Frequent debates on the subject culminated in Lord Rockingham's *Civil List Act*, 1782 (22 Geo. III, c. 82), which regulated the expenditure, and diminished offices, pensions, and secret service money. The debt, however, increased, and the Civil List was again raised, 1812, and 1816, reaching in the latter year over a million, whilst various items of expenditure were removed. In 1831, William IV gave up the hereditary revenues of Scotland, the Civil List for Ireland

Rockingham's Civil List Act, 1782.

¹ Anson, ii. 303.

² May, i. 232.

and other interests, accepting in exchange a Civil List of £510,000, which was still further relieved by the removal of judicial salaries, and other expenses. The Civil List of the Queen, which has been relieved from all extraneous charges, is £385,000, of which £1,200 may be granted annually in pensions.

2. *The Ferm of the Counties*, *i.e.* the amount collected and paid by the sheriffs, in composition for the profits due to the King from the Shires for judicial proceedings, fines, rent, and the like¹; (in Anglo-Saxon times this was paid in kind, as rent for leases of folkland, and known as *feormfultum* or 'sustentation'). The counties were let to the sheriffs at a fixed rate, thus opening the way for great extortion, as whatever could be raised above the amount agreed upon, was kept. The towns, also, often compounded for tolls, markets, dues, and the like.

Ferm of the Counties.

Feormfultum.

3. *Income from feudal incidents*, *e.g.* marriage, wardship, successions, escheats, and the like (p. 211). These varied much, and were very burdensome. By the *Charter of Henry I* (1100), reliefs were to be just and lawful; by *Magna Carta*, they were fixed at £100 for an earl, or baron, and £5 for a knight². *Magna Carta* also restrained the abuses of wardship, and marriage, and forbade aids to be imposed *nisi per commune concilium regni*, with the exception of the three regular feudal aids, *i.e.* to make the lord's eldest son a knight, to provide a dowry for his eldest daughter on marriage, and to ransom the lord's person³. This was confirmed by the *Confirmatio Cartarum* (1297), and by a Statute of 1340, which declared *all aids whatsoever* illegal, unless levied with consent of Parliament. Nevertheless, Edward III levied an aid to knight the Black Prince, 1346⁴. In 1610, Lord Salisbury attempted to secure the abolition of feudal incidents in return for an annual grant of £200,000; the attempt, which was known as 'the Great Contract,' failed,

Feudal Income.

The 'Great Contract,' 1610.

¹ Stubbs, i. 380.

² Sel. Charters, 297 § 2.

³ Ibid. 298 § 12.

⁴ The aid was levied without the consent of the Commons and at double the amount fixed by the Statute of Westminster.—Stubbs, ii. 395.

and the feudal exactions continued until surrendered by Charles II, 1660. A system of compulsory knighthood was employed to raise money by Edward I (1278, 1292), Edward VI, Elizabeth, James I, and Charles I (p. 199).

Sale of
Offices.

4. *Sale of Offices, and Honours.* A lucrative source of income, *e.g.* the Chancellor in 1130 paid £3,000 for his office¹; Richard I put up all sorts of offices for sale, including even bishoprics², in order to raise money for his Crusade. James I sold peerages, and baronetcies, the latter title being created in 1611, with the express intention of filling the royal coffers.

Pleas of the
Crown.

5. *Proceeds of Pleas of the Crown, i.e.* fines for offences tried before the Sheriff (*e.g. murdrum*), for not attending the local courts³, for breach of the forest laws (p. 183), on alienation of land, and the like.

Church.
Revenue.

6. *Revenues from the Church, e.g.* first fruits, and the custody of vacant sees (p. 275), which were often purposely left unfilled; *e.g.* on the death of Lanfranc, William II left the see of Canterbury vacant for four years (1089-1093).

Jews.

7. *Exactions from the Jews* (who were regarded as the King's chattels), especially by John, Henry III, and Edward I. Edward III borrowed large sums from the Florentine bankers, the Peruzzi, and the Bardi, and their bankruptcy in 1345 was due to the King's failure to discharge his obligations.

Miscellaneous.

8. *Miscellaneous Revenue* from prerogative, and droits of the Crown, *e.g.* waifs and strays, wreckage, dues from markets, ports, mines, and salt works, treasure trove⁴, royal fish (*i.e.* sturgeon and whale); in early times also, from the sale of justice and protection; in later times, from certain

¹ Stubbs, i. 384.

² Sel. Charters, 251. *Den Abb.*, ii. 90. 'Et omnia erant ei venalia, scilicet potestates, dominationes, comitatus, vicecomitatus, castella, villae, praedia, et cetera iis similia.' William II also trafficked in bishoprics, selling the See of Wells to Giso.—See Wharton, *Anglia Sacra*, i. 295.

³ Sel. Charters, 66.

⁴ In early days 'treasure trove' was valuable, as, in time of war, treasure of various kinds was frequently hidden in the ground.

revenues vested in the Crown, *e.g.* droits of the Admiralty (*i.e.* prizes), and West India Duties; the hereditary revenues of Scotland; the revenues of the Duchies of Cornwall, and Lancaster. The interest of the Crown in most of these was given up by William IV, though certain droits, and the two Duchies were retained.

9. Emoluments springing from the royal prerogatives of *Purveyance* (*a*) *purveyance*, (*b*) *coinage*, (*c*) *possession of forests*.

(*a*) *Purveyance* (*pourvoir*, to provide), a prerogative of very early origin, was the right of purchasing provisions and necessaries for the royal household 'at a fair price, in preference to every competitor, and without the consent of the owner'¹; and of taking the horses, carts, and even personal services² of the subject, always without adequate remuneration and often without any remuneration whatever. Payment, when offered, was generally made in Exchequer tallies, and the sums were deducted from the next taxes paid in by the victims. The system was greatly abused, and frequently petitioned against. There are no less than forty Statutes against *Purveyance*, commencing with a law of Canute³: '*I command all my reeves that they justly provide on my own, and maintain me therewith; and that no man need give them anything as feormfullum unless he himself be willing.*' *Magna Carta* forbids the King, or his bailiffs, to take any man's corn, or other goods, without payment on the spot, unless the owner voluntarily gives credit; or to impress any carriages or horses, or to take any man's timber, unless with the owner's consent⁴; the right is declared not to be vested in the Constables of the Royal Castles. *Purveyance* was regulated by the *Provisions of Oxford*, 1258; by the *Dictum de Kenilworth*, 1266; by the *Statute of Westminster I*, 1275; by the *Articuli Super Cartas*, 1300; by

Purveyance regulated.

¹ This was called Preemption.

² *E.g.* William of Walsingham was empowered by Edward III to compel an adequate number of painters to work at St. Stephen's Chapel, Westminster, all refusing being liable to imprisonment.

³ *Sel. Charters*, 74.

⁴ *Ib.* 300, §§ 28, 29, 31.

the *Ordinances* of 1311 and by the Act of 1323-4 (17 Ed. II, c. 2). A series of statutes restraining the royal prerogative was passed in the reign of Edward III. At one time the King promised that goods should be valued by the constable and four discreet men of the neighbourhood, and that purveyors who gave less than the price fixed should be dealt with as thieves¹: at another he conceded that nothing should be taken without the owner's consent². In 1340 the clergy were protected from the abuses of purveyance, and in 1347 it was enacted that goods should be paid for on the spot if under 20s. in value, and within three months if exceeding that amount. Finally by 36 Edw. III, cc. 2-5 (1362), the name purveyor was changed to buyer, and the right of purveyance was restricted to provision for the personal needs of the King and Queen³. This Statute seems to have considerably lessened abuses, but the petitions presented by the Good Parliament (1376) and the subsequent legislation of Richard II and the Tudors show that the old evils had not disappeared or that new ones had sprung up. How vexatious some of them were may be seen from the petition of 1604. The Commons complained that cart-takers were in the habit of ordering four times the required number of vehicles in order to secure bribes from owners who wished to escape, and were guilty, in various other ways, of misusing their powers for their own profit. Purveyors after appraising goods far below their value, would force the owner to accept a mere fraction of the money, and constables who arrested and justices who tried such offenders were often imprisoned⁴.

In 1606 a royal Proclamation put an end to many abuses of this nature, and in 1610 the Crown offered, as part of the Great Contract (p. 177) to commute its rights for a fixed sum.

¹ 4 Edw. III. c. 3; 5 Edw. III, c. 2.; 25 Edw. III, c. 1.

² 14 Edw. III, st. i. c. 19.

³ 'The abuse of purveyance accounts for the national hatred of Edward II, and for the failure of Edward III to conciliate the affection of the people, and helps us to understand why even Edward I was not a popular King.' Stubbs, ii. 538.

⁴ Gardiner, *Hist. of England*, 1603-42, i. 170.

Statutes of
Edward III.

1362.

Stuarts.

The plan fell through, but in the next year most of the shires agreed to a scheme by which the King surrendered his rights in return for a fixed composition¹. Purveyance was abolished by Statute in 1660 (12 Ch. II, c. 24). Abolished
1660.

(b) *The Coinage* was, from the earliest times, a royal monopoly, and a source of royal profit; it was a subject of legislation under Athelstan ('let our money pass throughout the King's dominions, and that let no man refuse'), Edgar, Ethelred² and Canute; the punishment for illegal coining being death. The first English coinage is said to have been at Colchester. Henry I substituted dismemberment for death as a punishment for false coining, and in 1125 mutilated all the false coiners on whom he could lay hands. The coinage was also depreciated by clipping, a process which frequently took place in the royal Mint itself. The right of private coinage was sometimes granted to a few nobles and prelates, on payment of a tax³. The anarchy of Stephen's reign was marked by the appearance of baronial mints, but Henry II put an end to this 'adulterine' coinage, and issued a fresh one in 1158 in accordance with the terms of the treaty of Wallingford. This was followed by another in 1180⁴. Under John, the coin was made by German merchants called Easterlings (hence our word *sterling*, a term which first came into use 1216); in 1278, Edward I renewed the coinage⁵, which was for the future to be round in order to prevent clipping, an offence of which the Jews were

The Coinage

¹ Gardiner, *Hist. of England*, ii. 113.

² 'Let no man have a moneyer except the King.' Ethelred III (997) quoted by Ashley, *Econ. Hist.* i. 167. The archbishops however seem to have exercised the right of coinage since the eighth century.—Stubbs, i. 221, note 2.

³ *E.g.* to the Bp. of Coventry. See Ruding's *Coinage of Great Britain*, i. 168.

⁴ *Sel. Charters*, 133. *Ben. Abb.* i. 263.

⁵ Before Caesar's invasion, there existed a British gold coinage, rudely copied from the Macedonian stater. After the Roman conquest this was replaced by the imperial currency, which in turn gave way to the Saxon. With slight exceptions, the silver pennies issued by Offa of Mercia in the last half of the eighth century remained the sole English coins till the reign of Edward I. A few gold pieces were struck by Henry III, but it was not till the reign of Edward III that a regular

Statutes on
Coinage.

frequently guilty; he also depreciated the money by slightly diminishing its weight; in 1299, a Statute was passed (27 Ed. I. st. 3), forbidding the importation of bad money. In 1307 a royal ordinance decided that the coin should circulate at its nominal value, but nevertheless, it was necessary to demand a reform in the *Articles of Grievance*, 1309. The Ordinances of 1311 forbade the king to meddle with the coinage without the consent of the barons in Parliament, but this was repealed in 1322, and in 1352 the Statute of Treasons made false coining, or the introduction of bad money, a treasonable offence. This was confirmed in 1416 (4 Hen. V. [vel 3^o Stat. 2] c. 6). Edward III coined the pound of silver into two hundred and seventy groats instead of two hundred and forty; this depreciation was carried still further by Henry IV, who coined it into three hundred and sixty, though only a little over £700 worth of money was coined during the whole reign; and by Edward IV (four hundred and fifty). Henry VIII debased the coinage by introducing large quantities of copper, and coining the pound into five hundred and seventy-six pennies, gaining £50,000. Under Edward VI, the practice was continued; the pound was coined into eight hundred and sixty-four pennies; Sharrington, Master of the Bristol Mint, struck £12,000 worth of bad shillings¹; and in April, 1551, it was decided by the Government 'to make 20,000 pound weight, for necessity somewhat baser, to get gains £160,000 clear.' In August of the same year, it was found necessary to reform the coinage by making the real and nominal value agree, *i. e.* the nominal shilling became the real sixpence, the country thereby losing about a million. In 1560, an elaborate scheme of reformation was carried out by Sir Thomas Stanley; the debased coin was called in (a bounty of threepence being paid on every pound's worth of silver), and good money issued in its place. In 1562, and 1576 (18 Eliz. c. 1), clipping was declared treason, gold currency was introduced. Copper coins were first made in 1672 and were replaced by bronze in 1861.—Vide Dict. of Eng. Hist. art. Coinage.

Depreciation
of the
Coinage.

¹ The Lords of the Council had the privilege of private coinage.

owing to the facilities afforded for the offence, from the coin being cut with shears in the mint. In 1640, a scheme of debasing the coinage was proposed, to obtain funds, which were much needed, but was negatived. In 1663, owing to the depreciation of the coinage from mutilation, the coins issued were stamped in a mill, instead of being struck by a hammer, and the milled coins had their edges stamped with a legend to prevent clipping; but the milled coin, being more valuable than the hammered, was either hoarded or exported, while the latter, continued in circulation, was constantly clipped and could be easily counterfeited. The evil became so great that it was necessary to issue a new coinage. In 1696 an act was passed which fixed a date after which hammered coin was no longer to be legal tender, and provided that the clipped coin should be brought to the mint and recoinced on the milled principle according to the old standard. The cost, which was to be borne by the nation and not by individuals, was met by a window tax which produced £1,200,000. Newton became Master of the Mint, other mints were established at certain provincial towns, as York, Chester, and Bristol, and the new issue was soon complete. Besides the Statutes mentioned above against the offence of coining, others were passed in 1416, 1572, 1697, 1742, 1774, 1779, and 1803. All previous Acts were repealed in favour of an Act of 1832, and the laws were further amended in 1861.

Coinage Act
1696.

Statutes
against
Coining.

(c) *The Revenues of the Forests*¹ (which were subject to peculiar jurisdiction), and *Forest Laws*, the earliest being that of Canute: '*I will that every man be entitled to his hunting in wood and in field, on his own possession, and let every one forego my hunting; take notice where I will have it untrampled on, under penalty of the full "wite"*'². Under William I, who 'loved the tall deer as if he were their father,'

Forest Laws.

¹ 'In its older meaning' says the late Professor Freeman, 'a forest had nothing to do with trees. It is a tract of land put outside the common law and subject to a stricter law of its own, and that commonly, probably always, to secure for the king the freer enjoyment of the pleasure of hunting.'—William the Conqueror, 171.

² Sel. Charters, 74.

hunting was regarded as a royal privilege, and the forests as the private property of the King; trespassers were severely punished, often by loss of sight; large tracts of land were afforested, and their inhabitants driven away. This practice was continued by William Rufus; and Henry I, in his Charter of Liberties, 1100, refused to give up the forests¹; he also made several new ones which were surrendered by Stephen². In his Charter to London, however, Henry promises the citizens even greater hunting grounds than their predecessors. Henry established an independent system of Forest Courts (p. 64), subsequently perfected by Henry II, under whom visitations of the forest were held 1167, and

1175. In 1184 was issued the *Assize of Woodstock, or the Forest*³, comprising sixteen articles of great strictness, and making attendance at the Forest Courts compulsory. In 1198 the Assize was re-issued and enlarged by the Justiciar, Geoffrey Fitz-Peter, and the fines exacted for breach of the laws were so burdensome, that by *Magna Carta* (*Art. 44, 47, 48*), persons dwelling outside the forest were exempted from attendance at the Forest Courts unless 'impleaded' for some offence; all forests made by John were to be disafforested, and all bad customs connected with the forest were to be inquired into, and abolished⁴. These concessions were confirmed, and increased, by the *Forest Charter* of Henry III⁵, November, 1217, which disafforested private land improperly afforested, and abolished the punishment of death and mutilation for forest offences. The Charter was, however, frequently infringed, in spite of a confirmation in 1225⁶, and Edward I was obliged to promise forest reform in the *Articuli Super Cartas*, 1300. Special commissioners inquired into the abuses, and the reforms were carried out. In 1327 (1 Edward III, c. 1) the *Charter of the Forest* was confirmed and ordered to be strictly observed. The forest

Assize of the Forest, 1184.

Forest Charter, 1217.

¹ Sel. Charters, 101. *Art. 10.*

² *Ib.* 120.

³ *Ib.* 157.

⁴ *Ib.* 302, and 348, § 2.

⁵ *Ib.* 348.

⁶ *E.g.* according to Matthew Paris the forest charters were annulled in 1227, and the Close Rolls contain letters which reafforested six counties.—Stubbs, ii. 39.

laws gradually fell into disuse until revived by Charles I, who, disregarding the settlement made by Edward I, enlarged the royal forests and exacted fines from trespassers (1634).

The policy pursued by the Crown in dealing with the forests was very unpopular. These tracts of land were subject to the absolute will of the King, and were outside the ordinary law of the land. The regulations for their administration were framed rather for the preservation of game than for the welfare of those of the King's subjects who lived within their pale, and transgressors were very harshly dealt with. The mere attendance at the Forest Courts must have proved very burdensome to men who already found it irksome to present themselves at the sessions of the shire-moot. The boundaries of the forests were finally fixed by Parliament, in 1640 (16 Car. I, c. 16), as they existed in 1623.

TAXATION.

Taxation.

In Anglo-Saxon times extraordinary taxation (*e.g.* the Danegeld) was levied with the counsel and consent of the Witan; the Norman Kings, before levying a tax, which was not a regular feudal due, consulted their council, probably as a mere matter of form, as no instance of debate on a tax occurs during this period. The first instance of opposition to a royal demand for money occurs in 1163, when Becket quarrelled with Henry II about the Sheriff's aid¹. This reign is also noteworthy for the establishment of a system of *class taxation*, and for the introduction of taxes on *moveables*. In 1198 a demand for money was resisted by the bishops of Lincoln and Salisbury, with the result that the demand was withdrawn, and the Justiciar, Hubert Walter, resigned. John sometimes levied taxes arbitrarily, sometimes with consent; scutages and carucages were raised, fines exacted, and moveables taxed. But in proportion as the fact was realised that

Anglo-Saxon.

Norman.

Angevin

¹ It has usually been supposed that the dispute was caused by some proposed alteration in the payment of Danegeld (see Stubbs, *Sel. Charters*, 29, and *Early Plantagenets*, 68, 69); Mr. J. H. Round, however, has recently shown that the tax under discussion was the *auxilium vicecomitis*, or Sheriff's aid. See *Eng. Hist. Review*, v. 750, and Stubbs i. 382, note 1.

taxation had become national, consultations on the subject increased, and, with the imposition of the tax on moveables, the idea arose that taxation should be more closely connected with representation (p. 128). In *Magna Carta* a clause was inserted against arbitrary taxation, but was omitted from the *Confirmation* of 1216, owing to the ministers of the young King, Henry III, being unwilling to tie the hands of the executive at so critical a juncture. Under Henry III, aids were frequently refused, and in the Charter of 1225, appears the principle of redress of grievances preceding supply¹, perfected under Edward III. The reign of Edward I presents a new feature in the system of taxation. It had hitherto been customary to issue special commissions to obtain the consent of the various local communities to a tax. After 1295 this was virtually abandoned, and the assent of the nation to the financial proposals of the Crown was thenceforth expressed by its representatives in Parliament. In 1297 the *Confirmatio Cartarum* forbade taxation not authorised by Parliament, but as *tallage* was not mentioned by name, further levies took place in 1304, 1312, 1332. It was abolished by the Statute of 1340. The Commons also increased their power over the revenue, by asserting their right of appropriating supplies (this did not become a regular practice until Charles II, p. 115), auditing the public accounts (p. 116), and originating Money Bills (p. 114). Under the Lancastrian Kings, illegal taxation was rare, and even under the Tudors, the assent of Parliament was usually obtained, though money was occasionally raised by *benevolences* and *monopolies* (p. 200-1). James I asserted his prerogative to levy impositions by his arbitrary will, and was aided by the servility of the judges, *e.g.* *Bate's case* (p. 198). Parliament frequently remonstrated, but the illegal taxation was continued by Charles I, and was forbidden by the *Petition of Right*, 1628; in spite of this, however, occurred the famous *case of Shipmoney*, 1637 (p. 199). Under Charles II, who received a fixed income of £1,200,000, taxation was heavy,

¹ Sel. Charters, 354.

Temp.
Henry III.

Temp.
Edward I.

Stuart
Taxation.

though imposed by the authority of Parliament; James II had recourse to the illegal expedient of levying the customs by Proclamation (p. 192). By the *Declaration of Right*, 1689, it was declared illegal to levy money otherwise than with the consent of Parliament, and since the time of William III, the system of appropriation of supplies, based on the estimates for the year, has given Parliament the complete control of the administration.

Taxation may be divided into (a) *direct*, (b) *indirect*.

A. Direct Taxation.

Direct
Taxation

Up to 1188, fell entirely on land.

(1) *Danegeld*¹, first levied 991, by Ethelred II, at the suggestion of Archbishop Sigeric (though the practice of paying money to the Danes appears in the early part of Alfred's reign), to buy off the Danes; imposed by consent of the Witan; levied occasionally only, *e.g.* 994, 1002, 1007 (36,000 pounds), 1012 (48,000 pounds), 1018 (82,500 pounds), consisted of 2s. on every hide of land; abolished by Edward the Confessor, but reimposed by William I at 6s. on the hide, 1084. It became a composition paid by the Sheriff, and was a very unpopular tax; the Barons of the Exchequer, many monasteries and the sheriffs were exempt from payment, and it seems to have afforded the latter great opportunities for extortion; Stephen promised to abolish it², but it continued till 1162. It soon reappeared under the name of *hidage*, *i.e.* 2s. on the hide, and under Richard I became *carucage*, or 2s. on the carucate of one hundred acres, the rate being raised to 5s., 1198³; 3s. on the carucate was demanded by John, 1200⁴. The tax was occasionally levied under Henry III, *e.g.* 1220, but died out as the newer forms of taxation were adopted.

Danegeld
first levied,
991.

Hidage,
Carucage,
temp.
Richard I.

(2) *Shippgeld* (the precedent of shippmoney), (p. 199), levied in Anglo-Saxon times for the defence of the realm, *e.g.* Ethelred, 1008, made every three hundred hides liable to

Shippgeld.

¹ Sel. Charters, 106, 203. In 991 the tax was 10,000 pounds.

² Ib. 115, *Hen. Hunt.*

³ Ib. 256, *Rog. Hov.* iv. 46.

⁴ Ib. 272, *Rog. Hov.* iv. 107.

furnish one ship, and in 1040, it was imposed for the support of Harthacnut's fleet.

Scutage first
levied, 1156.

(3) *Scutage*, a feudal tax of two marks on the knight's fee (*scutum*), and a great blow to the feudal system (first imposed 1156, and confirmed in the Toulouse war, 1159¹), was usually paid in commutation of personal service, and was, in this respect, a modification of the old *fyrdwite*² (p. 305); it was frequently levied under Henry II, Richard I, and John, and was in fact no small source of constitutional danger, as it provided the King with money to pay mercenaries, whom he occasionally used to oppress the people. *Magna Carta* provided that no scutage should be imposed except by the common consent of the nation. In 1231, a scutage of three marks was levied for the expedition to France. It was revived occasionally by Edward I, and Edward II, but became obsolete in the next reign, though there is an instance of its remission by Richard II, 1385. It was abolished at the same time as feudal tenures and purveyance, 1660.

Becomes
obsolete,
temp.
Edward III.

Tallage.

(4) *Tallage*, a tax on the towns, and demesne lands of the Crown, usually levied by a poll tax, *e.g.* a tallage of 2,000 marks levied from London in 1214; 1,000 marks in 1222, 1241, and 1252. By the *de tallagio non concedendo* (p. 19), an 'unauthoritative abstract' of the *Confirmation of the Charters*, 1297, held to be a Statute by the *Petition of Right* (1628), no tallage, or aid, is to be taken without the consent of all. In the *Confirmatio Cartarum* itself the word *tallage* is not used, and Edward I accordingly levied one in 1304; there was no opposition to this, but in 1312 a tallage was resisted by London and Bristol. In 1332, Edward III attempted to collect a tallage, but the opposition of Parliament compelled him to desist. The right was expressly abolished by the Statute of 1340, which was subsequently confirmed in 1348, 1352, and 1377.

Tax on
Moveables,
first imposed,
1188.

(5) *Tax on Moveables* (*i.e.* personal property and income)

¹ Sel. Charters, 129, *Gervas*, c. 1381.

² *Fyrdwite* and *Scutage* differed widely in theory: the former represented a punishment, the latter a privilege.

was foreshadowed by the *Assize of Arms* 1181, which compelled freemen to provide themselves with weapons according to the value of their personal property¹. It was first regularly imposed by the *Saladin Tithe*² of 1188. In 1193 one fourth of property or income was taken for the ransom of Richard I³, while in 1203 John imposed one seventh on the baronial moveables. Four years later, he exacted one thirteenth from all property, lay or ecclesiastical. During the thirteenth, fourteenth and fifteenth centuries the tax on personal property usually took the form of a *tenth* and a *fifteenth*, the former paid by the towns, the latter by the shires. In 1334 the produce of this tax was estimated at £39,000, and from that year the grant of a tenth and fifteenth meant the collection of £39,000 contributed in fixed proportions by the shires and boroughs. In the sixteenth century, this form of taxation gave way to the *subsidy*, but an instance of its employment occurs as late as 1623.

Tenths and Fifteenths.

(6) *Subsidy*, a tax on property at the rate of 4s. in the pound for land, and 2s. 8d. for goods, first voted *temp.* Richard II; a subsidy, like a fifteenth, became a fixed sum of £70,000 (clerical subsidy £20,000). In 1398 a subsidy on wool and leather was granted to Richard II for life; this was the first instance of granting taxes for life; the practice subsequently became usual (see *tunnage and poundage*, p. 192). Subsidies were discontinued after 1663.

Subsidies, first voted, *temp.* Richard II.

First instance of a tax granted for life, 1398.

(7) *Poll Tax*. Proposed 1222, but brought to no effect⁴. One of a groat a head was levied in 1377: a graduated poll tax ranging from £6 13s. 4d. to one groat a head, was exacted in 1379; and in 1380 one ranging from 60 groats to one, led to the Peasants' Revolt of 1381. A poll tax was levied as late as 1641, ranging from £100 to 6d., for the payment of the armies, and again in 1660. In 1692, and 1694, a poll tax varying from £10 to 4s. was collected for the purpose of

Poll tax, 1377.

1380.

1641.

¹ Sel. Charters, 154.

² Ib. 252. Rog. Hov. iii. 210.

³ Ib. 322, *Ann. Waverl.* p. 296.

⁴ Ib. 160.

carrying on the French war. It was imposed for the last time in 1698¹.

1698.

Hearth Tax,
1662—1689.

(8) *Hearth Tax*, of 2s. on every hearth was imposed in 1662, (14 Car. II, c. 10); it was the revival of an old exaction, and the first instance of a permanent tax; it was abolished in 1689 (1 Wm. & Mar. c. 10), owing to its extreme unpopularity.

Window
Tax, 1696—
1851.

(9) *Window Tax*, first imposed in 1696, abolished in 1851, in favour of the *Inhabited House Duty*.

Land Tax,
1689—1793

(10) *Land Tax* imposed in 1689 at the rate of 1s. in the pound, which was raised to 4s. in 1692. It was re-imposed in 1702 by 1 Anne, st. 2, c. 1 and in 1798 (38 Geo. III, c. 5) was made perpetual at 4s. in the pound. The act provided for its redemption by compounding, but this was not done to any great extent. In the year 1908-9 the income from Inhabited House Duty was £1,900,000 and from the Land Tax £730,000.

Income Tax,
1798.

(11) *Income and Property Tax*, of 10 per cent., was imposed by Pitt, 1799, on all incomes above £200; removed 1802; re-imposed in 1803 at the rate of 5 per cent on incomes above £150. It was again abolished in 1815, but revived by Sir R. Peel in 1842. The Income Tax is, at the present day, regulated by Act of Parliament every year; in 1908-9 it produced £33,000,000.

Tax on
Succession,
1796.

(12) *Tax on Succession* to personal property was imposed by Pitt in 1796; to real property by Mr. Gladstone in 1853, in his first budget.

Indirect
Taxation.
Customs.

B. Indirect Taxation.

Prisage.

(1) *Customs*, or duties on certain imports and exports, sprang from the royal prerogative of regulating all matters of commerce; the earliest were *prisage*, i.e. the king's right to one cask of wine out of every ten casks in the ship's load, at 20s. a cask; *customs on general merchandise*, which were in fact a kind of licence to trade, and on *wool*, which was peculiarly liable to *maletotes*, or evil tolls. By *Magna Carta*, all merchants were to trade without being

General
Merchandise,
Wool.
Maletotes.

¹ Anson, ii. 298.

subject to any evil tolls, but only to the ancient and lawful customs.¹ In 1275, the *Antiqua custuma* was settled by the 'prelates, magnates, and communities, at the request of the merchants,' at half a mark on the sack of wool, and on three hundred woolfells, and one mark on the last of leather; in 1294, this rate was raised, by consent of the merchants, to three marks on the sack, and on three hundred woolfells, and ten marks on the last. By the *Confirmatio Cartarum*, 1297, the King's right of imposing arbitrary customs was restricted (saving the custom of wools, skins, and leather), and the *maletote* of 40s. on every sack of wool was released. In 1303, by the *Carta Mercatoria*, a custom of 40 pence on the sack, and on 300 woolfells, and half a mark on the last, was obtained from the foreign merchants in return for a grant of certain privileges; this custom of 1303, known as the *nova custuma*, was refused by the representatives of the citizens and burghers. By the *Carta Mercatoria* the customs were fixed on a regular scale. Wine 2s. a cask, in addition to the *prisage*; exported cloth 2s. to 1s. a piece; other imports and exports 3d. in the pound value²; in 1309, the *Articles of Grievance* petitioned against these new customs, and the duties on wine and merchandise were suspended for a year; they were re-imposed 1310, but again suspended by the Lords Ordainers 1311-22; they were confirmed 1328, and by the *Ordinance of the Staple*, 1353, recognised as a Statute in the following year, were fixed at 10s. on the sack, and on three hundred woolfells, 20s. on the last, and 3d. in the pound. In 1340 (14 Ed. III, st. 2, c. 4) the King was forbidden to take more than the ancient custom except by leave of Parliament, but nevertheless Edward III taxed wool illegally on several occasions, usually with consent of the merchants, and Parliament petitioned against this way of raising money 1339, 1343, 1346; finally by Statutes of

*Antiqua
Custuma,
1275.*

1294.

*Carta
Mercatoria,
1303.*

*Nova
Custuma,
1303.*

*Ordinance
of the Staple,
1353.*

*Illegal
taxation of
wool, temp.
Edward III.*

¹ Sel. Charters, 301, § 41.

² Technically this proceeding was not a breach of the *Confirmatio Cartarum* because the bargain was made with foreigners, but it contravened the article of *Magna Carta* which provided for the freedom of trade. Stubbs, ii. 525.

1362, and 1371 (45 Ed. III, c. 4), it was declared that no grants on wool should be made without the consent of Parliament. From this time the power of Parliament in indirect taxation was recognised, and illegal impositions of duties became rare. Mary, by Proclamation, imposed a custom on cloth, 1557, and on French wines; and Elizabeth, one on Sweet wines. James I made illegal impositions, and in 1608 issued a Book of Rates imposing new and heavy duties on various articles¹. The House of Commons complained of the book (1610, 1614), and such impositions were declared illegal by the *Petition of Rights*, 1628, and by the *Bill of Rights*, 1689. The Customs were granted to Charles II for life, and were levied illegally by James II, on his accession, by Proclamation, before they had been granted by Parliament. Under William III and Mary, the Customs were granted for four years only; since then they have become permanent taxes, and have much increased in value, bringing in at the present day about thirty millions annually².

Book of Rates, 1608.

Tunnage and Poundage.

Regularly granted, 1373.

(2) *Tunnage and Poundage* were in reality the old customs on wine and merchandise. In 1308, the English merchants compounded for the *prisage* by paying 2s. a tun on wine; in 1347, 2s. a tun, and 6d. in the pound on merchandise, except the staple commodities of wool, leather, etc. From 1373, tunnage and poundage became a regular Parliamentary grant; it was regulated afresh at the beginning of each reign, and was granted to the King for life from Henry V to Charles I, in whose reign it was granted for a short time only, and who, in consequence, levied the tax on his own authority, e.g. 1626, 1628. The duties consisted at this time of 3s. on the tun of wine, and 1s. in the pound on other importations. In 1660, by 12 Car. II, c. 4, and 1685, by 1 Jac. II, c. 1, tunnage and poundage were granted to the King for life.

Excise Duties, 1634.

(3) *Excise Duties*, or duties on certain articles of consumption, and home manufacture, as beer, cider, tea, groceries,

¹ Authorised Books of Rates were issued by Parliament in 1647 and 1660.

² From March 1908 to March 1909 the customs produced £29,200,000.

silver and gilt wire, plate, paper, printed silks, etc., originated in 1643. After the Restoration they were granted to Charles II for life; they subsequently increased very much in number, and though they have now been greatly reduced, in 1908-9 they amounted to £33,650,000.

(4) *The Post Office*, first established under James I, and developed under Charles II (a General Post Office being sanctioned for London in 1660, by 12 Car. II, c. 35), has, since the introduction of the Penny Post in 1840, yielded a large annual profit to the Government. In 1908-9 the Post Office produced £17,770,000, the Telegraph Service £3,020,000, and the Telephone Service £1,510,000.

Post Office
originates,
temp.
James I.

(5) *Stamp Duties*, first imposed in 1671, by 22 & 23 Car. II, c. 9; they were re-imposed in 1694, by 5 & 6 Wm. & Mar. c. 21. In 1712, by 10 Anne, c. 19, a stamp duty was imposed on newspapers, and other ephemeral publications, with a view to discouraging writers against the Government; it was not repealed until 1855.

The Corn Laws.

Up to 1360, exportation of grain was by general custom and consent forbidden; in that year, by 34 Ed. III, c. 20, exportation was forbidden except to places exempted by the royal licence. In 1394 (17 Ric. II, c. 7), it was provided that export might take place except to places forbidden by the King, and the export was further regulated in 1425 (4 Hen. VI, c. 5). In 1436-7 (15 Hen. VI, c. 2), export was prohibited except when the price was 6s. 8d. a quarter and under. In 1463 (3 Ed. IV, c. 2), a similar limitation was imposed on importation. In 1534 (25 Hen. VIII, c. 2), exportation was forbidden, except with the royal licence, owing to the decline of agriculture in England; and in 1562 (5 Eliz. c. 5), the price at which exportation was permitted was made 10s. a quarter. Duties of increasing amount on the exportation of corn were imposed 1570 (13 Eliz. c. 13); 1604 (1 Jac. I, c. 25); 1624 (21 Jac. I, c. 28); 1660, 1663, and 1670 (22 Car. II, c. 13). In 1670, too, import duties varying from 8s. a quarter, when the price was over 53s. 4d.,

The Corn
Laws.
First Act,
1360.

1689. to 21s. 9d., when under 44s. were imposed. In 1689, export duties were abolished, exportation being encouraged by bounties. Importation was regulated in 1732, and in 1773, by *Burke's Act* (13 Geo. III, c. 43), the import duty was fixed at sums varying from the nominal sum of 6d. at 48s., to 24s. 3d. at 44s. and under; by the same Act export was forbidden when the price was over 44s., a bounty of 5s. being given below 44s. In 1791 (31 Geo. III, c. 30), and 1804 (44 Geo. III, c. 109), the price at which nominal import duty was exacted was raised to 54s. and 66s., whilst export was forbidden in 1791, at 46s., and 1804, at 54s. In 1814 (54 Geo. III, c. 69), duties on exportation were abolished; in 1815 (55 Geo. III, c. 26), importation was forbidden when corn was under 80s. a quarter; reduced in 1822 (3 Geo. IV, c. 60), to 70s. with a duty of 12s., which was to be 5s. when the price reached 80s. In 1828, a sliding scale of duties was established under an Act of the Duke of Wellington (9 Geo. IV, c. 60), fixing the duties at 36s. 8d. at 50s., 24s. 8d. at 62s., decreasing to 1s. at 73s. Several attempts were now made to obtain a repeal of the Corn Laws (which had already, *e.g.* 1815, led to serious bread riots), *viz.* by Mr. Whitmore, 1833, and Mr. Hume, 1834; and, in 1838, was formed the Anti-Corn Law League, headed by Mr. Charles Villiers (who made several motions in Parliament for the repeal of the laws, 1839-1843), by Mr. Cobden, and Mr. Bright. In 1842, Sir Robert Peel modified the sliding scale from 20s. at 51s., to 1s. at 73s. (5 & 6 Vict. c. 14); but opposition still continued, and, in spite of all kinds of prognostications of evil, the Corn Laws were abolished, on the motion of Sir Robert Peel, 1846 (9 & 10 Vict. c. 22), the Act to come into operation in 1849. A nominal duty of 1s. a quarter was continued, but abolished in 1869¹.

Assessment of Taxes.

Assessment of Taxes.

Anglo-Saxon.

(1) *Anglo-Saxon*, by the Sheriff in the local courts; usually compounded for by the Sheriff.

¹ Sir M. Hicks-Beach imposed 1s. duty on corn in 1902 and the next year it was removed by Mr. C. T. Ritchie, who had become Chancellor of the Exchequer in the meantime.

(2) *Norman*, according to *Domesday Survey*¹. All early Norman taxes fell on land.

Domesday Survey (from *Domus Dei*, the name of a chapel in the Cathedral at Winchester or Westminster where the record was deposited),² was taken in 1085, by the King's officers, on the sworn information of the sheriffs, barons, lords of manors, representatives and reeves of hundreds, and the priest, reeve, and six villeins from each township. Questions were put as to the holders of manors in the time of Edward the Confessor, and at the time of the survey; the extent of manors in *hides*, the number of villeins and freemen, the extent of wood, pasture, mills, and fisheries; the value at the time of the survey, and in Edward the Confessor's time. The result was an accurate, though not exhaustive, basis of rating, e.g. Northumberland and Durham were omitted, probably on account of their being at the time occupied by the Scots, as well as most of Cumberland, Westmoreland, and Lancashire. The particulars thus collected were laid before the King at Winchester, Easter, 1086. Many towns, especially those in the north, show a great decrease of population since the reign of Edward the Confessor, owing to William's severity; the great landholders prove to be all Normans, e.g. Earl of Mortain has 793 manors; Earl of Richmond, 442; Odo of Bayeux, 439; William himself, 1422. When the survey was made, the whole country was vested in the King, the Church, and about 600 tenants-in-chief, of whom hardly one was a Saxon.

(3) *Feudal taxes* were assessed on the *knight's fee*, not on the *hide*, but *Domesday* remained the basis, as the number of hides in a knight's fee was easily reckoned.

Change of ownership, etc., occasionally demanded fresh assessment, which was made by itinerant officers of the Exchequer, e.g. the tallages of 1168, 1173. The contributions of the boroughs were assessed by the sheriffs (the boroughs often obtaining charters to pay *firma burghi*, or rent, instead), (p. 261). *Scutages* were assessed on the report of the *Scutages*.

¹ Sel. Charters, 81, 86, 208.

² Stowe's Annals, 118,

individual knight, and were often levied inaccurately, though in the case of land there could not be extensive cheating.

Moveables.

Carucage,
1198.

Local
Assessment.

Moveables and personal property were assessed by a jury of sworn knights, or by four or six lawful men of the parish, e.g. *Assize of Arms*, 1181; *Saladin Tithe*, 1188. The Carucage of 1198 was assessed by the stewards of the barons, bailiffs, four lawful men of the township, and two lawful knights of the hundred¹. Assessments were often local, e.g. the Carucage of 1220 was assessed by two knights chosen in the county court, while the taxes of 1232 and 1237 were assessed by the reeve and four men from each township. In the collection of the fifteenth on moveables of 1225, the owner declared his liability on oath, the reeve and four men from each township collected the money and then handed it over to four elected knights of the hundred².

Customs were also assessed by collectors of customs in various towns, *circ.* 1275. From 1295 taxes were granted by an assembly representative of all classes. In 1371, a grant of £50,000 was made by Parliament to be raised by an assessment of 22s. 3d. on each parish, on the supposition that there were 40,000 parishes; there were found to be in reality under 9,000, and the rate had to be raised to 116s.

Local
Taxation.
Anglo-
Saxon.
Trinoda
necessitas.

Local Taxation.

Anglo-Saxon. The *trinoda necessitas* was incumbent on all holders of land; it consisted of (1) *burhbot*, maintenance of fortifications; (2) *brigbot*, repair of bridges; (3) *fyrð*, duty of military service (p. 305).

County
Rates.

County Rates were originally levied, and assessed, in the shire courts for county purposes, e.g. police, highways, prisons, and, up to the reign of Charles I, to pay knights of the shire. They were defined by Statute, 1530 (22 Hen. VIII, c. 5), though frequently increased; rates for different purposes were collected separately until 1739 (12 Geo. II, c. 29), when justices in quarter, or general, sessions were empowered to levy a general county rate, assessed on all townships and

¹ Sel. Charters, 257. *Rog. Hov.* iv. 46.

² Sel. Charters, 355.

parishes, to be collected by overseers with the poor rate, and paid by them to the high constable of the hundred. The county rate has been latterly applied to various fresh purposes, *e.g.* the maintenance of Lunatic Asylums 1808 (48 Geo. III, c. 96).

Borough Rates, levied by the town council for borough purposes, such as lighting; either paid out of the poor rate, or collected separately. Borough Rates.

Poor Rates, levied by the churchwardens and overseers of each parish, must be formally allowed by two justices. Poor Rates.

The National Debt commenced in 1664, and was rendered possible by the growth of banking during the Civil war; money had been borrowed freely by the Plantagenet kings from the Jews and Italian bankers, and in 1345 Edward III repudiated his debts. Similarly, Charles II repudiated the Debt, 1672, though interest was subsequently paid on the sum till 1683. In 1694, on the advice of Montague, £1,200,000 was raised at 8 per cent., the subscribers being incorporated as the *Bank of England*; this debt was *funded*, *i.e.* secured in the public funds. In order to prevent the Crown becoming independent of Parliament by the aid of the Bank, it was provided that no money should be advanced to the Sovereign by the Bank of England without the consent of Parliament. At the end of William III's reign, the Debt amounted to more than £16,000,000; under Anne, it grew to £54,000,000 (the interest being reduced to six per cent., and subsequently, *temp.* George I, to four per cent.); during the Seven Years' War, 1756 to 1763, to £139,000,000; in the American War to £249,000,000; and in the French War to £840,000,000. It is now (1909) £754,121,309, from which there are various deductions to be made for loans due to the Government, leaving net amount of Debt at £710,610,720, the annual cost of the Debt for interest, management, and new Sinking Fund being £28,000,000. This includes £42,839,602 of *unfunded* debt on Treasury bills, Exchequer bills and bonds (invented by Montague, 1697), redeemable by the Government at short dates, and £38,009,337 the capitalized value of Terminable Annuities. Origin of the Bank of England, 1694.
Unfunded Debt.

By the *National Debt Act*, 1870 (33 & 34 Vict. c. 71), the interest payable on the National Debt is to be paid annually out of the Consolidated Fund, *i. e.* the revenue.

Walpole's
Sinking
Fund, 1716.

Pitt's Sink-
ing Fund,
1786.

In 1716, Sir R. Walpole proposed to get rid of the Debt by a *Sinking Fund*; the scheme was subsequently developed by Pitt, 1786, and was merely to put by one million a year, which at compound interest would eventually swamp the Debt; to get a spare million to put by, however, money had often to be borrowed, so the scheme failed; it would have been simpler, and equally efficacious, to pay off a million a year, instead of laying it by. Some of the Debt has been paid off in recent years by means of the creation of Annuities.

Illegal
Exactions.

Instances of Illegal and Arbitrary Exactions.

Compulsory
Knighthood,
1278, 1292.

1278 and 1292. Knighthood was made compulsory (under penalty of a fine), on all whose estate reached £20 a year. In 1292, the necessary value of the estate was raised to £40.

Seizure of
Wool, 1294.

1294. Edward I seizes wool, and only releases it on payment of a maletote.

Of Corn and
Wool, 1297.

1297. Edward I exacts corn and meal from the counties, and again seizes wool.

Increase of
Customs,
1303.

1303. Increase of customs, contrary to the spirit of *Confirmatio Cartarum*, 1297 (p. 18).

Tallages,
1304, 1312,
1332.

1304, 1312, 1332. Tallage on demesne, contrary to the spirit of the *Confirmatio Cartarum*, 1297.

Aid, 1346.

1346. Aid to knight the Black Prince, contrary to the Statute of 1340.

Loan, 1347.

1347. A loan on wool, and increase of the customs.

Le Ple-
saunce, 1399.

1399. Richard II exacted sums of money, under the name of *le Plesaunce*, from seventeen counties.

Duty on
Wine and
Cloth, 1557.

1557. Mary imposed a duty on French wines, and foreign cloth, by Proclamation (p. 170).

Elizabeth imposed a duty on sweet wines.

1606. James I imposed a duty of 5s. 6d. per cwt. on currants, in addition to the ordinary poundage. Bate,

a Levant merchant refused to pay. The case was tried in the Exchequer Court and judgment was given for the Crown on these grounds¹. (1) The royal power was both ordinary and absolute. The former was controlled by Statute, but the latter was exercised entirely at the sovereign's discretion: (2) the king had complete control over foreign trade: (3) the Act of 45 Edw. III, c. 4 was not binding on his successors. 'This decision² does not appear to have struck either the bar or the public as erroneous or corrupt,' and was acquiesced in by the Parliament of 1608. Its political significance was not seen till later.

Case of Impositions, or Bate's Case, 1606.

1628. Illegal impositions and exactions, one of the most annoying of which was *distrainment of knighthood* (p. 198). In 1629, Commissioners were appointed to enforce the taking up of knighthood by those eligible, and the exaction was continued until abolished by the Long Parliament, 1641 (16 Car. I, c. 20), by which time it had brought in over £170,000.

Exactions, 1628.

1634. *Ship Money*. On the advice of Noy, the Attorney General, writs were issued to London and other sea ports, calling on them to supply ships of a specified tonnage for the defence of the coast. As no port except London possessed vessels of sufficient size, Charles offered to supply them if the ports would provide their crews and equipment. In 1635 a similar demand was made to the inland counties, the inhabitants of which were to be assessed by the sheriffs. In Plantagenet times it had been a constitutional practice to call on the ports for ships and men for coast defence, and as late as 1626, during the Spanish war, a fleet had been raised in this way³. But England was at peace now, and though Charles regarded Ship Money as a commutation for the duty of providing ships, many of his subjects looked on it as an arbitrary tax. Several refused to pay, among them *John Hampden*, a Buckinghamshire gentleman. In 1637 his case was tried in the Court of Exchequer.

Ship Money 1634.

Hampden's case, 1637.

¹ See Prothro, *Statutes and Const. Documents*, pp. 340-353 and the Introduction, pp. lxxiv, lxxv.

² Anson, i. 307.

³ Gardiner, *Hist. of England*, vii. 356.

St. John, one of the counsel for the defence, admitted that the Crown could call on the counties to provide shipping for the defence of the country, but contended that the law forbade the King to raise any money beyond his ordinary revenue except by consent of Parliament. It was doubtless true that in a moment of national danger the Crown might act without consulting Parliament, but at the present moment no such danger existed, nor was any alleged in the writ. The judges gave a verdict for the Crown by a majority of seven to five: of the latter Croke and Hutton denied the right of the Crown to levy Ship Money, while on the other side Finch laid down that since the defence of the country was the royal duty, the King's action in moments of peril must be unfettered by Acts of Parliament¹. The decision was very unpopular, and Ship Money was abolished, and declared illegal, by the Long Parliament, in 1641 (16 Car. I, c. 14).

Money was also raised by

Fines.

(1) *Excessive Fines* (p. 79).

Benevolences, 1473.

(2) *Benevolences*, which were first exacted by Edward IV, 1473, though their prototype of forced loans had been levied by Henry III, Edward II, and Richard II; they were supposed to be 'free gifts,' but were really more or less compulsory. They were declared illegal by Richard III, 1484 (1 Ric. III, c. 2), who, however, was compelled by want of

1485.

1492, 1504.

money to exact one in the following year. They were raised by Henry VII, in 1492, 1504, and other years, chiefly by the aid of Archbishop Morton, the inventor of the dilemma of *Morton's Fork*, i.e. if a man lived sumptuously, he was told that his wealth was apparent; if sparingly, that his economy must have enabled him to lay by great store of riches; in either case his gift must be large: in 1495, by 11 Hen. VII, c. 10, those who refused to contribute Benevolences, when asked, were made liable to imprisonment. They were raised by Henry VIII, 1522, 1525, by the aid of Wolsey; in 1545, Henry levied another; those who refused to give were sharply dealt with, one Richard Reed, an Alder-

Morton's Fork.

1522, 1525.

1545.

¹ See Gardiner, *Hist. of England*, viii. 272, and Anson, i. 313.

man of London, being sent to serve on the Scottish border as a common soldier by way of punishment. Forced loans were demanded by Mary, and by Elizabeth, who committed those refusing to lend to prison, though the latter Queen ^{Temp. Mary and Elizabeth.} seems to have punctually paid her debts. In 1614, James I ^{1614.} demanded a Benevolence, and even Coke upheld its legality. Mr. Oliver St. John, who had written letters against this exaction, and refused to contribute to it, was thrown into prison and fined £5,000 ¹. Charles I continued the practice, and in 1627, Sir Thomas Darnel, and four others, were ^{1627.} imprisoned for refusing to contribute to a loan (p. 241); in 1628, Benevolences were explicitly forbidden by the *Petition of Right*. Parliament in 1661 authorised the collection of a Benevolence (13 Car. II, st. 1, c. 4), but the amount to be given was limited, and 'voluntary subscriptions' were forbidden to be collected in future without the consent of Parliament.

(3) *Monopolies*, which arose from the prerogative of the ^{Monopolies.} Crown to regulate all matters of trade. Privileges, and exclusive rights of trade, were granted to merchants by the Norman Kings, in return for money payments. The system was much abused under Elizabeth, who granted her favourites Monopolies for dealing exclusively in different articles, such as salt, vinegar, leather, and coal. In 1571, a question was asked in Parliament about the abuse, but the proposer ^{Opposition to them, 1571.} (Mr. Bell) was summoned before the Council, and the subject dropped. In 1597 an address was presented to the Queen, ^{1597.} but received an evasive reply; thereupon the Commons determined to take the matter into their own hands, and a bill introduced by Lawrence Hyde in 1601 was so warmly ^{1601.} supported, that Elizabeth was forced to make various concessions. Many Monopolies, however, still continued to exist, and fresh ones were granted by James I in 1614. In 1621 ^{1614, 1621.} Sir Giles Mompesson was impeached for abusing a Monopoly of gold and silver thread, and various patents were cancelled.

¹ As usual, the fine was remitted as soon as the prisoner made full submission.

Their
abolition
1624.

Patents.

Three years later (1624) nearly all Monopolies were abolished by 21 Jac. I, c. 3, an exception being made in favour of *patents for new manufactures* which were to be granted for fourteen years. This act did not affect the power of the Crown to grant Monopolies to corporations, and Charles I took advantage of this in 1636. All Monopolies, however, were abolished in 1639.

1639.

Statutes
against
Exactions

Statutes in limitation of arbitrary taxation.

Magna Carta, 1215.

Confirmatio Cartarum, 1297.

Ordinances of 1311.

Right of tallage abolished, 1340, 1348.

King forbidden to tax wool, 1362, 1371.

Benevolences declared illegal, 1484 (1 Ric. III, c. 2).

Monopolies surrendered, 1601, 1624, 1639.

Petition of Right, 1628 (3 Car. I, c. 1).

Ship Money, and distraint of Knighthood, abolished, 1641 (16 Car. I, cc. 14. 20).

Feudal incidents surrendered, 1660 (12 Car. II, c. 24).

Bill of Rights, 1689 (Wm. & Mar. st. 2, c. 2).

CHAPTER VI.

THE LAND.

Land tenure before the Norman Conquest.

The Mark System, formed essentially for an agricultural people, whose powers of farming were equal, was the origin of all land tenure amongst Teutonic nations. By it the arable land of the *Mark* (or *March*) belonging to the whole tribe was allotted annually, or triennially, as the case might be, to the owners of homesteads, to be held until the time came for it to lie fallow, whilst the pasture and waste land was held in common by the heads of families. As agriculture improved, the mark system became impossible. A man, who farmed better than his neighbours, found himself wronged by having a no more lengthened hold over his land than his more idle or incompetent fellow mark-men; on the Saxon migration to England, the system failed to take root, and absolute ownership was quickly established, *land becoming indispensable to the position of a free man*. Although the mark system had no influence on the political organisation of the country, and died out after the settlement of the Saxons, it left a few traces of its existence, some of which are still to be observed, *e.g.* the township (p. 218) was merely a developed and altered form of the *mark*; the possession of common pasture, and waste land, by certain communities (*e.g.* Port Meadow at Oxford); and the system of common cultivation, on the threefold plan of sowing one third part with spring crops, one third with autumn crops, and letting one third lie fallow; a system which was by no means uncommon a century ago, and which is even now followed in certain

Tenure of Land before the Norman Conquest. Mark System.

Its failure in England.

Traces of its existence.

localities. Another trace of the mark system may be seen in the early

Importance
of Kin.

Importance of Kin, which continued in some degree throughout the Anglo-Saxon period; e.g. kinsmen fought side by side in the *fyrð*, shared in the *wergild* paid for their slain brethren, contributed to their brother's fine, and became legal *compurgators* for one another (pp. 73, 74). The patronymic *ing* is frequently found in the names of villages, which were originally occupied by communities united by blood, e.g. *Melling* = the home of the family of Mell.

After the Saxon migration to England, absolute ownership was quickly established; and, up to the Norman Conquest, the two chief divisions of land in England were into *Folcland*, and *Bocland*.

Folcland.

*Folcland*¹ (Folkland) was the surplus land, which the immigrating Saxons were unable to occupy. This surplus belonged to the state, and at first could only be alienated, even in part, by the national consent, expressed through the *Witan* (p. 93). Towards the end of the Anglo-Saxon period, the *folcland* tended, with the growth of the royal power, to become *terra regis*, or crown land (p. 175), the *Witan* merely being witnesses to grants made from it; (even as early as the time of Alfred, land is granted by the King alone). *Folcland*, as such, could only be granted for a definite term, returning to the nation at the expiration of the period, and was held on certain conditions of service to the state, such as *purveyance* (p. 179). 'Large portions of the folkland,' says Dr. Gneist², 'were made over to royal officials in lieu of a salary; and certain portions formed, until the close

¹ This is the view which has hitherto met with general acceptance. But M. Paul Vinogradoff has recently brought forward arguments which seem to show conclusively that *folcland* is what has hitherto been called *ethel*, *alod* or *family land*: it is 'land held by folkright, under the old restrictive common law,' and hence not at the free disposition of its holder. It is sharply contrasted with *bocland*, i. e. land 'held under a book, under a *privilegium* modelled on Roman precedents, armed with ecclesiastical sanctions, and making for free alienation.'—Eng. Hist. Review, vol. viii. pp. 1-17.

² Const. Hist. i. 31.

of the Anglo-Saxon period, the customary endowment of various offices.' *Folcland* could, however, be converted into *Bocland*, or land held in full ownership, by grant of the King Bocland. and *Witan*, under *charter* (or *book*) to any particular individual. Such land could be entailed, was alienable *inter vivos* and devisable by will. Its holders were exempt from all service to the State except the *trinoda necessitas* (p. 196). Occasionally, owners of *bocland* held it as part of the original allotment after the migration, but it was more often severed from the *folcland*, much of which in time became *bocland*.

Lænland was either *folcland*, or *bocland* leased out by its Lænland owners, when it grew too large for them to cultivate, to inferior freemen, and *Læts* (p. 224).

Ethel (the same word as *Etheling*, of noble blood, showing Ethel. the connection between nobility and the possession of land), was land forming part of the original allotment; it was generally inherited, though sometimes acquired by other means, and was always held in full ownership. 'Its evidence,' says Dr. Stubbs, 'is in the pedigree of its owner, or in the witness of the community¹.'

Alod, originally the same word as *Ethel*, is used in a wider Alod. signification, including *bocland* as well as *Ethel*. Allodial land, as being held in full ownership, was, up to the Conquest, always transmissible by will.

Feudalism,

Feudalism.

(a) *Before the Norman Conquest*, did not exist in England Before the Norman Conquest. as a *complete system*; several germs are, however, traceable, which would, in all probability, have developed into a system analogous to continental feudalism, even had the Norman invasion never taken place. The growth of a tendency towards feudalism, which is very apparent just before the Norman Conquest, is traceable in the change from personal to territorial relations. Feudalism has been described as 'an organisation, based on land tenure, in which all men from the highest to the lowest are bound

¹ Const. Hist. i. 76.

together by reciprocal duties of service and defence.' It should, however, be carefully borne in mind that *military* service is not essential to feudalism; *the essential point is the connection between service and land tenure.* As a territorial system, Anglo-Saxon feudalism was incomplete, for there was no supreme landowner in England; the land belonged to the nation, not to the King as it did abroad. As a judicial system, it was more highly developed; the King came gradually to be regarded as the source of justice, and gave rights of jurisdiction to his thegns (*sac* and *soc*, p. 73), who in their turn administered justice to the suitors at their courts. With these grants of *sac* and *soc*, began the connection between jurisdiction and property, which is one of the main features of a fully developed feudal system.

Incomplete as a territorial system.

Feudal tenures did not exist in England before the Norman Conquest; for although military service was owed by the holders of *folcland* and *bocland*, they did not hold their land on the condition of service, and although they were bound to the King by a special oath, the tie still remained a *purely personal one*.

Feudal Tenures before the Norman Conquest.

The distinct germs of feudalism in England before the Norman Conquest are—

Germs of Feudalism in England in Pre-Norman times.

(1) The personal tie existing between the King and his thegns, and between the greater and lesser thegns; a tie at first entirely unconnected with land, but tending by degrees to grow into a territorial relation.

(2) The practice of *commendation*, by which, however, a man only did service at his lord's court, and did not give up his land, and become the lord's vassal, as abroad.

(3) The rights of jurisdiction over suitors.

(4) The appearance of disintegration in the creation and growth of great earldoms, *e.g.* Canute's four earls.

(5) Obligation to military service, which becomes a personal duty *practically depending* on the tenure of land.

(6) The gradual tendency of the public land to become *terra regis*, and thus to make the King supreme landowner.

Commendation, and the growth of the Comitatus.

In the *Comitatus* we may trace the germs of Feudalism, as it existed in England before the Norman Conquest. The strong ties, mentioned by Tacitus as existing between the *princeps* and his *comites*, continued after the Anglo-Saxon migration with certain modifications. The Comitatus.

The King's *comites*, or *gesiths*, who were his personal followers in war, and his household in peace, at first occupied an inferior position, and were looked down upon by the *eorls*, or nobles by blood; by degrees, however, they assumed a more important position, with the growth of royal power, and with their employment in war as a military organisation; finally founding a nobility of service, which absorbed the old nobility of blood. The first step in this growth was seen when the '*gesiths*' received grants of *folcland* by charter after the migration, and their ranks consequently became filled with men who, having accepted grants from the King, were bound to him by the closest personal ties. Gesiths. Abroad, the *gesiths* received grants of the King's land; in England, of the public land. Thus abroad, a feudal noble was placed in a different relation to the King; in England, he had received a double set of duties, (1) those connected with his old relations to the King, (2) his new duties to the nation, as a holder of the public land. The '*gesiths*,' *temp.* Athelstan, became the King's thegns, or servants. To this service, however (whose germs existed in the *εταῖροι* and *θεράποντες* of Homer), no sense of degradation attached, and in the *Bower thegn*, and *Horse thegn*, of the Saxon Kings may be seen the prototypes of the Lord Chamberlain, and Master of the Horse of the present day¹. Growth of the order. It became apparent that the quickest way to distinction was to serve the King; the King's thegns obtained privileges, such as high *wergild*, and high value of oaths; and as they gradually made these hereditary, they became 'the noble class,' partly excluding, and partly absorbing the old nobles, or *eorls* (p. 222). There

¹ There was another important office immediately connected with the King, that of *Staller*, or Master of the Household,

quickly grew up a connection between the nobility of thegns, and the possession of land, *e.g.* Edward's law by which a Ceorl with five hides of land became thegnworthy¹. In Canute's laws there appears a division of thegns, into *twelve-hide* men with a *wergild* of 1200 shillings, and *two-hide* men with a *wergild* of 200 shillings. The greater thegns *commended* themselves to the King, and became his thegns, the lesser ones became the thegns of nobles greater than themselves; the landless man came to be regarded as an outlaw, and, though he might choose his lord, was compelled to *commend* himself to some one on the mutual terms of faithful protection and faithful service. *Commendation* in England was simply a personal relation; the land was given up on *commendation*, but given back again; and though the owner was bound to perform certain services, the land was *not held on the condition of their performance*. Abroad, a man by *commending* himself, gave up his land, and became the lord's vassal. The King's thegns were not only important to him in war, but they furnished him with a trusty body of men from whom to select his most important officers; their relations with their sovereign greatly aggrandised the royal power, as, with so many dependent on him, a King could rarely fail to secure a majority in the Witenagemot on any subject (p. 93).

Commenda-
tion.

Feudalism
after the
Conquest.

Continental
Feudalism.

Usufruct of
Land.

Modified
Feudalism of
William I.

(b) *Feudalism after the Norman Conquest.*

Continental Feudalism was not of purely Teutonic origin, having a close connection with Roman law. It arose from the adoption by ecclesiastical corporations of the old Roman custom of granting *usufruct of land* to temporary holders in return for definite services. This policy was soon pursued in lay property; the King, as the supreme landowner, granted lands to his followers in return for service; these lands, at first a temporary grant, usually for one life, gradually became hereditary, as they were often renewed to the heir of the late holder, especially when he was ready to pay for the succession.

Feudalism, as introduced into England by William I, was a great modification of Continental Feudalism, with the draw-

¹ Sel. Charters, 65.

backs of which William was well acquainted. The feudal barons of France were possessed of immense estates, which were let to tenants by the process of *subinfeudation*; and as these tenants owed military service to the barons as their immediate lords, those barons became in many cases more powerful than the King himself. William avoided this danger by granting his followers scattered lands, and never permitting a whole county to be held by one individual, the only exception being the Counties Palatine (p. 219). He also retained the supreme power in his own hands, and kept up the *hundred*, and *shire courts*, refusing to grant the nobles jurisdictions exempt from the latter. He discountenanced inter-marriages between the great nobles, e.g. that of Ralph de Guader, Earl of Norfolk, with the sister of Roger de Breteuil, Earl of Hereford, 1074; and at the famous meeting at Salisbury, 1086, exacted a direct oath of fealty to himself from every tenant of land in the kingdom, whoever was his lord. But though careful to prevent the growth of feudalism as a system of government, the Conqueror allowed it to become the basis of all social relations; *folcland* became the royal land; all surrendered their land to the King, and received it back from him, whilst the *free socagers* became the lords' vassals.

Subinfeudation.

Feudal Tenure.

Feudal tenure, the theory of which was elaborated by the Norman lawyers, implied, in contradistinction to the Anglo-Saxon system, tenure on certain conditions of service, violation of which would forfeit the lands to the lord; the lord had also a partial ownership of the land, which reverted to him on forfeiture or death, in the latter case being granted to the heir on payment of a *relief* (p. 212). Upon receiving his lands, a tenant performed the ceremony of *homage*, i.e. kneeling with sword ungirt, and uncovered, he swore to become the lord's *man* (*homo*).

Idea of double ownership.

Homage

There were a variety of feudal tenures after the Norman Conquest, e.g.—

Feudal Tenures after the Norman Conquest. Knight Service.

(1) *Knight Service*, which was entirely military. A knight's

fee (*feudum*—a landed estate varying in extent, of £20 annual value) was necessary for tenure by knight service (*per militiam*). The tenant was bound to ‘furnish a fully armed horseman to serve at his own expense for 40 days in the year¹.’ *Temp.* Henry II, this personal service could be commuted by the payment of *scutage* (p. 188). Tenure by *knight service* was liable to the feudal incidents (p. 211); it was abolished 1660, by 12 Car. II, c. 24.

Grand Serjeanty.

(2) *Grand Serjeanty* was tenure *per magnum servitium*, i.e. on condition of rendering special services to the King, such as filling the office of Butler, or Champion. ‘It was in most other respects like *knight service*; only a tenant by *grand serjeanty* was not bound to pay aid or escuage, and when tenant by *knight service* paid £5 for a relief on every knight’s fee, tenant by *grand serjeanty* paid one year’s value of his land².’

Cornage.

(3) Analogous to this was tenure by *Cornage*, or Horngeld, i.e. the tenant was to wind a horn, to give notice to the King’s subjects of the approach of the Scots, or other enemies.

Petit Serjeanty.

(4) Tenure by *Petit Serjeanty*, analogous to tenure by *free socage* (*infra*), bound the tenant to ‘render annually to the King some small implement of war, as a bow, a sword, a lance, an arrow, or the like.’

Frank-almoign.

(5) *Frankalmoign* (*free alms*) was tenure by which the members of a religious house held lands from the donor, to them and their successors for ever, on certain undefined conditions of spiritual service, such as praying for the souls of the donor and his heirs. Lands were held in Anglo-Saxon times by religious houses *in liberâ eleemosynâ*, and were exempt from all service except the *trinoda necessitas* (p. 196). *Frankalmoign* was exempted from the Statute of 12 Charles II, c. 24, 1660.

Free Socage.

(6) Tenure by *free socage* was tenure by certain fixed and specified services, such as by ploughing the lord’s land for three days, by fealty and a fixed rent, or by fealty alone. It is opposed to tenure by *knight service*, where the service was

¹ Stubbs, i. 432.

² Blackstone.

uncertain. In 1660, almost all holdings became tenures in *free socage*.

There was another kind of socage called *villein socage*; Villein Socage.
tenure by certain, but menial, services. (See *Villeins*, p. 227.)

(7) *Burgage tenure*, which was a kind of socage, was Burgage Tenure.
'where houses or lands, which were formerly the site of houses in an ancient borough, were held of some lord in common socage by a certain established rent¹'

(8) *Borough English*, a variety of burgage tenure, was Borough English.
where the *youngest* son inherits instead of the eldest.

(9) *Gavelkind* was a tenure usually found in Kent only. Gavelkind.
(though it is said by Selden to have been general before the Norman Conquest, and appears occasionally in various manors throughout England). The most remarkable features in it were, that the tenant could devise the lands so held by will, and that, in cases of intestacy, the lands descended to all the sons equally.

Feudal Incidents

were attached to tenure by knight service. They were—

Aids. The three regular feudal aids were due (a) to Aids.
make the lord's eldest son a knight; (b) to provide a dowry for his eldest daughter on her marriage; and (c) to ransom the lord's person. Irregular aids were, however, frequently Irregular Aids.
demanded by the lords for various reasons, such as to pay off a debt. This system led to great abuses, and by the twelfth article of *Magna Carta* it was provided that no scutage, or aid, with the exception of the three regular aids, should be imposed except by the Common Council of the nation, and that the three regular aids should be reasonable, whilst article 15 forbids *mesne* lords (*i. e.* lords who have tenants under them, whilst they themselves hold of a superior lord, as the King) to exact any aids at all except the three regular ones. In 1275, the *Statute of Westminster I* (3 Ed. I, c. 36) fixed the aid for marrying the eldest daughter, or knighting the eldest son, at 20s. on each knight's fee in the case of the inferior lords; the same regulation was applied to the tenants

¹ Blackstone.

in capite, i. e. holding directly of the King, 1351 (25 Ed. III, st. 5, c. 11). Illegal aids, however, continued to be exacted, although they had been forbidden by the *Confirmatio Cartarum*, 1297. The three customary aids continued to be exacted during the reign of Edward III, but gradually sank into disuse; they were abolished, *together with all other feudal incidents*, by Statute (12 Car. II, c. 24), 1660.

Reliefs.

Reliefs, originating when fiefs were not hereditary, were sums paid to the lord by the heir before he could enter upon possession of his lands. The sum was fixed by William I at 100s. (or, in *lieu*, so many arms), for each knight's fee; by William II arbitrary reliefs were exacted, but Henry I, in his *Charter of Liberties*, enacts that reliefs shall not be as in his brother's time, but shall be just and lawful¹. *Temp.* Henry II, the regular reliefs were 100s. for a knight's fee, and £100 for a barony; these reliefs were only payable if the heir was of age; if a minor, he became a ward, and paid no relief. *Magna Carta*, Articles 2 and 3, confirms the ancient relief².

Heriots.

Before the Norman Conquest, an analogous system of paying *heriots* was in vogue. A *heriot*³ was paid, on the death of a tenant, to the lord, and consisted of the best beast, or chattel, or of arms, or of a sum of money. It differed, however, from the relief, in being *a debt paid on behalf of the dead man to the lord*, the heir succeeding naturally by allodial right; whilst, in the feudal tenure, the heir could not obtain *livery of seisin*, or enter on his land until the relief had been paid.

Livery of Seisin.

Primer Seisin.

Primer Seisin was the right which the King had to exact from the heir of any of his tenants *in capite*, of full age, an additional relief of one year's profits of the land. *Primer Seisin* only applied to tenants *in capite*.

Wardship.

Wardship. When the heir was under twenty-one if a male, or under fourteen if a female, the lord was entitled to the wardship, and had the custody of the minor and land, without having to account for the profits of the land. Wardship was

¹ Sel. Charters, 100.

² *Ib.* 297.

³ See *Laws of Canute*, c. 72; Sel. Charters, 74.

often a source of great exaction ; it was regulated by Henry I, in his *Charter of Liberties*, which made the widow, or next of kin, guardian of the land and children¹. By the *Assize of Northampton*, however, the wardship was expressly given to the lord². By *Magna Carta*³ 4 and 5, it was provided that the guardians should only take just and fair profits, and should not abuse their trust.

By the *Statute of Westminster* I, 1275, the age of fourteen, in the case of a female ward, was increased to sixteen.

On attaining his legal age, the heir had to 'sue out his livery,' *i. e.* sue for the delivery of his lands from the custody of the guardian, by the process of *ouster le main*; this was done by paying half a year's profits. In this case no *relief*, or *primer seisin*, was paid. Ouster le main.

Marriage. The lord had power to dispose of a female ward in suitable marriage; if the ward refused the marriage, she forfeited the value of the marriage—*i. e.* the sum any one would give for the alliance—to the lord, and, if she married without the lord's consent, she forfeited double the value. *Temp.* Henry III, this right over wards was extended to males. Marriage.

Escheat. If the heirs of the blood of the tenant failed, or if the tenant committed any crime, such as treason or felony, which was held to corrupt his blood, and to render all his blood incapable of inheriting, the lands '*escheated*' or reverted to the lord. Escheats.

Lands entailed in a certain way by the *Statute de donis conditionalibus*, or *Statute of Westminster* II, 1285 (p. 332), were not subject to forfeiture for treason or felony. When a man was convicted of treason, his lands were forfeited to the Crown, and the immediate lord lost the *escheat*. By *Magna Carta* 32, it was provided that the lands of persons convicted of felony should be held by the Crown for a year and a day, and then escheat to the lord⁴. Forfeiture for treason and felony was abolished 1870 (p. 6).

¹ Sel. Charters, 101.

³ Ib. 297.

² Ib. 151.

⁴ Ib. 300.

Alienation of Land.

Alienation of Land.
Fines for Alienation.

Fines for alienation were paid to the King by the *tenants in chief*, for the power of alienating land.

In Anglo-Saxon times the power of alienation was only restricted by the rights of the family, when such rights were expressly mentioned in the title-deeds of the estate¹. But the rapid development of feudal ideas which followed the Norman Conquest led to the imposition of restraints on alienation. It gradually became necessary for tenants-in-chief to obtain the royal consent to proposed alienations, and a clause in the Charter of 1217 provided that no one should give away or sell so much of his land as to render the remainder incapable of furnishing due service to the overlord². The rights of the latter were further protected by the Statute *De donis conditionalibus* (see below *sub* Entail). The practice

Subinfeudation.

of alienating part of fees or fiefs by *subinfeudation*, or subletting portions of the estate to inferior lords, was so extensively carried out, that in 1290 was passed the celebrated *Statute of Westminster III* (18 Ed. I), known as *Quia Emptores*; this Statute forbade *subinfeudation*, and enacted that, in any case of alienation, the land was to be held directly of the superior lord, and not of the intermediate alienor. The effect of this measure was to increase largely the class of small freeholders, holding directly from the Crown, or the great lords. In the Confirmation of the Charters by Edward III, on his accession, 1327, a fine was imposed on alienation, which was, however, freely permitted on that condition.

Quia Emptores, 1290.

Entail.

Entail,

which is foreshadowed by a law of Alfred,—‘*The man who has bockland, and which his kindred left him, then ordain we that he must not give it from his kindred, if there be writing or witness that it was forbidden by those men who at first acquired it, and by those who gave it to him, that he should do so*’³,—was established by the first article of the *Statute of Westminster II* (passed June, 1285, 13 Ed. I), known as the Statute *de donis conditionalibus*. By this Statute ‘lands given to a man and the

De donis conditionalibus, 1285.

¹ Stubbs, i. 180.

² Sel. Charters, 346.

³ Ib. 63.

heirs of his body, with remainder to other persons, or reversion to the donor, could not be alienated by the possessor for the time being, either from his own issue, or from those who were to succeed them¹. *Temp.* Edward IV, it was held, in *Taltarum's Case*, 1473, that an entail could be cut off by *common recovery*, 'a fictitious process of law, invented originally by the clergy to evade the *Statutes of Mortmain*, but introduced under Edward IV for unfettering estates, and making them more liable to forfeiture²;' abolished 1833 (3 & 4 Wm. IV, c. 74), and in 1489 was passed the *Statute of Fines* (4 Hen. VII, c. 24), founded on a Statute of Richard III, giving a power of alienating entailed land; 'it enacts,' says Mr. Hallam, 'that a fine levied with proclamations in a public Court of Justice shall, after five years, except in particular circumstances, be a bar to all claims upon lands³.' This was confirmed in 1540 (32 Hen. VIII). By an Act of 1534 (26 Hen. VIII, c. 13) entailed lands were, in the case of high treason, declared forfeited to the Crown.

The general introduction, from the reign of Edward IV, of *uses*⁴ which had been, *temp.* Edward III, originally contrived by the clergy as a means of evading the *Statutes of Mortmain*, 'by obtaining grants of lands not to their religious houses directly, but to *the use* of the religious houses,' gave facilities for alienation, and increased the powers of the holders of real property. It also gave, however, facilities for fraud by the grant of secret *uses*, which rendered it hard to discover who was the true tenant of the land, and which led to a considerable curtailment of the profits accruing to the King from feudal incidents (p. 211). In 1536, therefore, was passed the famous *Statute of Uses* (27 Hen. VIII, c. 10), which prohibited the creation of fresh *uses*, and vested the actual ownership of land in those who held a *use* on it. But as no change was made in the common law, the old difficulty

¹ Hallam, i. 12.

² Blackstone.

³ Const. Hist. i. 13.

⁴ A *use* is defined by Blackstone as 'a confidence reposed in another who was tenant of the land, or *terre-tenant*, that he should dispose of the land according to the intentions of *cestuy que use*, or him to whose use it was granted, and suffer him to take the profits.'

Taltarum's Case, 1473.

Statute of Fines, 1489.

Uses.

Statute of Uses, 1536.

returned. Estates could not be devised by will, and younger children were thus often left unprovided for. This was remedied by the *Wills Act* of 1540 (32 Hen. VIII, c. 1), which expressly allowed liberty of bequest. By 27 Hen. VIII, c. 16, all transfers of land were to be sealed, and enrolled, before proper officers.

Quo
Warranto,
1278.

In 1278, was passed the *Statute of Gloucester* (6 Ed. I, c. 1), better known by the name *quo warranto*, enacting that the itinerant justices were to inquire by what right the various territorial franchises were held.

Divisions of
Land.
Shire.

Divisions of Land.

The word *Shire* or *Scir* originally meant a *part* or *division* (*e.g.* Yorkshire was divided into seven shires), but occurs as early as the reign of Ine as an administrative division of the West Saxon kingdom. The English shires fall into two classes—the natural or historic, and the artificial or administrative. The former (*e.g.* Hampshire) represent the kingdoms set up by the early invaders of Britain, the latter (*e.g.* Notts) the administrative divisions into which England was split up after the reconquest of the Danelaw by Wessex. The north of England was not divided into shires until after the Norman Conquest. Each shire contained a varying number of hundreds, and its moot (p. 68) was presided over by the ealdorman, the bishop and the sheriff.

The
Hundred.

The Hundred, a division answering to the *pagus* of Tacitus, has been defined by Dr. Stubbs as 'the union of a number of townships for the purpose of judicial administration, peace, and defence'.¹ The term *hundred* originated in, and was almost entirely confined to, the south of England; in the north, the shire divisions were called *wards*, and in the centre (*e.g.* Yorkshire, Derbyshire, Leicestershire) *Wapentakes* (*weapon take*), possibly from an old custom of swearing fidelity to a magistrate by touching his arms, or else in mere allusion to a military gathering of the freemen of the district; another derivation is, that persons unable to find sureties for their good behaviour were deprived of their weapons.

Wapentakes.

¹ Const. Hist. i. 96.

The origin of the *hundred* is obscure; the five chief theories on the subject are :—

Theories as to the hundred.

(a) That it was originally the division of one hundred *hides* of land.

(b) That it was a district of one hundred *hides*, each hide furnishing one warrior.

Both these are disproved by the unequal size of the hundreds.

(c) That it was the original district held by one hundred families.

(d) That it was a district furnishing one hundred warriors. This is, to a certain extent, borne out by the military meaning of the word *wapentake*, and by the fact that one hundred warriors were furnished by the *pagus* to the host.

(e) (*The most tenable theory.*) That it was an association of one hundred persons for purposes of police and justice. The term *hundred* is first found under Edgar¹, when it denotes an organisation for police purposes, though it had probably been in existence for some time, as Alfred is said to have adopted the *hundred* as the basis of rating, and may possibly, as some authorities suggest, have actually been the one who divided England into hundreds. The term was, at any rate, first used to denote the *personal* relations of the hundred warriors, or the association of the *hundred* for defence, being applied in course of time to the *district* occupied by them. The chief man of the *hundred* was the *hundreds ealdor* (see *hundred moot*, p. 70).

The Lathe (*lething*, a levy) was a term used in Kent to denote a district which included several '*hundreds*.' These Kentish *hundreds* were merely geographical divisions, all organisation being vested in the *lathe*, which had a court of its own.

Lathe.

Rape (a share), in Sussex, and *riding* (*trithing*, a third part), in Yorkshire, and Lincolnshire, were sub-divisions of land, coming between the *shire*, and the *hundred* or *wapentake*.

Rape Riding.

¹ Sel. Charters, 70

- Township.** *The Township* (*tun*, an enclosure), the lowest division in the political system, consisted of a number of allodial proprietors banded together by community of interests, and by the position of their estates. The *township*, which took the place of the *mark* (p. 203), although it contained the germ of the boroughs (p. 260), must be carefully distinguished from the *town*. The chief officer was the town reeve (*tun gerefa*), at first probably elected by the proprietors, but afterwards becoming the king's nominee. In later times, the townships consisted of the tenants of a large proprietor, either under the direct control of the lord, or having a kind of self-government dependent on him. In these townships the lord nominated the reeve. These later townships became, under the Normans,
- Manors.** *The Manors*¹, which were not altogether a Norman innovation, but grew chiefly out of these Anglo-Saxon townships, where the lord had his rights of *sac* and *soc* (p. 73). The lord kept part of his manor, the *demesne lands*, for his own use, occupying part of the *demesne* himself, the rest being in the occupation of *villeins* (p. 227); whilst the remaining portion of the manor was held by freeholders, with the exception of
- The Waste.** a small portion known as the waste, which served for common pasture land. The manors were also called *baronies* and *lordships*, and all had special courts (p. 72). Fresh manors continued to be frequently created by the process of *subinfeudation*, until the practice was stopped by the Statute *Quia Emptores*, 1290 (p. 214).
- Subinfeudation.**
- Sithesocn.** *Sithesocn*, a name given to the districts exempt from the local courts, where the jurisdiction was in the hands of the lord (p. 72).
- Honour.** An *Honour*, or greater liberty, was usually an aggregation of manors in the hands of one lord, who could hold one court for all the manors, had criminal and civil jurisdiction, and occasionally had the right of excluding the sheriff's jurisdiction; e.g. the *honours* of Wallingford, and Peverell.

¹ For the theory that 'the main features of the later manorial system were of Roman origin,' see Seebohm's *English Village Community*. A summary of his views is given by Professor Ashley in his introductory chapter to *The Origin of Property in Land*. (De Coulanges).

Hide, a division of land varying from thirty-three acres in Hide. pre-Norman times, to one hundred and twenty acres in later times. Local and national customs, and the varying quality of land, account for the indefinite use of the term.

Carucate, the amount of land that one plough could turn Carucate. over in a season ; it varied much, but at last became fixed at one hundred acres.

Counties Palatine,

Counties
Palatine.

so called a *palatio*, the King's palace, as the holders of them enjoyed royal rights, subject only to the suzerainty of the King ; (there was an officer in the household of the early French Kings called *Comes Palatii*, who enjoyed immense power and authority). The power of the holders of Counties Palatine was much curtailed, 1536, by 27 Hen. VIII, c. 24.

Counties Palatine had courts of their own, and their own Parliament for the transaction of local matters (p. 67).

The Counties Palatine were always counties bordering on an enemy's country, *e. g.*—

Chester, granted to Hugh the Fat, of Avranches, by Chester. William I, was united to the Crown *temp.* Henry III, though still retaining its Palatine character, and has ever since given the title of Earl of Chester to the King's eldest son. It was not represented in Parliament until 1541. It formed a barrier against the Welsh.

Durham, granted to Bishop Walcher by William I. It re- Durham. mained a County Palatine under a Bishop until 1836, and was not represented in Parliament until 1675. It formed a defence against Scotland.

Kent, granted to Odo of Bayeux as a defence against Kent. France. On Odo's fall, 1082, it lost its Palatine character.

Lancaster, granted as a County Palatine by Edward III to Lancaster. Henry, Earl of Lancaster (afterwards Duke). It was united to the Crown on the Attainder of Henry VI, who was Duke of Lancaster, and confirmed to it by an Act of Henry VII, 'but under a separate guiding and governance from the other inheritances of the Crown.'

Cinque
Ports.**Cinque Ports,**

were originally the five ports of Sandwich, Dover, Hythe, Romney, and Hastings. Sandwich, Romney, and Dover, which are mentioned in Domesday, probably obtained their privileges from the Confessor: Hythe and Hastings may not have been added until the reign of William I. Winchelsea and Rye were included by Henry II, and obtained a confirmation of their privileges from Richard I, in 1190. The liberties of the seven towns were confirmed in 1278 by the famous charter of Edward I, 'the palladium of the Cinque Ports' liberties.' The object of the organisation of these ports was the defence of the coast, and each port was bound to provide so many ships, contributing in a great measure to form the English Navy (p. 319). The *Cinque Ports* fleet, however, occasionally acted on the offensive, *e. g.* in 1147 they figured conspicuously at the siege of Lisbon, and in 1212, under the Earl of Salisbury, they ravaged the coast of France. In 1242 there was a piratical war between the *Cinque Ports*, and the French; in 1277, their fleet ravaged the Welsh coast; in 1293, it defeated the Normans at St. Mahé, and in the year following captured a Spanish fleet, and did much damage to the French coast. In 1229, the number of ships was fixed at fifty-seven, of which twenty-one were to be furnished by Dover, ten by Winchelsea, six by Hastings, and five each by the other ports; the men were to serve for fifteen days without pay; in case of their services being required for a longer period, they were to be paid by the King. The *Cinque Ports* have courts of their own, besides many curious privileges (p. 67), of which the inhabitants have always been very jealous; they are under a Lord Warden of the Cinque Ports, whose office was, in former days, of the greatest importance. The ports each sent two barons to Parliament, and from the time of the Tudors, the Lord Warden returned one and sometimes all the members. This abuse was removed in 1689, but the ports did not regain their independence, and became close

¹ See 'The Cinque Ports,' by Professor Montagu Burrows.

boroughs returning the government's nominees. Many of their privileges were abolished by the Reform Bill of 1832, and the Municipal Corporation Act of 1835¹.

Stannaries

Stannaries

(*stannum*, tin), are districts in Cornwall, and Devonshire, containing tineries, the workers of which were from early times entitled to special privileges, tin having been originally in those counties a prerogative of the King. In 1201, a Charter was granted by John to the tin-workers, and subsequently confirmed on several occasions, *e. g.* 33 Ed. I, and 50 Ed. III. Since the grant of the Stannaries by Edward III to the Black Prince, 1337, they have always formed part of the Duchy of Cornwall, and were presided over by a Lord Warden assisted by two Vice-Wardens. By the *Supreme Court of Judicature Act* of 1873 (36 & 37 Vict. c. 36) the jurisdiction and powers of the Lord Warden and his assessors were transferred to the New Court of Appeal. (See *Stannary Courts*, pp. 66, 67.)

¹ It is interesting to note that the Barons of the Cinque Ports received commands to attend the Coronation of King Edward VII.

CHAPTER VII.

THE PEOPLE.

Social Ranks. SOCIAL RANKS IN PRE-NORMAN TIMES.

Athelings. **The Athelings.** The word *Atheling*, (*Ethel*), at first denoted any one of noble blood, but, with the rise of the *thegns* and the consequent absorption of the *Eorls* (*infra*), the term became restricted in meaning to the kinsmen of the royal house. The *wergild* of an Atheling was usually half that of the King¹.

Eorls. **The Eorls**, (to be distinguished from the Danish jarls, or earls, who were nobles by service), were the descendants of the primitive nobles, and were *noble by blood*. The King, consequently, could not make a man of ignoble blood an *Eorl*, though, with the growth of thegnhood (p. 309), the possession of forty hides of land rendered a thegn *eortworthy*². An *Eorl's wergild* was 1200 shillings, and his oath was equal to those of six ceorls.

Thegns. **The Thegns**, originally companions of the King, bound to render military service, (*thegn* = warrior), in contradistinction to the *gesiths*, or mere personal companions, by degrees grew into a powerful class, with great social and political advantages, absorbing and superseding the *Athelings* and *Eorls*; whilst from the time of Athelstan, the *gesiths* disappear, being either exalted into *thegns*, or debased to the position of inferior servants³. A man possessed of five hides of land became a *thegn*, though he could not count nobility of blood until the third generation. The class of *thegns* comprised men of various degrees of power and wealth, from the *King's thegns*, over whom the King alone had *soken*

King's
Thegns.

¹ Sel. Charters, 65.

² *Ib.* § 6.

³ Stubbs, i. 156.

or jurisdiction¹, to the possessors of five hides only, who were the *thegns* of some great *hlaforð*, (*loaf-giver*), such as a bishop, or ealdorman². The thegn, throughout all the period of Anglo-Saxon history, is bound to military service, and accompanied the King in war, as well as attended his Council in peace.

The Ceorls had no nobility of blood, although they were Ceorls. freemen, could hold property, and enjoyed the protection and privileges of the law. Owing to the barrier of blood, a *ceorl* could never become an *eorl*, though by the acquisition of five hides of land, together with a church and house, he might attain to thegnhood³. By degrees, however, both *eorls* and *ceorls* became merged in the *thegns*, and when the law of Athelstan declared that every lordless⁴ (*i.e.* landless) man must have a lord, an *eorl* without land found himself in a worse position than a *ceorl* with land. Those *ceorls* who did not prosper enough to become *thegns*, sank into a state not far removed from that of *serfs*, the only difference being that a *ceorl*, although landless, was still free, and might commend himself to what lord he pleased, whilst by the acquisition of property he could rise to a higher position. A *ceorl's* *wergild* was 200 shillings.

The Thralls, Theows, or Slaves were of two kinds— Slaves.

(a) *Hereditary Slaves*, *i.e.* the descendants of the old Wealth. Britons. These were called *wealth*, and were found in the greatest numbers in the western districts.

(b) *Wite Theows*, reduced to servitude for crime, neglect Wite
Theows. to pay a fine, or voluntary sale.

The slaves were the absolute property of their master, and were regarded as his chattels; they were usually sold with the land, they had neither *wergild* nor legal rights, and their status descended to their children. Compensation for injuries was

¹ Sel. Charters, 73. *Laws of Ethelred*, cap. 11.

² 'The name of thegn covers the whole class, which, after the Conquest, appears under the name of knights, with the same qualification in land, and nearly the same obligations.'—Stubbs, i. 156.

³ *Laws of Edward*. Sel. Charters, 65.

⁴ Sel. Charters, 66. *Vide* Stubbs, i. 188.

made, not to the slave, but to his master; the slave, however, was allowed to purchase his freedom, and by a law of Ethelred he could not be sold to heathen¹.

Læts. The **Læts** of Kent, with their wergilds of forty, sixty, or eighty shillings, were in a better position than the *theows*, being cultivators of land, which, however, did not belong to them. They were possibly, in their origin, slaves who had accompanied the Romans, and remained behind.

**Social Ranks
after the
Norman
Conquest.
The
Baronage.**

SOCIAL RANKS AFTER THE NORMAN CONQUEST.

The Baronage and the Crown, to Henry III.

The word *baro* was originally used to denote a freeholder², but was gradually limited to those who held land directly of the King. During the 12th and 13th centuries, these tenants-in-chief were divided into two classes, the *majores barones* and the *minores barones*: the former became the House of Lords, the latter the knights of the shire.

Up to 1295, the Baronage played a very important part in English history, being continually in opposition to the Crown.

1074. In **1074**, the struggle began with the insurrection of Ralph Guader, Earl of Norfolk, and Roger of Breteuil, Earl of Hereford, caused by the objection of the King to a marriage between the Earl of Norfolk, and the sister of the Earl of Hereford (p. 209). William, by a sudden return from Normandy, crushed the conspiracy.

1088. In **1088**, a number of the barons, headed by Odo of Bayeux, Roger Montgomery, Earl of Shrewsbury, and Robert Mowbray, Earl of Northumberland, espousing the cause of Robert of Normandy, rose against William Rufus. The King obtained the support of the English people, who hated the feudal nobles, and the rebellion was crushed.

1095. In **1095**, Robert Mowbray, Earl of Northumberland, and other great barons, rose in favour of Stephen of Aumâle. William was again victorious.

¹ Sel. Charters, 73, V cap. 2.

² Regis judices sunt *barones* comitatus qui liberas in eis terras habent, etc. Sel. Charters, 106, § xxix.

In 1102, Robert of Belesme, Earl of Shrewsbury, attempted an insurrection, but was compelled to quit England. 1102.

The effect of these insurrections, which showed the wisdom of William I's anti-feudal policy (p. 209), was to draw the Crown and the people closely together, and to cause Henry I to endeavour to strengthen his own party by the creation of new barons¹. Alliance of the Crown and the People.

Although under the strong government of Henry, the Crown was triumphant, the Barons, during the anarchy of Stephen's reign, assumed the position of petty kings, each one fighting for his own advantage; under the reforming hand of Henry II, the power of the Crown was speedily re-asserted, the 'adulterine,' or unlicensed, castles of the Barons were razed, and the 'fiscal' earldoms, (so called as the King, having no lands to bestow, had to support them by grants of money²), created by Stephen were taken away³. Henry further curbed the power of the Baronage by giving the offices of state to able men who were not great feudal nobles, whilst the introduction of *scutage* (p. 188) still further checked their power by rendering the King independent of their services in the field. In 1173, a civil war broke out in Normandy and England, in which many of the Barons supported Henry's sons, Henry, Richard, and Geoffrey, who were also aided by the Kings of Scotland and France, but, in the following year, the King's party was completely victorious, and William the Lion of Scotland was taken prisoner at Alnwick. Position of the Baronage, temp. Stephen. Henry II's Policy. Civil War, 1173.

From this time, the character of the Baronage changes; the old Norman nobility was dying out, and was being superseded by the *novi homines*, raised to power by the anti-feudal policy of Henry II. As a result, the Barons, under the misgovernment of John, caring little for the loss of Normandy, refused to follow the King abroad (e.g. twice in 1213, they refused to invade France), and were not only hostile to the Crown, but closely allied with the people, in Change in the character of the Baronage.

¹ Sel. Charters, 97 (*Ord. Vit. Eccl. Hist.*, xi. 2).

² Ib. 116. *Wm. Malm.* i. 18. ³ Ib. 118. *Matt. Paris*, p. 86.

Alliance of
the Baronage
and the peo-
ple, *temp.*
John.

whose interests, as much as in the interest of the nobles, the *Articles of the Barons* were presented to the King at the New Temple, London, in Jan., 1215; whilst in the 60th clause of *Magna Carta*, wrung from John by the action of the Barons, it is provided that all the aforesaid customs and liberties, which have been granted, *are to apply to every one*¹. John's subsequent attempts to evade the Charter led the Barons to offer the Crown to Prince Lewis of France. The opportune death of John, and the tact displayed by the Earl of Pembroke, after he had defeated the Baronial party at the 'Fair,' of Lincoln (May, 1217), combined with the capture in 1224, of Falkes de Breauté, the Baronial leader, brought the Barons for a time back to their allegiance, but the subsequent misgovernment of Henry III made the latter half of his reign one long struggle between the Crown and the Baronial party, which was headed by Simon de Montfort; attempts were made to check the misrule of the King by appointing his ministers in Parliament, 1244, 1258 (p. 47), but to no effect; and in June, 1258, the Barons presented their famous Petition of 29 Articles, at the Parliament of Oxford², detailing their grievances; the King assented to the scheme of government proposed (p. 16), and in October, 1258, the *Provisions of Oxford*³ were drawn up, followed in the next year by the *Provisions of Westminster*⁴ (App. A). After the death of Simon de Montfort, 1265, the Baronial party was won over to inactivity by partial concessions, and the remainder of the reign was comparatively untroubled.

Henry III.

Provisions
of Oxford,
1258.

Livery
and Main-
tenance.

Livery.

Livery and Maintenance became, in the later history of the Baronage, great abuses.

Livery at first meant the whole of the allowance given by a lord to his servants. Subsequently the term was restricted to the clothes given as a badge of dependence or servitude, and it became the practice to grant livery to any one who asked for it; livery thus worn entitled the wearer to the protection of the lord, and had the effect of encouraging

¹ Sel. Charters, 304.

³ Ib. 387.

² Ib. 382.

⁴ Ib. 401.

rioting and lawlessness, no one daring to take action against an offender who wore the livery of a great lord. The granting of liveries was checked by Statute in 1377, 1389 (13 Ric. II. st. 3), 1393 (16 Ric. II, c. 4), 1397 (20 Ric. II, c. 2), 1399 (1 Hen. IV, c. 7), 1411 (13 Hen. IV, c. 3), 1468 (8 Ed. IV, c. 2), and 1487 (3 Hen. VII, c. 1). By a Statute of 1504 (19 Hen. VII, c. 14), cases of giving, or receiving, livery were to be tried by the Star Chamber, or King's Bench; and large sums of money were exacted from those who violated its provisions: *e.g.* the Earl of Oxford was fined £15,000.

Maintenance, or the maintaining and assisting one of the parties in a suit in which the 'maintainer' had no direct interest, was liable to great abuse, as persons desirous of bringing suits against any one usually obtained the assistance of some wealthy and powerful lord, and were thus enabled to bring actions, whether false or not, with impunity. Maintenance was checked by the *Statute of Westminster I*, 1275 (3 Ed. I), and in 1327 (1 Ed. III, st. 2. c. 14), 1389 (13 Ric. II. st. 3), 1540 (32 Hen. VIII, c. 9), and 1545 (37 Hen. VIII, c. 7). It was to check these two evils that the judicial authority of the Star Chamber (p. 52) was revived, *temp.* Henry VII.

Villeins. By the time of the Norman Conquest, the *ceorls* (p. 223), who had failed to prosper enough to become thegns, had sunk to a condition in which they were fast losing their independence. In Domesday survey there appear three classes of labourers, or serfs, *villani*, *bordarii*, and *cotarii*, the two latter being merely lower grades of the *villani*; these *villani* were depressed *ceorls*. At first, their position under the Normans was by no means without its advantages; they had certain rights and privileges, were often comfortably off, and had many methods of obtaining their freedom, *e.g.* by residing in a town as burgage tenants for a year and a day¹; they were often given their freedom

¹ *Customs of Newcastle*, Sel. Charters, 112. *Charter of Lincoln*, ib. 166. *Charter of Nottingham*, ib. 166. *Extracts from Glanville*, ib. 162.

by their lords at the request of the Clergy, though the *Constitutions of Clarendon* provide that the sons of *villeins* shall not be ordained without the consent of their lord. Their position, however, deteriorated for a time, and then suddenly began to improve, owing to—

Improvement in the position of Villeins.

(1) *The tendency to limit the service owed by villeins to their lords*—and which was not defined by law—to a *fixed labour rent*; when their work was finished, they hired themselves out as labourers to the farmers who held land on lease, and so occupied the position of hired labourers.

(2) *The influence of the Church.*

(3) *War.* Many *villeins* became soldiers in a temporary war, and, being unwilling to revert to their former life, subsequently fled to the towns.

Copyholders.

By degrees, the lords began to commute the agricultural services of their *villeins* for money payments, and the better class of *villeins* became *copyholders*, *i. e.* held their land on certain conditions of rent, or service, imposed by the will of the lord, and the *custom of the manor*, and entered on the copies of the court roll of the manor, which alone afforded evidence of the tenure. Thus at the time of the Black Death, 1348, the condition of the *villeins* was good; the scarcity of labourers caused by the pestilence, and the miserable wages decreed by the *Ordinance and Statute of Labourers*, 1349, and 1351, soon led to the growth of a class of *free* labourers. The lords made every effort to assert their ancient rights over their *villeins*, and tried to reduce the *villeins* to their former position. The result was the rebellion of Wat the Tyler in 1381, in which the *villeins* attempted to destroy the court rolls containing the records of their villenage. From this attack the system of villenage never recovered, and it gradually died out, the last attempts to assert it being the cases of *Butler v. Crouch*, 1568, and *Pigg v. Caley*, 1617 (App. B).

Statutes of Labourers, 1349, 1351.

Rebellion of 1381.

Butler v. Crouch, 1568.
Pigg v. Caley, 1617.
Villeins regardant.
Villeins in gross.

Attempts have been made to draw a distinction between *villeins regardant* (*i. e.* bound to the soil) and *villeins in gross* (*i. e.* bound to the lord's person): but this has now been

conclusively shown to be a purely legal theory, having no foundation in fact¹.

The Poor Laws.

The
Poor Laws.

In Anglo-Saxon and Norman times, the relief of the poor was the business of the Church, and was regarded as a duty to be rigidly fulfilled. A law of Ethelred declares that the poor are to have a third of the tithes, and up to the time of Edward II almsgiving remained the special province of the Clergy. But in order to deal with the economic disturbances which resulted from the Black Death, the *Ordinance of Labourers* was issued in 1349: it was re-enacted as the *Statute of Labourers* in 1351 (25 Edw. III), and provided that able-bodied persons should work in their own district at the accustomed rate of wages, while those who gave alms to 'sturdy beggars,' were to be punished with imprisonment. The object of this Statute was to check vagrancy, and to secure a sufficient supply of agricultural labour in the districts where it was needed, at the prices current before the Plague².

(1) Volun-
tary Relief.

An Act of 1388 (12 Ric. II, c. 7) permitted licensed begging, and drew a distinction between *impotent* and *able-bodied* poor. The former were to remain where they were when the Act was passed, and if they could find no means of support, were to return to the hundred in which they had been born, and there seek maintenance. By Acts of 1495 and 1504, impotent paupers were to be sent to the place of their birth, and to beg under license within a certain district. In 1531 (22 Hen. VIII, c. 12) licensed begging was allowed, but unlicensed begging, 'especially by scholars of the Universities of Oxford and Cambridge . . . and sailors pretending shipwreck, and fortune-tellers' was severely punished.

Impotent
and able-
bodied poor
1388.

Up to this date the legislature had mainly attempted to check the growth of vagrancy, and had been content to leave the relief of the poor to individuals and corporations. But this voluntary system of relief broke down during the Tudor

¹ Vinogradoff. *Villainage in England*, pp. 48-55.

² Ashley, *Economic History*, vol. i. part ii. p. 333.

(2) State
Provision.
Act of 1536:

period owing to the agrarian changes, and the marked increase of distress compelled the Government to resort to State provision for the poor. By an Act of 1536 (27 Hen. VIII, c. 25) indiscriminate almsgiving was forbidden, and the local authorities were ordered to maintain the impotent poor of their districts. Collections were to be made in churches to provide the requisite funds, and the clergy were to exhort their flocks to contribute. The money was also to be used for the purpose of furnishing 'valiant beggars,' *i. e.* able-bodied paupers, with work: but if the latter 'played the vagabond,' they were to be whipped for the first offence, lose part of the gristle of their right ear for the second, and suffer death for the third¹.

its impor-
tance.

The importance of this act is very great, and it may be regarded as the foundation of the modern poor-law system. It emphasises the distinction between the able-bodied and impotent poor, condemns begging, recognises that even the able-bodied cannot always find work, and for the first time lays down the principle that the poor of a district must be relieved by that district. Subsequent legislation followed on the same lines, vagrancy being severely repressed², and further measures being taken for the relief of the deserving poor. At last in 1572 (14 Eliz. c. 5, § 16) the justices were ordered to make a direct assessment for impotent paupers, and to appoint overseers to administer the proceeds. The well-known Act of 1601 (43 Eliz. c. 2) ordered paupers, unable or unwilling to work, to repair to the parish in which they had been born, or had lived for a certain period, and empowered overseers to levy a rate on the landed property of each parish. The money was to be used to relieve the infirm poor, and to provide work for able-bodied paupers.

Compulsory
rate, 1572.

Act of 1601.

¹ Ashley, *Economic History*, vol. i. part ii. pp. 356-358.

² By 1 Edw. VI, c. 3 (1547) vagabonds were to be branded and reduced to slavery for two years.

By 5 Eliz. c. 3 (1563) vagabonds and sturdy beggars were to be whipped, and if convicted a second time, were to be punished as felons.

By 39 Eliz. c. 4 (1597) vagabonds found begging were to be whipped and sent to Houses of Correction: if they seemed 'dangerous rogues' they might be banished from the realm.

No means were, however, provided for the uniform enforcement of this Act, and it was consequently carried out differently in various places; the result being that the able-bodied paupers repaired to the parishes which had the best organisation. This was checked in 1662 (14 Car. II, c. 12), when it was provided that any pauper settling in a place might (within forty days), on the complaint of the Overseers, and by the order of two Justices of the Peace, be sent back to the parish where he was born, or had been last settled. This settlement of paupers in their own parishes was further regulated 1685 (1 Jac. II, c. 17), 1691 (3 Wm. & Mar. c. 11), and 1697 (8 & 9 Wm. III, c. 30). In 1723 (9 Geo. I), workhouses were established for the reception of the poor, and in 1782, *Thomas Gilbert's Act* provided for the appointment of Guardians of the Poor, for the union of various parishes for the relief of paupers, and for the better administration of the Poor Law, where such action was considered desirable by two-thirds of the owners and occupiers assessed to the Poor Rate. In 1819, by the *Select Vestry Act*, the vestry of a parish might appoint a select vestry of householders to superintend the action of the Overseers. But as the *Gilbert* and *Select Vestry* Acts were not compulsory, the Poor Law continued to be shamefully administered. The Act of 1691 had practically put the administration of poor relief in the hands of the justices, and since they had no interest in keeping down the poor rate, they freely indulged their charitable instincts. As a result, 'the fund intended for the relief of want and sickness, of age and impotence, was recklessly distributed to all who begged a share. Every one was taught to look to the parish, and not to his own industry for support . . . In a period of fifty years, the poor rates were quadrupled: and had reached, in 1833, the enormous amount of £8,600,000¹.' In 1834, in consequence of the report of a Commission of Inquiry, was passed the *Poor Law Amendment Act* (4 & 5 Wm. IV, c. 76), which reverted

Paupers to be sent to their own parishes.

Gilbert's Act, 1782; 22 Geo. III, c. 83.

Select Vestry Act, 1819; 59 Geo. III, c. 12.

Poor Law Amendment Act, 1834; 4 and 5 Wm IV, c. 76.

¹ May, iii. 405-7.

to the principles laid down in 1601, and endeavoured to distinguish between the deserving and the undeserving poor. *Poor Law Commissioners* were appointed for five years (the period being subsequently extended to 1847); all relief was to be given in the workhouse, instead of being, as before, administered to 'out of door' applicants, whilst the system of union workhouses was established. Outdoor relief, however, has by no means disappeared, and the original purpose of the Act has been disregarded to such an extent, that at the present day recipients of outdoor relief are three times as numerous as the inmates of the workhouses. In 1847, a *Poor Law Board*, consisting of the Lord President of the Council, the Lord Privy Seal, the Home Secretary, and the Chancellor of the Exchequer, together with certain other Commissioners appointed by the Crown, took the place of the *Poor Law Commissioners*. In 1871, the duties of the *Poor Law Board* were transferred to the *Local Government Board* (p. 46).

Poor Law
Commis-
sioners.

Poor Law
Board, 1847.

Merchants.

Merchants.

By a law of Edward the Elder, it was provided that '*if a merchant throve, so that he fared thrice over the wide sea by his own means, then was he thenceforth of thegnright worthy*'¹. Athelstan also made regulations in favour of trade; and in 968, Edgar ravaged Thanet, to revenge an attack made by the inhabitants on some merchants of York, who were under his protection. Subsequently foreign merchants received considerable encouragement, laws being made for their protection by Ethelbert; in *Magna Carta*, (clause 41), it was provided that '*all merchants shall have safe conduct to depart from, or enter, England, to stay in and go through England, either by land or water, to buy or sell without any evil tolls, according to old and right customs, except in times of war; in case of war, foreign merchants are to be detained safely until it is seen how the English merchants in the enemy's country are treated*'². A Charter of Henry III granted con-

¹ Sel. Charters, 65.

² Ib. 301.

siderable privileges to the German merchants of the Steel Yard in England, and was confirmed 1413, and 1504 (19 Hen. VII, c. 23). In 1283, was passed the *Statute of Merchants* (11 Ed. I), at Acton Burnell, in which provisions were made for the recovery of their debts; this was confirmed in 1285 (13 Ed. I, st. 3), and ordered to be observed by the *Ordinances* of 1311. In 1297, another Statute (25 Ed. I, c. 30), was passed in favour of foreign merchants, from whom Edward I frequently obtained customs and grants of money without the consent of Parliament (p. 198), granting in return charters of privileges, e.g. the *Carta Mercatoria*, 1303. (See *Customs*, p. 190.)

Statute of Merchants, 1283.

Confirmed, 1285.

1311.

Carta Mercatoria, 1303.

In 1335, by 9 Ed. III, c. 1, foreign merchants were granted full liberty of trading, and their proceedings were subsequently further regulated in 1364 (38 Ed. III, st. 1. c. 2), 1391 (14 Ric. II, c. 6), and 1430 (9 Hen. VI, c. 2). Edward III occasionally summoned representatives of the merchants to aid him in his financial difficulties, and in his reign the *Merchants of the Staple*¹ (trading, chiefly with Flanders, in wool, woollens, leather, tin, and lead, called 'staple commodities'), who had existed under Edward I, and increased under Edward II, reached the zenith of their power. Certain towns, e.g. Bristol, Caermarthen, Canterbury, Chichester, Cork, Dublin, Drogheda, Exeter, Lincoln, London, Newcastle, Norwich, Waterford, Winchester, and York, were named as 'staple towns,' and all 'staple commodities' were sent there, for exportation by the foreign merchants to the foreign staple towns, such as Antwerp, or Calais. In 1328, the *Staple* was abolished, but shortly afterwards re-imposed. In 1353 (27 Ed. III, st. 2), the *Staple* was regulated (p. 191), and the privileges of the *Staple Merchants*, who had their own officers and laws, were

Merchants of the Staple.

Staple Commodities.

Staple Towns.

Statute of the Staple, 1353.

¹ *Staple*, Anglo-Saxon, signifying a fixed place; or, from the French *estape*, 'a market for wines.'

'The merchants of the Staple had a monopoly of purchase and export: the towns of the Staple were centres for the collection, trial, and assessment of the goods.'—Stubbs, ii. 411. The system facilitated the collection of customs and guaranteed the quality of the wares.

confirmed. Heavy penalties were attached to the offence of selling staple commodities in any but staple towns, and no one except *Merchants of the Staple* was allowed to buy or sell them. In 1369, (43 Ed. III, c. 1), the *Staple* was removed from Calais, owing to the war with France, but in 1423, another Statute (2 Hen. VI, c. 4) made Calais the only foreign staple town. The *Staple* was subsequently regulated in 1392 (15 Ric. II, c. 9), and 1437 (15 Hen. VI, c. 8). In 1496, a commercial treaty, made by Henry VII with the Netherlands, gave a great impulse to English commerce, and *temp.* Henry VIII, the English merchants began to assert their power; in fact in 1517, the foreign merchants resident in London were the victims of a popular riot against them, stirred up by the sermon of one Dr. Bell; *temp.* Edward VI, the privileges of German steel yard merchants were taken away (1552), and the Steel Yard itself ceased to exist 1597, whilst the English *Merchant Adventurers*, incorporated 1564, (who had existed from 1296, as the *Brotherhood of St. Thomas à Becket*), secured most of the Dutch trade¹.

Merchant
Adventurers,
incorporated
1564.
Brotherhood
of Thomas à
Becket.

East India
Company,
1599.

Sir William
Courteen's
Company

New
Company,
1698.

Amalgama-
tion of the
two Com-
panies, 1702.

In 1599, was formed the *East India Company*, which was incorporated by Royal Charter, Dec., 1600. The Company thus started obtained further powers of settlement in 1624, and in 1649, was amalgamated with a company which had been formed in 1635, by Sir William Courteen. In 1657 Cromwell granted a new charter, which was again renewed by Charles II, 1661, the administrative powers being largely increased. In 1667, the Company obtained the right of coinage, and in 1683, the right of employing Martial Law. In 1693, a new charter was granted, and in 1698, a new Company, with immense powers, was incorporated, consisting of certain persons who had subscribed a loan of two millions to the Government. In 1702, the two rival companies were united under the title of 'the United Company of Merchants of England trading to the East

¹ In 1643, the *Merchant Adventurers* obtained a fresh grant of privileges by lending £60,000 to the Parliament.

Indies.' In 1708, a fresh loan of £1,200,000 to the Government gained the Company an extension of its right of exclusive trade until 1726 (6 Anne, c. 71). This right was subsequently confirmed and extended, and the wealth and power of the Company increased rapidly, but its administration of India was a source of great complaint, and in 1783, Mr. Fox brought in his *India Bill*, vesting the powers of administration in a body of seven Commissioners, appointed, in the first instance, by Parliament, and subsequently by the Crown; the measure failed, and another *India Bill*, brought in by Mr. Pitt in the following year, became law; by it a Parliamentary Board of Control was appointed, to which the Company was responsible (24 Geo. III). This Board, which had the entire control over all the affairs of the Company both civil and military, was to consist of the Chancellor of the Exchequer, a Secretary of State, and four other Privy Councillors. In 1833, all trading privileges were abolished (3 & 4 Wm. IV), and in 1853, the Board of Directors was re-organised, and reduced to eighteen. The whole Government of India was subsequently transferred to the Crown in 1858.

Fox's India Bill, 1783.

Pitt's India Bill, 1784.

Aliens.

Aliens.

Although *Aliens* before the Norman Conquest were under the King's protection, they were for long regarded in England with peculiar jealousy, e.g. in 1258, 1404, 1571, and 1575, they were expelled from the realm; they were subject to higher rates of taxation, and the 'alien tax' was often imposed, e.g. 1439, 1442, 1449, 1453, 1483, though by *Magna Carta* foreign merchants were allowed to come to England for the purposes of commerce without being subject to any evil tolls. Aliens were frequently subjected to repressive legislation. In 1380 (3 Ric. II, c. 3), they were forbidden to hold benefices; in 1414, to hold land, or engage in retail trade; in 1484, and 1523, to have foreign apprentices; and in 1540, to take any shop or dwelling-place on lease. An alien may become a British subject by *denization*, e.g. by letters patent issued by virtue of the King's prerogative, or by *naturalisation*,

Alien tax.

Legislation against aliens.

Denization.
Naturalisation.

e.g. by Act of Parliament, or by a certificate from the Home Secretary, on taking the oath of allegiance (in accordance with the *Naturalisation Act* of 1870). In 1610 (7 Jac. I, c. 2), the conditions of naturalisation embraced receiving the sacrament, and taking the oaths of supremacy and allegiance; the necessity of taking the sacrament was abolished 1825. In 1608, it was decided, by *Calvin's case*¹ (App. B.), that those born after the union of England and Scotland under one King, (*postnati*), were not aliens. By the *Act of Settlement*, 1701, owing to the jealousy with which the foreign favourites of William III were regarded, it was enacted that no alien, even though naturalised or a denizen—unless born of English parents—shall be capable of sitting in Parliament, or holding any office or place of trust, or have any grant of land from the Crown. Although this enactment was sometimes relaxed by special Acts of Parliament in favour of particular individuals, it was confirmed on several occasions, *e.g.* 1740, 1749. In 1774, it was provided that no Bill for naturalisation should pass, unless it contained a clause deferring the immunities and indulgences of natural-born subjects until after seven years' residence. In 1793, in consequence of the alarm existing at the influx of large numbers of French refugees, Lord Grenville's *Alien Act* was passed, subjecting them to most strict regulations; it was subsequently re-enacted as occasion demanded until 1826². In 1827, and 1836, measures were adopted for the registration of aliens; in 1844, Mr. Hutt's Act increased the facilities for naturalisation, and extended the consequent privileges. By the *Naturalisation Act* of 1870 (33 & 34 Vict. c. 14, §§ 2, 7) an alien may acquire, hold, and dispose of real and personal property, with the exception of British ships, like a natural-born subject, and has all the rights and privileges of a British-born subject, except the franchise, and the power of holding municipal or

Calvin's
Case, 1608.

The Postnati.
Act of
Settlement,
1701.

Alien Act,
1793.

Hutt's Act,
1844.

Naturalisa-
tion Act,
1870.

¹ His name is more correctly spelt *Colvill*.

² An Alien Bill was passed in 1905 (5 Ed. VII. c. 13) to exclude diseased and criminal aliens, and to expel undesirable aliens.

parliamentary office. An alien, by obtaining a certificate of naturalisation from the Secretary of State, acquires all political as well as all civil rights (see *Allegiance*, p. 32).

Outlaws

Outlaws.

were persons put beyond the pale of the law, by three public proclamations, for committing felony¹. In early days, an outlaw might be killed by any one who met him, as he was regarded as a wild beast, and was said to have *caput lupinum*, a 'wolf's head.' By the *Assize of Clarendon*² (Art. 14), men judged to be of evil repute by the testimony of lawful men are to leave the country, and, if they return without the King's pardon, to be outlaws. *Temp.* Edward III, however, it was provided that outlaws should not be put to death, except by the sheriff; any one killing an outlaw wilfully, except when endeavouring to apprehend him, being guilty of murder. At first outlawry was only applied to felony, but subsequently was used in civil cases where the defendant absconded; in a case of outlawry, forfeiture of goods and lands followed. Statutes regulating outlawry were passed 1331 (5 Ed. III, c. 12), 1363 (37 Ed. III, c. 2), 1406 (7 Hen. IV, c. 13), 1423 (2 Hen. VI, c. 11), 1532 (23 Hen. VIII, c. 14), and 1589 (31 Eliz. c. 3). Outlawry in civil cases was abolished by 42 and 43 Vict. c. 59, § 3, and its employment in criminal cases has been rendered unnecessary by the extradition treaties made with foreign countries under the Act of 1870.

The Jews

The Jews.

came into England as early as the seventh century, but did not appear in any numbers till after the Norman Conquest. From the first they were regarded with hatred by the people, while the Church forbade Christians to hold any but the most necessary communication with them. Like the forests, they were the special property of the Crown³, and could be mulcted at the King's pleasure. In return they were allowed

Are the
King's
Chattels.

¹ The sentence might be reversed, when the criminal was said to be inlawed, e.g. Elfgar was outlawed in 1055, on a charge of treason, and inlawed the same year. ² Sel. Ch., 145. ³ Stubbs, ii. 529.

considerable privileges. They were exempt from the general taxation of the country, they could build synagogues and carry on their religious rites: they might be judged by their own tribunals, and they were allowed to carry on an extremely profitable trade as usurers. But though nominally under the King's protection, they were often the victims of popular outbreaks, during which the *Jewry* (*i. e.* the Jewish quarter) was sacked by the mob, and its inhabitants massacred¹. Little heed was paid to the services which they rendered to medicine and physical science, and some towns succeeded in excluding Jews from their walls.

They were heavily taxed by Henry II, and by the *Assize of Arms*² were forbidden to keep coats of mail or hauberks. Richard I ordered the registration of all their debts, securities, lands, houses, rents, and possessions³, and John subjected them to great extortions. Provisions putting a check on their system of usury were inserted in the *Articles of the Barons* and in *Magna Carta*⁴. The Jews were severely oppressed by Henry III. In 1218 they were compelled to wear a distinctive badge, and at different periods of the reign the King extorted from them sums varying from ten to twenty thousand marks⁵, while in 1255 he handed them over to Earl Richard as security for a heavy loan. Popular hatred was excited against them by the preaching of the friars, and they vainly asked for permission to leave England. They were very obnoxious to Edward I, and persecution went on unchecked. The Statute *de la Jeuerie* (1275) forbade lending money at interest, and imposed an annual poll tax of 3*d* or 4*d* on all Jews. At last the King yielded to the popular clamour, and exercising 'considerable self-denial,' banished them from England in 1290, permitting them to take their moveable goods but confiscating their real property. We have abundant evidence of the presence of Jews in England from the fourteenth century onward, but it was not till 1655 that

¹ *E. g.* in 1189 there were anti-Jewish riots all over England.

² Sel. Charters, 155, § 7.

³ *Ib.* 262.

⁴ *Ib.* 293-298.

⁵ Stubbs, ii. 530.

Oppression
of the Jews,
temp.
Henry III.

Banished
from
England,
1290.

they were openly allowed to return. Even then they were looked on with great jealousy, and in 1660 a petition was presented to Charles II, asking that they might be driven out. But though they were allowed to remain, it was not till the present century that their civil disabilities were removed. In 1753 they were allowed to naturalise themselves, but this concession was withdrawn in the following year, and up to 1832 Jews had no political rights, and were debarred from holding civil, military, or corporate offices. However, in that year the Reform Bill gave them the franchise, and Lord Denman's Act of 1839 enabled them to take the oath of allegiance. In 1845 they were admitted to corporate offices, and in 1846 the public exercise of their religion was legalised. Next year Baron Rothschild was elected as member for London, but was not allowed to take his seat, as he had conscientious objections to repeating certain words in the oath. In the next few years various measures of relief passed the Commons but were thrown out by the Lords, and it was not till 1858 that the *Jewish Relief Act* (21 & 22 Vict. c. 49) empowered each House to exclude the words 'on the true faith of a Christian.' Finally, in 1866, the *Parliamentary Oaths Act* entirely omitted the phrase from the oath.

Cromwell allows them to return.

Gradual removal of their disabilities.

Jews obtain the Franchise, 1832.

Jewish Relief Act, 1858.

Liberty of the Subject

was a principle existing from the earliest times, e.g. the law of Ini: '*If any one sell his own countryman, bond or free, though he be guilty, over the sea, let him pay for him according to his wer*¹;' and by the laws of Ethelred², and the Statutes of William I³, no one was to be sold out of the country. It was expressly declared by *Magna Carta* (clause 39), '*That no freeman shall be seized, or imprisoned, or dispossessed, outlawed, or exiled, or in any way injured, nor will we go against him, or send force against him, except by the lawful judgment of his equals, or the law of the land;*' (40) '*To no one will we sell, deny, or delay, right or justice*⁴.'

Liberty of the Subject

Law of Ini.

Of Ethelred

Magna Carta.

The great *Charter of Liberties* was subsequently confirmed

¹ Sel. Charters, 61.

² Ib. 73. V. c. 2.

³ Ib. 84, § 9.

⁴ Ib. 301.

on many occasions during the reigns of Henry III, Edward I, Edward II, and no less than fifteen times by Edward III.

There were also four Writs, by which the Liberty of the subject was specially protected—

Writ de odio
et atia.

(1) The Writ *de odio et atia* formerly sent to the Sheriff directing him to inquire whether a prisoner, charged with murder, was committed upon reasonable suspicion, or only through malice (*propter odium et atiam*); in the latter case he was admitted to bail. By *Magna Carta* (36), it was provided that this writ, there called 'the writ of inquest of life or limb,' should be given *gratis*, and not denied¹. The application of the writ was restricted by the *Statute of Gloucester*, 1278 (6 Ed. I), but it was again to be granted without denial by the *Statute of Westminster II*, 1285 (13 Ed. I). It was abolished in 1354 (28 Ed. III), 'but,' says Blackstone, 'as the Statute, 42 Ed. III, repealed all the Statutes then in being, contrary to the Great Charter, Sir Edward Coke is of opinion that the writ *de odio et atia* was thereby revived.'

Main-prize.

(2) *Writ of Main-prize*, sent to the Sheriff, directing him to take sureties for the prisoner.

De homine
replegiando.

(3) Writ *de homine replegiando*, a writ to 're-pledge,' or deliver a man from custody, on bail being given to the Sheriff for his subsequent appearance.

Habeas
Corpus.

(4) *Writ of Habeas Corpus*, of which there are several kinds, the most important being the *habeas corpus ad subjiciendum*, existing at common law; a writ which might be demanded from the Court of King's Bench by any one imprisoned, and which directed the gaoler 'to produce the body of the prisoner, with the day and cause of his caption and detention, to do, submit to, and receive, whatsoever the judge or court awarding such writ shall direct.'

Writ refused
by Coke,
1616.

Although the writ of *habeas corpus* could not be denied (except the prisoner admitted just cause of detention; *e.g.* in 1616, Sir Edward Coke denied the writ to a man imprisoned for piracy, who admitted his guilt), there was

¹ Sel. Charters, 301.

frequently a delay in its execution, as the gaoler need not bring up the body until a third writ had been issued (*pluries*). Pluries Writ.

In 1627, *Sir Thomas Darnel*, Sir Walter Earl, Sir John Corbet, Sir Edward Hampden, and Sir Thomas Heveningham were imprisoned by the Privy Council for refusing to contribute to a loan demanded by Charles I. They sued out their writs of *habeas corpus* and the return stated that they were detained *per speciale mandatum regis*. Darnel's Counsel did not question the Privy Council's right of commitment, but argued that a specific charge ought to be named in the warrant, so that the judges could decide whether the prisoners might be admitted to bail. For if the Council could imprison without cause shown, there was no guarantee that the accused would ever be brought up for trial. The Crown lawyers, on the other hand, maintained that reasons of state often made it inexpedient to specify the charge on which political prisoners were detained. The judges, while refusing to face the broad question, declined to admit the prisoners to bail¹. This decision, being contrary to *Magna Carta*, and to a Statute of 1354 (28 Ed. III), roused both the indignation and fear of the country, and led to the *Petition of Right*, 1628, which asserted that in violation of *Magna Carta*, and 28 Ed. III (that 'no man should be imprisoned, or put to death, without being brought to answer by due process of law'), certain of the King's subjects had been detained by the King's special command alone, and prayed that no such imprisonment should for the future be allowed (App. A). Nevertheless, in 1629, Sir John Eliot, Mr Selden, and others were imprisoned *per speciale mandatum regis*. Darnel's Case, 1627.

In 1641 (16 Car. I, c. 10), it was provided that every one, committed by the Privy Council, might claim a writ of *habeas corpus* to show the cause of his detention. Petition of Right, 1628

Under Charles II, illegal commitments again became frequent, (*e.g.* Lord Clarendon imprisoned several political

¹ Gardiner, *History of England, 1603-1642*, vi. 213.

prisoners in places where the writ did not run), and various Bills were proposed to remedy the evil, but failed to pass.

Jenkes' Case,
1676.

In 1676, occurred *Jenkes' Case*, in which Jenkes, who had been committed by the King in Council, only obtained a writ of *habeas corpus* after great delay and difficulties, *e. g.* the Lord Chancellor refused it in vacation.

Habeas
Corpus Act
1679.

This led, three years later, to the famous *Habeas Corpus Act*, 1679 (31 Car. II, c. 2) (p. 333), passed, chiefly at the instance of Lord Shaftesbury, for 'the better securing the liberty of the subject, and for prevention of imprisonment beyond the seas,' which defined the method of obtaining the writ. By it a *Habeas Corpus* may be claimed from the Chancellor, or any judge, in term *or vacation*, by any prisoner, except one committed for treason or felony; the writ is to run in special jurisdictions, such as the Channel Islands, and Cinque Ports, and within twenty days at most after its issue, the body of the prisoner must be brought up. Persons committed for treason or felony must be presented for trial at the next assizes, unless the witnesses for the Crown could not be produced so soon: if such prisoners were not tried at the Second Sessions, they could claim their discharge. The Act forbade imprisonment beyond the seas.

Its defects.

Important as the Statute was, it was subject to three defects: (1) it fixed no limit to the amount of bail: (2) it only applied to commitments on criminal charges: (3) it neglected to guard against a false return. The first point was remedied by the

Remedied in
1689 and
1816.

Bill of Rights,
1689.

Bill of Rights (1689), and the other two by the Act of 56 George III, c. 100 (1816), which extended the writ to non-criminal charges, and empowered the judges to examine the truth of the return. Legislation on this subject was completed by the Statute of 1862 (25 & 26 Vict. c. 20), which enacted that no English court should issue a writ of *habeas corpus* to any colony whose courts had power to issue it themselves.

Suspension
of the Habeas
Corpus Act.

In times of rebellion and disturbance, it has sometimes been necessary to suspend the *Habeas Corpus Act*: *e. g.* in 1689 and 1696, during the Jacobite movements of 1714, 1722,

1745, during the period of the French Revolution 1794-1801, and for the last time in 1817. The Irish Act has been frequently suspended.

It must be remembered that there is never a *general suspension* of the writ. The *Habeas Corpus Suspension Acts* merely empower the executive to refuse the writ to persons charged with treasonable practices.

Impressment. See pp. 317, 318.

The liberty of the subject was also endangered by the use of *General Warrants*, *i. e.* warrants issued by a Secretary of State for the arrest of unnamed individuals 'without previous evidence of their guilt or knowledge of their persons¹.' Their legality was tested in the law courts in the cases of *Wilkes v. Wood*, *Leach v. Money*, and *Wilkes v. Halifax*, which were tried during the years 1763 to 1769. In 1763, Lord Halifax had issued a general warrant against the authors, printers and publishers of No. 45 of the *North Briton*, edited by Wilkes, and by its authority forty-nine persons were arrested. Actions were at once commenced by the editor and the printers against the messengers who had made the arrest, and the secretaries of state who had authorised it. Wilkes and the printers were successful: the law courts held that general warrants were illegal, and awarded heavy damages to the plaintiffs. General Warrants.
Declared illegal, 1763.

General Search Warrants, *i. e.* warrants empowering messengers to seize the books and papers of an individual, were pronounced illegal by Lord Camden in the case of *Entick v. Carrington* in 1765. The decisions of the law courts were confirmed by the House of Commons in 1766. See *Libel, post*.

Liberty of Opinion.

The Censorship of the Press was an immediate consequence of the development of printing. At first vested in ecclesiastical hands, it passed, at the time of the Reformation, to the State, and was regulated by the Star Chamber. Under *Temp. Mary*.

Liberty of
Opinion.
Censorship
of the Press.

¹ May, iii. 2.

Mary, the number of printers was limited, and the *imprimatur* of a Licenser was required by Proclamation, 1559. In 1585 stringent regulations were issued by the Star Chamber; all works were to bear the *imprimatur* of the Archbishop of Canterbury, or the Bishop of London, or, in the case of law works, of the Chief Justices. No printing was to be done, except at Oxford, Cambridge, and London; all presses were to be registered, and the number of master printers was limited. Under the first two Stuarts, the censorship continued to be most rigorously enforced, and the authors of Puritan publications were severely punished. In 1637, Bastwick, Burton, and Prynne suffered imprisonment, fine, and mutilation, for seditious writings, the latter having already been fined, imprisoned, and mutilated in 1634 for publishing his *Histriomastix*. On the commencement of the Civil War, the Long Parliament endeavoured to carry on the policy of the Star Chamber, by suppressing the many political pamphlets which appeared, most of which espoused the cause of the Royalists. In 1644, Milton's *Areopagitica* pleaded for freedom of opinion, but Committees were nevertheless appointed to regulate this censorship. In 1662 (13 and 14 Car. II, c. 33), the *Licensing Act*, (passed for three years and renewed at intervals until 1679), forbade any printing to be done, except at the Universities, and at London and York, appointed licensers, and limited the number of master printers to 20. In 1680, after the expiration of the *Licensing Act*, Chief Justice Scroggs declared that all unlicensed publications were illegal, and in 1685 the *Licensing Act*, was again passed for seven years. Subsequently it was renewed for two years in 1692, but in 1695, the Commons refused to re-enact it, and from that time the press was, in theory, free from control.

In reality it was still subject to great restrictions, owing to the imposition of a *stamp duty* on newspapers (1712), and to the severity of the law of libel. The stamp duty was abolished in 1855, and the last check on the multiplication of cheap newspapers was removed by the abolition of the paper duty in 1861.

Prynne's
Histriomas-
tix, 1632.

Milton's
Areopagitica,
1644.

Licensing
Act, 1662.

Lapses in
1695.

Stamp Duty,
1712-1855.

Law of Libel.

Law of Libel.

In 1545, by 37 Hen. VIII, c. 10, a slanderous libel was declared a felony, and 'seditious words' were severely punished by a Statute of 1581 (23 Eliz. c. 2). As a rule, at that period cases of libel were dealt with by the Star Chamber, and the reigns of Elizabeth, and the first two Stuarts, exhibit many instances of its action against libellers; *e.g.* in 1583, John Coping and Elias Thacker were hanged for 'seditious libels,' *i.e.* writings in disparagement of the Book of Common Prayer; and in 1593, Penry was executed for a libel on the Queen, and as the suspected author of the libels on the bishops, written by *Martin Marprelate*; in the same year, Barrow and Greenwood were executed for seditious libels; in 1637, Burton, Bastwick, and Prynne were punished for the same offence. Previous to the Revolution, it appears to have been a punishable offence to publish anything reflecting on the Government or the ministers¹. In 1688, the *Seven Bishops*,^{Seven Bishops, 1688.} having presented a petition to the King against the Declaration of Indulgence, were tried for seditious libel. They were acquitted by the jury, who claimed the right to return a *general verdict* of guilty or not guilty on the whole matter. In *Tutchin's* case (1704) it was held that it is a libel to express any *ill* opinion of the Government, though Chief Justice Scroggs, in *Carr's* case (1680), had declared that 'to print or publish any news whatsoever is illegal.' Libel prosecutions were frequent under William III and Anne, and during the reigns of George II and George III three important propositions were laid down. In *Franklin's* case (1731), it was ruled that *falsehood is not essential to the guilt of a libel*: in 1764, at the trial of the printers of the *North Briton*, Lord Mansfield held that *the judge alone could decide on the criminality of a libel*, the jury having merely to determine the fact of publication: while in *Almon's* case (1769) the same judge laid down that *a publisher is criminally liable for the acts of his servant*, which was soon interpreted to mean that the pub-

Developments of the law.

¹ Hallam, iii. 167.

lication of a libel by a servant was proof of his master's connivance.

Fox's Libel Act, 1792.

In 1792, *Fox's Libel Act* (32 George III, c. 60) asserted the right of the jury to return *a general verdict on the whole matter*, and thus overthrew the dangerous proposition enunciated by Lord Mansfield. But the fear of democratic outbreaks caused by the French Revolution induced the government to deal severely with expressions of popular opinion, and it was not till 1843 that *Lord Campbell's Act* (6 & 7 Vic. c. 96) placed the law of libel on a more satisfactory footing. The Act provided that the truth of a libel and its publication in the public interest should constitute a valid defence, and acquitted a publisher of all liability for the acts of his servants when done without his knowledge or contrary to his consent. Two important decisions remain to be noticed. In 1839 in *Stockdale v. Hansard* it was decided that the House of Commons could not authorise the publication of a libel: and in 1868 in *Wason v. Walter* it was held that a libel action could not be brought against a newspaper for a faithful report of a parliamentary debate, with fair comments on the proceedings, even though the character of an individual might be injuriously affected thereby.

Lord Campbell's Act, 1843.

Stockdale v. Hansard, 1839.

Wason v. Walter, 1868.

Petitioning.

The Presentation of Petitions.

The subject has always possessed the right to petition the Crown for the redress of grievances, but for some centuries it was mainly used for private and local matters, and it is only since the period of the Great Rebellion that many petitions have been presented 'asking for some change in the general law, or some legislation to meet new circumstances'.¹

Act of 1661.

In order to check the demonstrations which sometimes accompanied the presentment of these petitions, an Act of 1661 (13 Car. II, c. 5) forbade tumultuous petitioning, and provided that petitions for the alterations of the law, if signed by more than twenty persons, could not be presented unless approved by three justices of the peace, or

¹ Anson, i. 346.

by the Grand Jury of the county: no petition might be presented by more than ten persons. In 1680 the presentation of petitions asking the Crown to summon a Parliament was forbidden by royal Proclamation. The right of the subject to petition the Crown was expressly recognised by the *Bill of Rights*, but this did not prevent the House of Commons from imprisoning some of the *Kentish Petitioners* (p. 118) for breach of privilege (1701).

Proclamation of 1680.

Bill of Rights.

Attempts to influence Parliament by means of petitions became general at the end of the last century. Petitions were presented against the Roman Catholic Relief Bill (1780), for the abolition of slavery (1782), and for Parliamentary Reform (1782). Since that time, petitions have attained enormous proportions, and have been presented with every conceivable object, and on every occasion of popular excitement, culminating, perhaps, in the National Petition for the People's Charter in 1838. In 1839, the Petition—the six points of which were, vote by ballot, annual parliaments, manhood suffrage, equal electoral districts, the abolition of the property qualification, and the payment of members—was presented to the Commons with over a million and a half signatures attached. At the present day very great latitude is allowed to petitions, but the increase in their numbers no longer permits a debate on their contents at the time of their presentment. By standing orders of 1842 and 1853, the member presenting an ordinary petition merely states its object, its authors, and the number of signatures attached to it. It is then referred to a select committee.

Modern Petitions.

The People's Charter, 1838.

Political Agitation,

and public meetings, began to be employed, as a regular and organised means of influencing the government, about the reign of George III, although, as early as 1733, popular feeling had compelled Sir Robert Walpole to abandon his Excise Bill. During the reign of George III, political agitation was rife, and frequently took the form of riots, e. g. the *Silk Weavers' riots* 1765, which obtained a restraint upon the importation of silk from abroad; and the *Lord George*

Political Agitation.

1733.

Silk Weavers Riots, 1765.

Gordon Riots, 1780.

Gordon riots, 1780, in which the rioters invaded the very precincts of the House.

Anti-Slave Trade Association, 1787.

In 1787, the *Anti-Slave Trade Association* for the Emancipation of the Slaves was formed, and was followed, during the period of the French Revolution, by the establishment of

Democratic Associations.

democratic associations, which called forth severe measures¹ on the part of the government, continuing in force more or less until the end of the reign. In 1819, it was found necessary to pass what are known as the 'Six Acts,' a series of

The 'Six Acts,' 1819.

repressive statutes, one of which forbade any meeting of more than fifty persons to be held, unless six days' notice was given by seven householders to a magistrate. The other five Acts accelerated the punishment of offenders in cases of

Catholic Association, 1828.

misdeemeanour, forbade persons to be instructed in military exercise, and the use of arms; provided for the effective punishment of seditious libel; ordered the seizure of arms by

Agitation for Reform.

justices of the peace in disturbed counties; and subjected certain publications to the stamp duties. About 1828, the agitation of the *Catholic Association* was so violent as actually

The Chartists, 1838-48.

to overawe the government, and was followed by extreme agitation for Parliamentary Reform, and for the formation of various political unions. The Chartist agitation, too, continued from 1838 to 1848, when it culminated in the failure

Anti-Corn Law League, 1838.

of an attempt to overawe Parliament. In 1838, the *Anti-Corn Law League* was formed, and by 1846 had attained its

objects².

Official Ranks.
Ealdorman.

OFFICIAL RANKS.

The *Ealdorman*, often an under King, *e.g.* in *Mercia*, and *Hwiccia*, was the chief magistrate of the shire, appointed

¹ *E.g.* the Treasonable Practices Act (1795); the Seditious Meetings Act (1795); and the Corresponding Societies Act (1799).

² Sir T. Erskine May, in summing up the results of political agitation, remarks (Const. Hist., ii. 418), 'Not a measure has been forced upon Parliament, which the calm judgment of a later time has not since approved; not an agitation has failed, which posterity has not condemned. The abolition of the Slave Trade and Slavery, Catholic Emancipation, Parliamentary Reform, and the Repeal of the Corn Laws were the fruits of successful agitation; the Repeal of the Union, and Chartism, conspicuous examples of failure.'

as a national officer by the King and Witan (p. 93); there was often a tendency to make the office hereditary, especially in the case of the annexation of an under kingdom, although the idea of an Ealdorman was connected with jurisdiction, rather than with nobility of blood. The Ealdorman sometimes ruled over two or more shires; he attended the Witenagemot, and it was his duty to lead the host of the shire in war, as well as to sit with the bishop and the sheriff in the shire moot (p. 68), where he received the third penny of the judicial profits. About the time of Ethelred, the Danish title of *Jarl* or *Earl*, (Norman *comes*), begins to supersede that of Ealdorman. After the Norman Conquest, the title of Earl becomes a personal dignity, carrying with it no administrative functions; and his share in judicial profits, 'the third penny,' was gradually commuted for a fixed sum¹.

Jarl or Earl.

The Sheriff, (*scir gerefa*, or *reeve*, probably connected with the German *graf*, *grau*, *grey*; or *reafan*, to plunder²), was the royal officer of the shire, (as the Ealdorman was the national officer), the nomination, except in the case of the Sheriff of London,³ being almost always made by the King. The Sheriff was the King's steward and representative; it was his duty to attend the local courts in the royal interest, to receive taxes, and to administer the King's demesne.

Sheriff in Pre-Norman times.

The Sheriffs after the Norman Conquest (*vice-comes*) became all-powerful in the local courts, owing to the withdrawal of the ealdorman and bishop, and, in some cases, managed to make their offices hereditary. Their judicial and financial powers were great; in their judicial capacity, they held the *Sheriff's Tourn* (p. 71), and presided over the local courts; in their financial capacity, they had to render the accounts to the Exchequer twice a year, and, as the Barons of the Exchequer were often Sheriffs as well, there were frequent opportunities for fraud, a Sheriff in such a case being enabled to audit his own accounts, as a Baron of the Exchequer. In their military

After the Norman Conquest.

¹ Selden, *Titles of Honour*, ch. v. § viii. p. 671.

² For other derivations, see Stubbs, i. 82, note 7.

³ Sel. Charters, 108.

capacity they commanded the militia and the lesser tenants in chief. *Temp.* Henry I, the Sheriffs had, in many cases, become so powerful, (*e.g.* Richard Basset, and Aubrey de Vere, held eleven counties in a joint sherrifdom¹), that the King sought to lessen their power by appointing men of inferior position, instead of great barons and officials; freedom from their exactions was promised by the second Charter of Stephen².

During the anarchy of Stephen's reign the power of the Sheriff rapidly declined, but he was restored to his former position by the Treaty of Wallingford. Henry II, however, soon found that the Sheriff was becoming a danger to the central government: no longer an useful royal official, he had become a local magnate who too often disregarded the King's interests, mulcted the King's subjects, and transmitted his office from father to son. In 1170, in consequence of numerous complaints of shrieval exactions, Henry removed all the Sheriffs, and ordered a commission of itinerant justices to inquire into the charges brought against them. Although this *Inquest of Sheriffs*³ resulted in the acquittal of the majority of the accused, hardly any were reinstated, and their posts were filled by officers of the Exchequer.

Inquest of
Sheriffs, 1170.

Limitation of
his powers in

The Inquest was the first of a series of measures which curbed the Sheriff's power, made him subordinate to the itinerant justice, and affected his position in financial, judicial and military matters.

(a) Finance.

(a) *Financial.*

The disappearance of Danegeld after 1162, and the permission obtained by the wealthier towns to pay their contributions directly to the Exchequer, deprived the Sheriff of two great opportunities for extortion. Further limitations were placed on his power by the practice of entrusting the assessment and collection of local taxes to royal officials assisted by local representatives. Thus in 1188 the collection of the *Saladin Tithe*⁴ was put into the hands of officers

¹ Stubbs, i. 392.

³ Sel. Charters 147.

² Sel. Charters, 121.

⁴ *Ib.* 160, c. 2.

of the Exchequer assisted by a jury, and in the carucage of 1198¹, the Sheriff was only to hand over to the Exchequer the sums already collected by local officials.

(b) *Judicial.*

(b) Justice.

By the *Assize of Clarendon*² (1166) the power of the Sheriff in criminal matters is subordinated to that of the justice, and by the *Assize of Northampton*³ (1176) it is no longer the Sheriff but the justice who is to impose the oath of fealty. The *Judicial iter of 1194* provides that no Sheriff shall be a justice in his own county⁴, and orders the election of three knights and a clerk to hold the pleas of the Crown⁵, while in 1195 knights were assigned to administer the oath of peace⁶. *Magna Carta*⁷ forbid any Sheriff to hold pleas of the Crown, and many of the borough charters contain clauses freeing the townsmen from the Sheriff's jurisdiction in civil and sometimes in criminal matters⁸.

(c) *Military.*

(c) Military matters.

The power of the Sheriff in military matters was lessened by the introduction of *Scutage*, which deprived him of the levy of the lesser tenants in chief, and by the *Assize of Arms* (1181), which authorised the justices to supervise the armament of the local militia⁹. When the assize was enlarged by the *Statute of Winchester* (1285) two constables were to be chosen in every hundred and franchise 'to make the view of arms'¹⁰.

But in spite of these limitations the Sheriff retained considerable remnants of his former powers. He summoned the county court, held the view of frankpledge, enforced distraint of knighthood, collected the ferm of the shire and the tallage of unchartered towns, kept prisoners in custody till the arrival of the justices, led those lesser barons who did not pay scutage, and retained the command of the militia until superseded by the Tudor lord-lieutenant.

Powers retained by Sheriff.

¹ Sel. Charters, 257.

² Ib. 143, § 4.

³ Ib. 152, § 6.

⁴ Ib. 260, § 21.

⁵ Ib. 260, § 20.

⁶ Ib. 264.

⁷ Ib. 300, § 24.

⁸ See Charter of Henry I to London. Sel. Charters, 108, lines 10-15.

⁹ Sel. Charters, 155, § 9.

¹⁰ Ib. 472, § vi.

His influence
over
elections.

In the fourteenth century, the Sheriff once more became an official of great importance, owing to the control which he exercised over parliamentary elections. It was his duty to hold the election and return the members¹, and as he was practically master of the situation, he could return either such persons as he chose, or could omit to make any return at all. To provide a remedy for the malpractices of the Sheriff, an Act of 1406 required that the names of the elected members should be written in an indenture, authenticated by the seals of the electors; in 1410 Justices of Assize were empowered to scrutinise the returns, and by the Statute of 1445 a Sheriff making a false return could be fined £200.

His appoint-
ment and
Tenure of
office.

The *Provisions of Oxford*² limited the Sheriff's tenure of office to one year, and the *Articuli Super Cartas* (1300) allowed the counties to elect those Sheriffs whose office was not heritable. In 1316 (9 Ed. II), his election was declared to lie with the Chancellor, Treasurer, Barons of the Exchequer and the Justices. The limit of the shrievalty to one year was confirmed by 14 Ed. III, c. 7 (1340).

At the present day the sheriff is appointed in the Privy Council. It is his duty to receive the judges on circuit, summon the juries, conduct the assizes, carry out the writs for the election of county members, and enforce those judgments of the High Court which affect persons or property within the county³.

Itinerant
Justices.

Itinerant Justices (*in itinere*) date from the reign of Henry I, who organised circuits of the Judges, and Barons of the Exchequer, for judicial, and more especially for financial, purposes, with the object of bringing the local courts into connection with the central administration⁴. Something of the same kind had been attempted in the judicial circuits of the Anglo-Saxon Kings, and in the courts held by William I at Westminster, Gloucester, and Winchester, but the system

Circuits of
Judges.

¹ By 16 & 17 Vic. c. 68, § 1, writs for cities and boroughs are no longer sent to the Sheriff but to the returning officer.

² Sel. Charters, 391.

³ Anson, ii. 236.

⁴ 'The Norman *curia* met the Anglo-Saxon *gemot* in the visitations of the itinerant justices.' Stubbs, i. 392.

was not elaborated until the time of Henry II. During his reign circuits were frequently held and greater prominence was given to their judicial aspect. In 1156, pleas were heard in certain counties, and in 1166, by the *Assize of Clarendon* (p. 325), a commission of itinerant justices was despatched to visit the counties and try criminals presented by the hundred and shire. No baronial franchise was to claim exemption from their visitation¹. Two years later a financial circuit was made, and in 1173 the kingdom was divided into six circuits for fiscal purposes. In 1176 the *Assize of Northampton* was carried out by six groups of three judges each, a circuit or 'cluster of counties' being assigned to each group. Subsequent visitations were made under Richard I and John, and as the taxation of personal property compelled the Exchequer to entrust the assessment of the tax to local juries, the financial duties of the justices lost much of their importance. By *Magna Carta* (Art. 18), it was provided that the assizes of *Darrein Presentment*, *Mort d'ancestor*, and *Novel Disseisin* (p. 87), should be held before itinerant justices and elected knights four times a year²; by Article 13 of the second re-issue of the Charter, 1217, this was reduced to once a year³. During the reign of Henry III, the *itinerata* took place about every seven years, though they were frequently irregular. The system was remodelled by Edward I, and regular circuits of Judges of Assize were substituted for the irregular visitations of the justices itinerant. In 1285, by the *Statute of Westminster II* (13 Ed. 1), two Judges of Assize were appointed to go on circuit three times a year, and in 1293 the country was divided into four circuits. Two judges were given to each division and were to be on duty throughout the year: finally in 1299 the Judges of Assize were empowered to act as Justices of Gaol Delivery, and were thus invested with all the judicial powers of their predecessors⁴. The judges sat under five commissions:—

I. *Assize*, for the trial of disputes about real property;

¹ Sel. Charters, 143, § 1 & § 11.

³ Ib. 345.

² Ib. 299.

⁴ Stubbs, ii. 271.

1156.
Assize of
Clarendon.
1166.

Magna
Carta.

Reforms of
Edward I.

Commissions
under which
the Justices
sat.

2. *Nisi Prius*, (created by the *Statute of Westminster II*, 1285), so called from the necessity of questions of fact in civil cases being tried at Westminster, *unless before (nisi prius)* the day fixed for the trial, the judges come into the county in which the cause of action lies;

3. *Oyer and Terminer*, 1328 (2 Ed. III, c. 2), to hear and determine cases of treasons, felonies, and misdemeanors;

4. *Gaol Delivery*, 1299 (27 Ed. I), *i. e.* to try all prisoners in gaol at the time of the judges' arrival in the town;

5. *Of the Peace*, 'by which all justices of the peace, having no lawful impediment, are bound to be present at the assizes to attend the judges.'

Conservators
of the Peace,
1195.

Conservators of the Peace. In 1195, certain knights were appointed, before whom every one was to swear to keep the peace¹, and on several occasions during the reign of Henry III, knights were assigned to secure the peace being kept². Under Edward I, *custodes pacis*, elected in the county court, appear, and were appointed to secure the enforcement of the *Statute of Winchester*, 1285.

Become
Justices of the
Peace, 1360.

In 1327, Edward III enacted that *Conservators of the Peace* should be appointed in every county. In 1360 (34 Ed. III, c. 1) they received the title of *Justices of the Peace* and were authorised to exercise criminal jurisdiction. In the following century they gradually assumed the powers which had previously been vested in the shire court. A Statute of 1389 (12 Ric. II, c. 10) regulated their wages³, and directed that sessions should be held *quarterly* before two justices. By 11 Hen. VII, c. 3, justices were empowered to try without a jury all offences against unrepealed statutes, except charges of murder, felony, and treason, and in 1542 (33 Hen. VIII, c. 10), were authorised to hold *Petty Sessions*.

Quarter
Sessions,
1389.

Petty
Sessions,
1542.
Administra-
tive work,
temp. Tudors
and Stuarts.

Under the Tudors and Stuarts, the burden of local government rested mainly on the shoulders of the justice of the peace. It was his duty to carry out the recusancy laws, collect benevolences and forced loans, settle the scale of wages and

¹ Sel. Charters, 264.

² Ib. 362, 371.

³ Justices of the Peace are now unpaid officials.

prices, maintain bridges, roads and public buildings, grant licenses, appoint local officials and control local finance. In 1745 (18 Geo. II, c. 20) a property qualification of £100 a year was declared necessary for a justice, and in 1732 (5 Geo. II, c. 18) attorneys and solicitors in practice were declared incapable of holding the office. At the present day, Justices of the Peace for counties are appointed by the Lord Chancellor on the recommendation of the Lord Lieutenant: most of their administrative functions have been transferred to the *County Councils* by the Local Government Act of 1888, (51 & 52 Vic. c. 41).

Lord Lieutenant, as the head of the County Militia, held an office analogous to that of the Ealdorman of Anglo-Saxon times. The office was created during the reign of Henry VIII¹, and by 3 & 4 Ed. VI, c. 5, § 13, its holder superseded the Sheriff in the command of the military forces of the shire. The Act of 1871 deprived him of the control of the Militia, but he is still the chief officer of the county and the representative of the Crown.

Lord Lieutenant.

STATE OFFICIALS.

The Justiciar, the highest official in the kingdom, and the head of the administration, first appeared in English history *temp.* William I, as the regent of the kingdom in the Sovereign's absence, e.g. William Fitz-Osbern (p. 29); the importance of the office was much increased by Ranulf Flambard under William Rufus, and the Justiciar became, (next to the King), supreme in matters of justice and finance. When the *Curia Regis* split up into the Courts of Common Law (p. 58 sq.), *temp.* Henry III, the Justiciar's power began to decline, as he could not preside over all the three Courts. The office ceased to exist *temp.* Edward I, and the Justiciar's powers passed to

State Officials.
Justiciar.

The Lord High Chancellor, (so called from *Cancelli*, the

The Chancellor.

¹ The Duke of Norfolk was made *King's Lieutenant* by royal commission in 1545 (Davenport, Lord Lieutenant, p. 4), but no mention of the officer is found in statute law till 3 & 4 Ed. VI, c. 5, § 13, where he is simply called *Lieutenant*. The title *Lord Lieutenant* is first found in 4 & 5 Phil. and Mary, c. 3 § 5.

screen behind which the secretaries sat to transact business¹), who first appears in English history *temp.* Edward the Confessor. He was the head of the King's Secretaries and Chaplains, the 'Keeper of the King's Conscience,' and the *Keeper of the Great Seal*, in which capacity, although subordinate to the Justiciar, he obtained great power, as no grant could be made by the King without the Chancellor affixing the *Great Seal*. After the establishment of the Chancellor's equitable jurisdiction, which dates from the 22nd year of Edward III, this power increased, and he became the head of the whole legal system. Up to Edward III, the office was always held by ecclesiastics, owing to their superior education, and qualifications for the post; the first lay Chancellor was Robert Bouchier, 1340. From the time of Sir John Knyvett (1372), to Sir Thomas More, no lawyer was appointed; from 1592, there has only been one instance of an ecclesiastic holding the Lord Chancellorship, viz. Bishop Williams of Lincoln (1621-1625). The Chancellor's office is declared identical with that of Lord Keeper by a Statute of 1563 (5 Eliz. c. 18). The Lord Chancellor is a Privy Counsellor by virtue of his office, the Speaker of the House of Lords, and Visitor, in right of the King, of all Hospitals and Colleges of the King's foundation; he is also Patron of the King's livings, and has the appointment of all justices and judges. The office cannot be held by a Roman Catholic. (11 Geo. IV, c. 7).

The
Treasurer.

The Lord High Treasurer, Keeper of the royal Treasure, held an office created by William I; his chief duty was to receive the accounts of the Sheriffs in the Exchequer (p. 58). Up to 1371, the office was held by ecclesiastics, the first lay Treasurer being Sir Richard le Scrope. The last Lord High Treasurer of England was the Duke of Shrewsbury, appointed by Queen Anne in 1714. In 1715, the office was put in Commission, in order that the House of Commons might be represented in its administration, and

¹ Sir Edward Coke's derivation is *a cancellando*, from cancelling the King's letters patent, when granted contrary to law.

has since then been vested in a First Lord of the Treasury, three or four Junior Lords, and the Chancellor of the Exchequer.

The Chancellor of the Exchequer, (office created Chancellor of the Exchequer. *temp.* Henry III), keeps the Exchequer seal. He is now the minister who controls the national revenue, his duties in the Exchequer being purely formal. By the *Judicature Act* of 1873, his judicial functions were taken away. From the nature of his duties, the Chancellor of the Exchequer is always a member of the Lower House, and his office gives its holder a seat in the Cabinet.

The Lord Privy Seal, was appointed originally to keep Privy Seal. the Privy Seal of the King, so that no independent grants might be made without the knowledge of the Council. His duties were abolished in 1884, and though the office still exists it is purely honorary. Until the reign of Henry VIII, the office was usually held by a Churchman. There is also a *Privy Signet*, kept by the principal Secretary of State. Privy Signet.

Secretaries of State, became important officials during the Tudor period, (and more especially under Elizabeth). Up to that time, the Secretary had existed only as a Clerk. In 1539, a second principal Secretary was appointed by Henry VIII; and up to 1707, there were, as a rule, two only. In that year, a third Secretary, (for Scotland), was appointed, but his office was abolished 1746. In 1768, a third Secretary for the Colonies was appointed; the office was abolished 1782, but revived 1794, the third Secretary being for War. In 1801 the Colonial business was transferred to this Secretary from the Home Office, and in 1854, the War and Colonial departments were separated, whilst in 1858, a Secretary for India was appointed. Secretaries of State.

The Lord High Admiral, was an officer who commanded the fleet and was specially concerned with the administration of naval affairs. Although records of previous appointments are in existence, an uninterrupted series of Lord High Admirals can only be traced from the year 1404. The office was put in commission in 1636, and was administered by a parliamentary committee during the Commonwealth. At Lord High Admiral.

the Restoration, it was conferred on James, Duke of York, but from 1690 to the present day, it has, with few exceptions, remained in commission. It is now administered by a First Lord and four naval Lords, a civil Lord, a financial and parliamentary secretary, and a permanent secretary¹.

COURT OFFICIALS.

Court
Officials.
The
Constable.

The Lord High Constable, (*comes stabuli*), the *staller* of Anglo-Saxon times, was a military officer of the Court, and with the Marshal, held the Court of Chivalry (p. 64); he was at first an officer of the Exchequer. The powers of the Lord High Constable, which had been defined by Statutes of 1385 (8 Ric. II, c. 5), 1390 (13 Ric. II, cc. 2, 3), were much increased by Edward IV, who empowered him to 'hear, examine, and conclude,' all cases of high treason 'on simple inspection of fact.' Since 1514, when Henry VIII discharged the Duke of Buckingham from his office, the Lord High Constable has never been a permanent official, though one is appointed at each Coronation.

The Marshal.

The Earl Marshal, (*Mareschal*), first appears in England as a Court official *temp.* William I, when Roger de Montgomery held the office. The Earl Marshal's duties were similar to those of the Constable, with whom he presided in the Court of Chivalry. When the office of Constable fell into abeyance, the Earl Marshal continued to hold the Court as a Court of Honour in civil cases (p. 64). The Marshal's jurisdiction was defined, and checked, by the *Articuli Super Cartas* 1300, the *Ordinances* 1311, and again in 1390 (13 Ric. II, cc. 2, 5). The Constable and Marshal were specially charged with the due regulation of the troops. The Earl Marshal at the present day is the Head of the College of Heralds.

Lord High
Steward.

The Lord High Steward. The important functions which this officer exercised under the early Norman kings soon passed to the Justiciar. By the reign of Henry II, the office had become hereditary in the House of Leicester, and being inherited by Henry IV, was absorbed by the Crown.

¹ Anson ii. 177.

Since that time a Lord High Steward has only been created on special occasions *pro hac vice*, to preside at the trial of peers, or at Coronations.

The Lord Chamberlain, the *bower thegn* of Anglo-Saxon times, was at first an officer possessing considerable financial and judicial powers and 'responsible for the administration of the royal household¹.' In 1539, the office of Lord Great Chamberlain was declared next in importance to the Lord Privy Seal. The Lord Chamberlain of the King's Household has at present the duty of licensing plays. Lord Chamberlain

The Lord High Almoner, the dispenser of the Sovereign's bounty. There is a patent giving the Almoner the goods of all *felones de se*, and all *deodunds*². Lord High Almoner.

All the Court offices tended to become hereditary at early periods, and were nearly all *Grand Serjeanties* (p. 210)³.

¹ Anson, ii. 139. ² *Rawlinson MSS.* (Bodleian) A. 185, 303.

³ By an Act of 1539, 31 Hen. VIII, c. 10, sec. 4, relating to the precedence of peers in Parliament, the order of the great officials is settled as follows: (1) the Lord Chancellor; (2) the Lord Treasurer; (3) the Lord President of the Council; (4) the Lord Privy Seal; (5) the Great Chamberlain; (6) the Constable; (7) the Marshal; (8) the Lord Admiral; (9) the Lord Steward; (10) the King's Chamberlain; (11) the Chief Secretary.

CHAPTER VIII.

THE TOWNS.

Pre-Norman. **Towns before the Norman Conquest.**

The
Borough.

The borough, (*burh*, a fortified place), was originally a place more capable of defence than the *township* (p. 218). The origin of the *burh* cannot be traced back to a Roman source, nor can any distinct connection be established between the *burhs* and the Roman *municipia*; and the typical example of the fate of Roman towns in England may be said to be that of Anderida, razed to the ground, and of Chester, deserted for almost two centuries; though the sites used by the Romans, being advantageously placed, and partially fortified, were often selected for new *burhs*. Some of the English boroughs grew out of a township, or a collection of townships, whilst others sprang up round the castles of the great nobles, or under the shelter of the monasteries, in the latter cases being the property of the Lord of the Castle, or the Abbot, in the former retaining an independent organisation. In the *burh*, or *burgh*, men met together for the purposes of trade as well as of defence, and as they were unable to pay their lord by labouring on his land, the custom grew up of demanding a money payment, or *tallage* (p. 188). These tallages were at first arbitrary, and imposed at the pleasure of the lord, but were subsequently commuted for a fixed rent, although arbitrary tallage continued to be occasionally demanded until Edward III (p. 198). The chief magistrate of the *burgh* was the *tun gerefa*, (or *town reeve*), or in mercantile towns, the *port reeve* (*porta*, the place where the markets were held). The *burghs* gradually obtained

Town reeve.

Port reeve.

exemption from the jurisdiction of the *hundred*, though they remained subject to that of the *shire*¹; they had a *burgh-mote*, or *ward-mote*, of their own, held three times a year, for the transaction of their judicial and administrative business. Before the Norman Conquest, many towns had become the absolute property of the great lords, who in such cases appointed the reeve, (*e.g.* Chester belonged to the Earl of Mercia, and Exeter was the property of Queen Emma, 'the gem of the Normans,' wife first of Ethelred, and then of Canute); the rest became the King's demesne, the reeve being a royal nominee. The larger towns, such as Canterbury, as being a collection of townships, had an organisation resembling that of the *hundred*; as they were subject to the shire, the Sheriff collected all taxes and dues, and took note of all judicial proceedings. To avoid the Sheriff's exactions, a few towns even before the Norman Conquest had obtained the privilege of compounding for their taxes², and had been freed from attendance at the hundred court. The five Danish boroughs of Nottingham, Lincoln, Leicester, Stamford, and Derby, had an organisation in common, and special privileges. About eighty towns are mentioned in Domesday, and forty-one are described as having customs and privileges of their own³.

Towns after the Conquest.

William I, seeing the importance of the towns, included most of them in the royal demesne, and the practice arose of granting charters of incorporation, and privileges, such privileges being generally the right of independent jurisdiction, and the right of paying *firma burgi*, or a fixed sum, as rent to the King, or lord, instead of submitting to the exactions of the Sheriffs; these charters were granted to the

After the
Conquest.

Charters of
Incorporation.

Firma Burgi

¹ London obtained a shire jurisdiction of its own by a charter of Henry I, and the same privilege was eventually acquired by eighteen other towns, principally in the fifteenth century. See Maitland, *Justice and Police*, p. 71, note.

² Huntingdon paid *firma burgi* in the time of Edward the Confessor.

³ See *Customs of Chester, Lincoln, and Oxford*.—Sel. Charters, 87, 89, 90.

'fully qualified members of the township or hundred court of the town¹,' either by the King², or, in the case of towns belonging to a noble, by the owner, *e.g.* Leicester obtained a charter from its Earl, and Beverley from Archbishop Thurstan, *temp.* Henry I³. Most of the large towns appear to have been vested in the Crown, *temp.* Henry I, and by the time of Henry III, had obtained a distinct recognition of their privileges and immunities.

The readiness with which the towns undertook municipal government, and the ease with which they were incorporated by charter, was due to the fact that they already possessed a more or less complete organisation in the gild system.

Gilds.

The Gilds

(*gildan*, to contribute), are occasionally referred to a Roman origin, but more probably sprang from the sacrificial gilds, which were continued after the conversion to Christianity, with the substitution of Christian for heathen rites. The gilds of the Anglo-Saxons involved an oath of fidelity, and a sense of mutual responsibility; they were of various kinds.

Religious Gilds.

(1) *The Gild for Religious Purposes*, (the earliest of all), such as burying the dead, the holding of annual feasts, and the levying of contributions for the maintenance of services. Chief of these were the gilds of Exeter and Cambridge, the latter of which was also connected with the

Frith Gilds.

(2) *Frith Gild*, an association for the purposes of mutual protection and the preservation of the peace. These gilds undertook to capture and punish thieves; the gild brethren were, by the laws of Ini, and Alfred⁴, to share in the *wergild* of a fellow-member. There is the code of a *frith gild*

¹ Stubbs, i. 410.

² 'The King was possessed of some towns *antiquo jure Corona* as part of the original inheritance of the Crown, of others by *antient escheat*; the former were called ancient Demesne.'—Madox, *Firma Burgi*, p. 5.

³ Sel. Charters, 109. From the towns belonging to lords unable from their position to grant Charters, sprang the market town. Stubbs, i. 426.

⁴ Sel. Charters, 63.

in London with elaborate police arrangements, *temp.* Athelstan.

(3) Associations for *social* purposes, akin to our modern clubs. Social
Gilds.

(4) *The Merchant Gilds.* There is no trace of a Merchant Gild in Anglo-Saxon times, and the first direct notice of such an association is found in a Burford charter of 1087 and a Canterbury document of 1093¹. The name occurs several times in the reign of Henry I, and becomes common under his grandson. The affairs of the gild were managed by an alderman and various subordinate officials, and members were admitted by paying a fee, producing sureties, and swearing to observe the gild statutes. It was the object of the merchant gild to regulate trade, and procure special privileges for its associates. Membership of such a body gave a man commercial status, conferred on him exclusive rights of buying and selling free from toll, enabled him to look to his brethren for aid if ill, poor, or in prison, to share in their profits and to combine with them to obtain better terms². Such an institution was naturally popular, and the payment of a sum of money often induced the Crown to confirm the privileges claimed by the gild³. In some instances it would seem that the merchant gild soon became identified with the governing body of the town⁴, but this was not always the case⁵, and it was rare for the inhabitants to coincide with the members of the gild. Sometimes there were non-resident gildsmen who were not burgesses, or resident burgesses who were not gildsmen, and often inhabitants who were neither burgesses nor gildsmen⁶. Merchant
Gilds.

¹ Gross, *The Gild Merchant*, i. 5.

² Cunningham, *English Industry and Commerce*, i. 207.

³ See the charters granted by Henry II to Lincoln and Oxford. *Sel. Charters*, 166, 167.

⁴ *E. g.* Henry II's charter to Winchester is addressed to '*cives mei Wintonienses de gilda mercatorum.*' *Sel. Charters*, 165. See also charter of Richard I to same town. *Sel. Charters*, 265.

⁵ Dr. Gross goes so far as to say that though the merchant gild 'aided in evolving the later legal idea of technical municipal incorporation,' it 'was never actually equivalent to the latter.'—*The Gild Merchant*, i. 105.

⁶ Gross, i. 68-70.

In the 14th century the craft guilds began to absorb the powers of the gild merchant; its sphere of activity was decreased, and its powers were gradually transferred to these new associations. Its later history is obscure, and presents many varying features. In some towns it lent its name to the 'aggregate or craft fraternities,' or became identified with the governing body, in others it sank into a society for social and religious purposes, or disappeared altogether¹. At the present day, Preston is the only town in England in which a gild merchant still exists².

Craft Guilds.

(5) *The Craft Guilds* were associations of craftsmen engaged in a particular trade in a particular town. A few are met with as early as the 12th century, but they do not come prominently into notice till the 13th or 14th. They have usually been regarded as trade combinations formed for the purpose of breaking down the monopoly enjoyed by the merchant gild, and their formation has been looked on as the English counterpart of the continental struggle between a privileged commercial aristocracy and an unprivileged artisan class. But recent authorities maintain that such a view is entirely false³. They assert that no evidence can be produced of the oppression of the artisans by the richer classes⁴, and show that the gild statutes contain few clauses which would protect the craftsmen from external tyranny⁵. Dr. Gross is of opinion that craftsmen were freely admitted to the merchant gild during the 12th, 13th, and 14th centuries, and Dr. Cunningham tells us that civil quarrels 'were between burgh and alien, not between capital and labour'⁶.

¹ Gross, *The Gild Merchant*, i. 158-163.

² *Ib.* i. 165.

³ 'It is probable, that not a single instance can be cited of a conflict between the gild merchant and the crafts as such.'—Gross, *The Gild Merchant*, i. 171. See the whole of chap. vii, and also Cunningham, *English Industry and Commerce*, i. 310, 315.

⁴ There is no doubt that the weavers were subject to great disabilities, but Dr. Cunningham thinks that weaving as a regular craft was introduced and followed by foreigners, who did not pay the borough taxes, and were naturally regarded with great jealousy. *Eng. Industry and Commerce*, i. 179.

⁵ *Ib.* i. 315.

⁶ *Ib.* i. 315.

The real object of the craft guilds seems to have been the regulation of particular branches of trade. Their statutes aim at maintaining a high standard of excellence in the work, and inflict heavy penalties for fraud or 'false work.' The internal organisation of these bodies resembled that of the merchant gild, and all who followed the craft were bound to obey the gild rules. Up to the reign of Edward I, the craft guilds were only allowed to exist on payment of a yearly sum to the king or a lord, but in succeeding reigns their development was fostered by the Crown, and in the 14th and 15th centuries they absorbed the powers of the older merchant gild. But by the 16th century their commercial utility was passing away, and their regulations served rather to hamper than to develop trade. They received a severe blow by a Statute of 1547, and gradually lost all influence over the various trades. Their place was taken by the merchant companies of the 17th century¹.

Towns from Henry II to 1265.

Towns from
Henry II to
1265.

From the time of Henry II the growth of the towns was rapid. *Temp.* Richard I, and John, many towns bought charters conferring privileges which varied in proportion to the sum paid. *Magna Carta* (art. 13) confirmed the *antiquae libertates*, and *liberae consuetudines*, of all cities and boroughs. The privileges granted were usually self-government², self-assessment, permission to have a merchant gild, the free election of reeves³, exemption from a variety of tolls and imposts, from the interference of the Sheriff, and from the wager of battle (p. 76). One very important privilege, usually granted from the time of Henry II, was the recognition that residence as a burgess within the town for a year and a day conferred freedom on the villein who had sought

¹ The London craft guilds obtained charters from Edward III, and became known as trading companies. They obtained exclusive power in the city councils, and escaped dissolution in the reign of Edward VI because their abolition would have involved the reconstitution of the city government. Stubbs, iii. 566; Cunningham, i. 465.

² *Charters of Dunwich, Helston.*—Sel. Charters, 311, 313.

³ *Charters of Nottingham, Northampton and Lincoln.*—Sel. Charters, 309, 310, 312.

Firma Burgi. refuge within its walls¹. The *firma burgi*, the *ferm* or rent paid to the king, was portioned out amongst the householders, and occupiers of land in the borough; those contributing towards it, held their tenements by *burgage tenure* (p. 211). A few towns such as London had their own jurisdiction, independently of that of the shire-moot, and many old customs, such as *compurgation* (p. 74), were preserved in London, and other towns, long after they had been abolished in the Sheriff's Court. When the privilege of independence was gained, the right of electing magistrates became of importance. The charter of John to Lincoln² (1200), authorises the *commune consilium civitatis* to elect four lawful and discreet men to hold pleas of the Crown, and two lawful and discreet men to be reeves. The latter are to hold office during good behaviour and to be removable by the same body which chose them. The most important municipal privilege acquired by a town was the permission to make its own terms with the Exchequer, for it became necessary to refer to the citizens on the subject of the taxation of their towns. Local representatives were consulted by officers from the Exchequer, but it would often be found more expedient for such consultation to take place at some central point like London, and the fact that Simon de Montfort's summons of the burghers to Parliament, 1265 (p. 130), contained no instructions as to who was to send them, or how they were to be elected, shows that the election of borough representatives was no new thing.

History of
London.

Chief points in the History of London to Edward I.

During the Roman occupation of Britain London became a flourishing sea-port, and at the commencement of the English invasion, its walls were strong enough to hold the Jutes at bay. But though no record remains of its siege or capture, it had fallen into the hands of the Middle Saxons by the beginning of the seventh century. The town suffered severely at the hands of the Danes: it was sacked by the

¹ See the *Customs of Newcastle-upon-Tyne*, Sel. Charters, p. 112, line 15.

² Sel. Charters, 312.

Vikings in 851, and brought to the verge of ruin: the treaty of Chippenham (878) left it in possession of Guthrum, but it was regained by Alfred in 886, its walls were repaired, and its government was entrusted to the Mercian ealdorman Ethelred. London was annexed to Wessex by Edward the Elder, and rapidly recovered its wealth. It successfully resisted Sweyn and Olaf in 994 and stood three sieges from Canute. When it at last fell into his power, its wealth may be estimated from the fact that it paid £10,500 out of £72,000, raised from the whole kingdom¹.

At the time of the Norman Conquest, it had an organisation resembling that of the shire, and was divided into *wards*, answering to *hundreds*, its chief officers being the bishop and port reeve. It obtained a charter from William I², and a much more extended one from Henry I³. By this charter the citizens obtain the *ferm* of the county of Middlesex; the right of electing their own sheriff and justices; freedom from *Danegeld* (p. 187), *murdrum*, and *wager of battle* (p. 76); from toll, both in England, and at the ports, and 'from the immediate jurisdiction of any tribunal except of their own appointment⁴'; they are to hold a *husting* court once a week, and to have their *wardmoot*, and dues⁵. At the death of Henry I, the Londoners claimed the right to elect the King, and gave active support to Stephen⁶. During the reign of Henry II, the number of sheriffs seems to have varied from four to two or one. In the following reign we meet with the first Mayor of London. John, who was acting as regent in his brother's absence, having granted the citizens their *Communa* or corporation in 1191⁷.

First Mayor
of London,
1191.

In 1196, the excessive aids demanded from the Londoners, for the war against France, caused the riots under William

¹ Green, Conquest of England, 465.

² Sel. Charters, 83.

³ Ib. 108.

⁴ Ib. 107.

⁵ 'During the Norman period,' says Dr. Stubbs (Const. Hist., i. 407), 'London appears to have been a collection of small communities, manors, parishes, church-sokens, and guilds, held and governed in the usual way.'

⁶ Sel. Charters, 114. *Wm. Malin.*

⁷ Ib. 252. Bened. Abb. and Ric. Divis. p. 53.

Fitz Osbert¹. Under John, the citizens appeared on the side of the Barons ; they had aided in deposing Longchamp, 1191 (p. 46), and now joined in wringing the *Charter of Liberties* from the King, 1215; their privileges were expressly confirmed by *Magna Carta* (p. 328)², whilst the Mayor of London, (who receives the title of Lord Mayor from the reign of Edward III at the latest), was one of the Barons appointed to carry out its provisions. In the same year John granted a charter to London, allowing the citizens to elect their mayor annually⁴. In the reign of Henry III very unfriendly relations existed between the Crown and the city. The king frequently imposed heavy tallages, and although in 1250 he made excuses for his exactions, he does not appear to have made any amends, and it was partly owing to the support given by London to the Barons, that they were able to pass the *Provisions of Oxford* so easily. After the death of Simon de Montfort, Henry marched on London to take vengeance for the help which it had given to the baronial party in 1264. The citizens were fined and imprisoned, the town pillaged, the mayoralty put in abeyance, and a warden was appointed as governor. It was not until 1270 that Henry was induced to restore the previous constitution. In 1285 London was so disorderly, that Edward I suspended the whole municipal government for twelve years, and nominated a warden to regulate its affairs and carry out various reforms. After it regained its freedom in 1297, its government was carried on by a mayor, assisted by two sheriffs, twenty-five aldermen presiding over the wards, and a body of common councillors.

Later History of Towns.

Municipal Boroughs. The later history of the towns presents so many varying features, that it is impossible to describe their development in detail. But the general tendency was to vest the government in the hands of a mayor, assisted by a small body of aldermen, and a larger

Later History of the towns.

Municipal Boroughs.

¹ Sel. Charters, 255. *Reg. Hen.* iv. 5.

² Loftie, London (Historic Towns), p. 105

³ *Ib.* 298, § 13.

⁴ Sel. Charters, 314.

body of councillors. At first the mayor was chosen by the whole body of burgesses, but gradually his election passed into the hands of the aldermen and councillors. The latter formed themselves into a close Corporation¹, ignored the rights of their fellow townsmen, and obtained Charters of incorporation. Thus at Leicester the powers of the gild magistrates and the bailiff were transferred to the mayor. Twenty-four mayor's brethren and a court of common council were recognised by Edward IV, and in 1464 were empowered to elect the mayor. Twenty years later, the members of the council assumed the title of aldermen, and in 1489, together with the mayor and the brethren formed themselves into a close Corporation, excluded all other freemen from municipal elections, and obtained parliamentary recognition². This restrictive tendency was carried still farther. The rights of the freemen disappeared, the Corporation came to be regarded as owner of the town property, it developed into a close oligarchy, and even the election of members of Parliament was sometimes placed in its hands. The Crown was usually able to secure the return of its own candidates, but the independence exhibited by the Corporations under the Stuarts induced Charles II to remodel their Charters.

Leicester.

Close Corporations.

Confiscation of the Charters, 1683.

In 1683, he caused an information to be brought against the Corporation of London, *quo warranto* they had passed a by-law imposing tolls on goods brought into their markets, and had petitioned the king for the meeting of parliament, 1679. The Corporation was declared by the Court of King's Bench to have forfeited its Charter, and had to make the most humble submission to avoid its confiscation, though in 1690, 2 Wm. & Mar. c. 8 declared all the proceedings of no effect. Charles at once proceeded against other towns; in 1684, Judge Jeffreys, on the Northern circuit, 'made all

Writ of Quo Warranto against London, 1683.

¹ A corporation has been defined as a body which has the right of perpetual succession, can sue and be sued, purchase land, have a common seal, and make by-laws; Blackstone, Com. i. 475.

² Stubbs, iii. 581-2.

the charters, like the walls of Jericho, fall down before him, and returned laden with surrenders, the spoils of towns.' The charters, thus surrendered by the towns, were replaced by others, 'framing the constitution of these municipalities in a more oligarchical model, and reserving to the Crown the first appointment of those who were to form the governing part of the Corporation¹.' James II, in his desire to conciliate the country, restored many of the old charters, but matters were little mended for the burgesses generally, and throughout the 18th century the principle of close Corporations was maintained; the burgesses in almost every instance had no voice in the election of their governing body, and the members of the Council almost invariably neglected their duties to the town for the advancement of their personal interests. All the borough patronage was in their hands, and was usually dispensed in the worst possible manner, whilst the Corporation often possessed trading privileges, which were highly injurious to the general trade of the town.

Municipal
Corporations
Act, 1835.

This shameful state of things continued until the *Municipal Corporations Act* of 1835, which provided that the Town Council, all the members of which must be ratepayers in the borough, should consist of a Mayor, chosen annually by the Council, of Aldermen, elected by the Councillors from their own body to hold office for six years and of Councillors, elected by the Burgesses, *i.e.* the resident ratepayers; special trading privileges were taken away from the Corporations, the borough jurisdiction was regulated, and ample provisions made for the effectual administration of local self-government. The Corporation of London was specially exempted from the provisions of this Act, and remains the only unreformed municipal Corporation in England. But in recent years its authority has only extended over a small part of modern London. In 1855 an administrative body called the *Metropolitan Board of Works* was

¹ Hallam, ii. 455.

appointed to regulate the affairs of that part of London which lay outside the city, and by the Local Government Act of 1888 (51 & 52 Vic. c. 41, § 40) the 'powers, duties and liabilities' of this board were transferred to the *London County Council*.

Parliamentary Boroughs. See *Borough Franchise* (p. 133); *Burgesses* (p. 136); *Bribery* (p. 142); *Reform* (pp. 144-6).

CHAPTER IX.

THE CHURCH.

History to
the Norman
Conquest.

History to the Norman Conquest.

The marriage of Ethelbert of Kent with Bertha, the Christian daughter of Charibert of Paris, *circ.* 575, afforded Pope Gregory an opportunity for the conversion of the south-east portion of England, and he accordingly despatched a mission with Augustine at its head¹. Ethelbert was converted in 597, and Kent soon adopted the new religion, the archiepiscopal see being established at Canterbury in 600. The marriage of Edwin of Northumbria with Ethelburga, daughter of Ethelbert, led to the conversion by Paulinus of the northern kingdom, over which the already converted Picts and Scots exercised some influence. In 603 a conference was held between Augustine and the British bishops, but the latter refused to acknowledge the supremacy of the Roman Church or accept certain changes in ritual. In 634, Birinus commenced the evangelisation of Wessex, and in spite of the antagonism of such champions of heathenism as Penda of Mercia, Christianity was firmly established as the religion of the country by the end of the 7th century, and that, too, in the Roman, as opposed to the Celtic form. The contest at the Synod of Whitby, 664, between the

Introduction
of Chris-
tianity into
Kent, 597.
Northum-
bria, 627.

Wessex con-
verted, 635.

Synod of
Whitby, 664.

¹ Christianity had been introduced into Britain after the Roman Conquest, but too great insistence cannot be laid on the fact that 'the Church of England which was founded by Augustine. . . is the daughter of the Church of Rome...and has nothing whatever to do with the early British Church. The Roman planted, the Scot watered, but the Briton. . . refused to do anything.' See Enc. Britt: art. *England*, by E. A. Freeman and S. R. Gardiner.

Celtic and Roman priests, is of vast importance, and, had it been decided otherwise, might well have altered much in the country's history; the nominal questions at issue—the shape of the tonsure, and the date of observing Easter—were decided in favour of Rome by Oswi of Northumbria, the result being, that, saved from the ecclesiastical disorganisation of the Irish church, England remained connected with Rome, and with Europe generally. In 668, Theodore of Tarsus, Archbishop of Canterbury, commenced the organisation of a thoroughly national church by dividing the country into dioceses, formed on the lines of the old tribal divisions; by increasing the number of bishops, and by bringing them together in a yearly synod under the presidency of the Archbishop of Canterbury. Tradition points to him as the creator of the parochial system, which placed each township or group of townships in the charge of a priest, who was responsible to the bishop of the diocese. This ecclesiastical organisation preceded, and formed a model for, the later secular organisation. In Anglo-Saxon times, the close union of church and state, caused by the fact that Christianity began with the court and spread downwards, is very marked; church councils, attended by the king and ealdormen, existed from a very early period, but, as the witenagemot, which was composed of almost the same members as the councils, grew into more importance, these councils gradually became exclusively ecclesiastical synods, whilst most of the witenagemots legislated on ecclesiastical subjects. Clerics who violated the secular law were tried in the courts of the hundred and the shire, for there was no separate ecclesiastical jurisdiction in criminal cases, but it seems probable that special church courts existed for the trial of spiritual offences¹. The bishops sat with the ealdormen in the shire courts, expounding the 'law of God' and the law of man², and as royal ministers³, and sometimes soldiers⁴, obtained a very

Work of
Theodore.

Early Union
of Church
and State.

¹ Stubbs, i. 233.

² Sel. Charters, 73. Canute, § 18.

³ *E.g.* Dunstan, the trusted minister of Edred and Edgar.

⁴ *E.g.* Bishop Elstan of Sherborne, who defeated the Danes in 845.

great influence in secular affairs. From this early connection between church and state, sprang that character of nationality, which has always so strongly marked the English Church.

There appear but few cases of Roman legations before the Conquest, and the introduction of foreign Bishops, by Edward the Confessor, was by no means viewed with favour by the nation. Dunstan openly defied the Pope, and although it became the custom for Archbishops to fetch their *pallium* from Rome, and although the collection *Rom-feoh* or *Peter's Pence* (a contribution of *1d.* from every hearth, abolished 1534, 25 Hen. VIII, c. 21) dates from the beginning of the tenth century, Roman influence in England was small before the Norman Conquest.

Peter's
Pence.

Honourable
position of
the Anglo-
Saxon
Clergy.

The Clergy during the Anglo-Saxon period occupied, as the only educated class, a highly honourable position; the oath of a priest was equal to those of a thegn, the wergild of an archbishop equalled that of an atheling; a bishop was on a par with an ealdorman¹, a priest with a thegn; whilst the laws of Edward give rank and power to any 'scholar who through learning throve so that he had holy orders².'

Relations of the Church to the State, from the Norman Conquest to the Reformation.

Ecclesiastical
policy of
William I.

The success of the Norman invasion was partly due to the hearty co-operation of the pope, and it was natural that the Conqueror's ecclesiastical policy should bear witness to the reforming influence of Hildebrand. He accordingly attempted to assimilate the English to the Western church in matters of discipline and ritual. The uncanonical bishops were deposed; Archbishop Stigand, who had received his pallium from the antipope Benedict, was removed from his see; church councils were revived, and with them ecclesiastical discipline and ritual; clerical marriages were forbidden, and the monasteries and chapters were reformed. But the most important step was the separation of the ecclesiastical and secular courts. By an undated charter of his reign³, William laid down that

¹ Sel. Charters, 65.

² Ib. 65, § 7.

³ Sel. Charters, 85.

spiritual cases should no longer be held in the hundred court nor brought before a layman for settlement, but were to be tried by canon law in the courts of the bishop and arch-deacon. Contempt of ecclesiastical jurisdiction would be punished by the secular arm.

But though the Conqueror was willing to bring the English Church into closer connexion with Rome, he had no intention of tolerating encroachments on his authority. He refused to do homage to Hildebrand¹, and laid down three propositions which were to govern the relations between the Pope, the church, and himself.

(1) That no Legate, or Papal Bull, should be received in England, and no Pope recognised, without the royal sanction.

(2) That no enactment of an Ecclesiastical Council should become law until confirmed by the King.

(3) That no tenant in capite should be excommunicated without the King's leave².

The result of this policy was to give the church a more definite position, and to organise her as a power apart from and possibly in rivalry with the state. Such a system could only be successful when those who were called upon to carry it out possessed the administrative ability and practical common sense of William and Lanfranc. Difficulties were sure to arise as soon as its working passed into less capable hands.

If the Conqueror had been despotic, William Rufus proved tyrannical. The revenues of vacant sees were appropriated by the king, and he deliberately neglected to make fresh appointments. The principles which regulated the taxation of lay fiefs were applied as closely as possible to church lands, and the king sometimes bestowed the estates of a bishopric on one of his favourites, and forced the next prelate to ratify the gift. The see of Canterbury remained vacant from 1089 to 1093, and when Anselm, the newly

The tyranny of Rufus.

¹ Fidelitatem facere, nolui nec volo; quia nec ego promisi, nec antecessores meos antecessoribus tuis, id fecisse comperio. Stubbs, i. 285, note 1.

² Sel. Charters, 82. *Eadmer*.

appointed archbishop, protested against such abuses, he was forced into exile.

Henry I.

The first act of Henry I was to recall the archbishop and to issue a *Charter of Liberties*, in which he recounted the abuses of the preceding reign and promised to abolish them. The church was to be free from unjust exactions, its revenues should not be seized, nor its lands sold nor farmed for the profit of the Crown¹. During his reign, the famous *Controversy about Investitures*, which was raging over western Europe, threatened to cause a serious breach between the king and the archbishop. The point at issue was whether the prelates should be *invested* by the pope or the sovereign. Anselm wished to check the growing secularisation of the church, and thought that better appointments would be made if the clergy were not subject to the immediate control of the Crown. Henry felt that church dignitaries were great landowners, and that if they refused to do homage and fealty he would have no claim on their military services, and possess no guarantee that their power would not be employed against the royal interests. The quarrel was settled by the *Compromise of Bec* (1107), by which the Church was to invest with the ring and crozier, as emblems of spiritual jurisdiction, whilst the king was to receive the homage and fealty, in exchange for the temporalities².

The Investiture question.

Henry subsequently acknowledged the appellate power of the pope in ecclesiastical matters, though he would not permit a Legate to visit England without the royal license³.

Stephen.

Stephen, finding it necessary to conciliate the clergy, to whom he principally owed his election, granted them considerable liberties and concessions in his second charter⁴ (App. A), but his subsequent imprudence in arresting Roger, bishop of Salisbury, the Justiciar, and Alexander, bishop of Lincoln, June, 1139, and in sending Nigel, bishop of Ely,

Arrest of the Bishops, 1139.

¹ Sel. Charters, 100.

² Ib. 97. *Flor. Wig.* 1107.

³ The first appeal to Rome was made by Wilfred of York, on his expulsion from his diocese in 678, but the practice was very rare until after the Norman Conquest.

⁴ Sel. Charters, 120.

the Treasurer, into exile, roused the hostility of the whole ecclesiastical body, and the action of the king was formally condemned in a church council held at Winchester in Aug. 1139; the result was civil war and anarchy, lasting until the Peace of Wallingford, 1153, which was due in great measure to the mediation of the clergy.

In 1163, the clergy, headed by Becket, who, after his appointment as Archbishop of Canterbury (1162), had become a strong upholder of church privileges, made the first stand against a tax proposed by the king, by refusing to pay the sheriff's aid¹: the separation of the secular and ecclesiastical courts had moreover given facilities for the escape from justice of criminal clerks, and some modification of the existing laws was so earnestly needed that complaints about the degeneration of the spiritual courts had been formally made at Westminster in October, 1163. Becket vehemently opposed Henry's plan of reform; the king, however, was firm, and, in 1164, the *Constitutions of Clarendon* (App. A) settled the different questions at issue, in accordance with the customs of Henry I, ascertained by recognition. Criminous clerks were to appear before the king's court, and if handed over to the ecclesiastical authorities for trial were not to be protected by the church if pronounced guilty: the king's leave must be obtained before any archbishop or bishop might quit the realm, or before any appeal could be carried to Rome: the baronial status of archbishops and bishops was asserted, and their election was to take place by the king's leave, in his chapel².

The Constitutions were a bold attempt on the part of the Crown to define the relations between church and state, to destroy clerical immunities, and to assert the right of the state to control the authorities of the church. Thomas reluctantly accepted them, but immediately withdrew his assent and fled to the continent. The quarrel was ended by the murder of the archbishop in 1170, and the feeling against Henry was so

St. Thomas
of Canter-
bury.

His opposi-
tion to taxa-
tion, 1163.

Need of Ec-
clesiastical
Reform.

Constitutions
of Clarendon
1164.

¹ See note, p. 185.

² Sel. Charters, 137-140.

strong that he was compelled to annul the Constitutions. The Crown never quite lost its control over the election of bishops, but appeals to Rome became frequent, and criminal clerks succeeded in evading the jurisdiction of the secular courts.

Clerical
opposition
to taxation,
temp.
Richard I.

During the reign of Richard I, the clergy appear as the opponents of unconstitutional taxation (p. 185), and in 1198, Hugh, bishop of Lincoln, and Herbert, bishop of Salisbury, refused to contribute to a military aid, demanded by the king, on the ground that by their tenure they were bound to military service within the realm only¹; the result was the resignation of Archbishop Hubert Walter, the Justiciar. In the same year, the clergy refused to pay the hidage of 5s., but were soon brought to submission by an edict of the king, that any man who injured a clerk should not be obliged to satisfy him, but that if a clerk were the wrong-doer, he should at once be compelled to give compensation². The quarrel of John with the Pope (Innocent III) arose about the appointment of a successor to Archbishop Hubert Walter who had died 1205. The freedom of elections to bishoprics had hitherto been only nominal, but on the death of Hubert Walter, the monks at Canterbury elected their sub-prior Reginald; the king nominated John de Grey, bishop of Norwich: appeal was made to the Pope, who set aside both elections and induced the proctors of the chapter to choose his friend Stephen Langton. The new archbishop received papal consecration in 1207. John refused to accept the nomination, and on the submission of the Canterbury monks to Innocent, expelled them. In the same year, John roused the hostility of the clergy by demanding one-thirteenth of the church revenues³; this demand he subsequently relaxed, but in 1208, on the Pope putting England under an interdict⁴, John confiscated all the estates and goods of the clergy⁵. The Pope retaliated by excommunicating the King (1209), and by formally deposing him in 1212; the execution of the

John's
quarrel with
Innocent III.

His deposi-
tion by the
Pope, 1212.

¹ Sel. Charters, 255. *Rog. Hov.* iv. 40.

² *Ib.* 258. *Rog. Hov.* iv. 40.

³ *Ib.* 273. *Ann. Waverl.* 1207.

⁴ *Ib.* 273. *Mat. Par.* 226.

⁵ *Ib.* 274. *Ann. Waverl.* 260.

deposition he entrusted to Philip of France¹. John, unsupported by his people, opened negotiations with Rome, and at length surrendered his kingdom to Innocent, receiving it again to be held of the Pope on condition of swearing fealty² to the Pope and paying an annual tribute of 1,000 marks (May 1213). This disgraceful surrender bore important fruit, by sowing amongst the people of England the seeds of an enmity to Rome, which ultimately ripened into the Reformation under Henry VIII. As an immediate consequence, the whole kingdom was consolidated against the king; an attempt in 1215 to win over the clergy by making restitution, and by the grant of freedom of election³, failed, and John found himself compelled to sign *Magna Carta*, the first article of which expressly guarantees the liberties of the church⁴.

His submission, 1213.

Its consequences.

Throughout all these reigns there exists a close bond of union between church and state in the employment of ecclesiastics as ministers of the king, *e.g.* Lanfranc, Roger of Salisbury, Becket (during the earlier portion of his career), and Hubert Walter.

Employment of Ecclesiastics as Statesmen.

The alliance between king and pope begun by John's submission, continued throughout the reign of Henry III (who swore, when he did homage after his coronation, to pay the annual 1000 marks promised by his father), and until the action of Boniface VIII against Edward, 1296; the Pope, who, in 1223, had declared Henry of full age to govern⁵, exacted large sums of money, especially from the clergy; and, if the king remonstrated, as he did in 1246, had only to use a threat of deposition to bring him to submission; these exactions were frequent, *e.g.* 1229, 1240, 1244 (when Master Martin extorted large sums from the clergy), 1246, 1252, 1257; and though occasionally resisted by the people, *e.g.* 1231, and remonstrated against by the national assemblies, were almost always sanctioned by the king, to whom, in 1254, Innocent IV offered the crown of Sicily for his son Edmund. Henry had contracted enormous debts in support-

Papal exactions, *temp.* Henry III.

¹ Sel. Charters, 276. *Mat. Par.* 232. ² *Ib.* 276. *Mat. Par.* 236.

³ *Ib.* 288.

⁴ *Ib.* 296.

⁵ *Ib.* 322. *Mat. Par.* 318.

ing Innocent IV against the Emperor, and in 1257, obtained 52,000 marks from the clergy to pay the Pope for the crown of Sicily¹. The King's relations with the clergy were always rather strained; in 1243, he had demanded a large sum on his return from France; in 1247, he attempted to restrict the ecclesiastical jurisdiction over laymen to matrimonial and testamentary cases, and in 1252 made an unsuccessful demand for a tenth of the clerical revenue for the next three years. During the barons' war, the Pope supported Henry, and in 1264 released him from his oath and declared the new constitution null and void.

Edward I.

With the accession of Edward I, the relations of church and state took a more settled shape under the defining hand of the King. An assertion of the independence of the church by Archbishop Peckham, caused the King to put forward, in 1279, the famous *Statute of Mortmain*, or *de religiosis*² (7 Ed. I, c. 2), (the germ of which lies in the 43rd Article of the second re-issue of the Charter, 1217³, and in the 14th clause of the *Provisions of Westminster*⁴), and which stands to ecclesiastical tenures in the same position that the statute *Quia Emptores* (p. 214) does to lay tenures. The object of the statute was to prevent persons giving their estates to religious corporations, and receiving them back to be held of the church, and so depriving the overlord of the services due from the fiefs. For some years, there was a struggle between the King and Archbishop Peckham on the subject of the privileges of the clergy, and in 1285 Edward issued the writ *circumspecte agatis*, which defined the jurisdiction of the spiritual courts, and confined it to questions of tithe, assaults on clergymen, and to offences, such as breaches of morality, which were properly cognizable there; the writ however did not affect their jurisdiction over criminal clerks. In 1296, Boniface VIII issued the famous bull *Clericis laicos* which forbade the clergy to pay taxes to the state. The object of the Pope was to deprive the secular authorities of the clerical contributions, and

First Statute
of Mortmain,
1279.

Writ cir-
cumspecte
agatis, 1285.

Bull clericis
laicos, 1296.

¹ Sel. Charters, 331. *Mat. Par.* p. 946.

² *Ib.* 459.

³ *Ib.* 347.

⁴ *Ib.* 404.

so check the wars which were largely carried on at the expense of the church. When therefore Edward called on the clergy to make a grant (Nov. 1296), Archbishop Winchelsey pleaded the papal prohibition. The king replied by placing the clergy beyond the pale of the law, and thus compelled them to give way.

Clergy outlawed.

The exactions of the Papacy had rendered any dealings with Rome highly unpopular with the nation, and at the *Parliament of Carlisle* (1307) a document was drawn up protesting against papal encroachments, and a statute was passed prohibiting the taxation of English monasteries by their foreign superiors. The weakness of Edward II enabled the popes to flatter or defy him as suited their purpose. Clement V induced him to acquiesce in the prosecution and suppression of the Templars (1308-1311), and succeeded in reserving to himself many episcopal appointments; on the election of John XXII (1316), these reservations were frequent. Edward's submission to the Pope brought him into collision with the national clergy, at the head of whom were Adam Orleton, bishop of Hereford, and the bishops of Bath and Lincoln; the king sent Stratford to the papal court at Avignon, with complaints of their conduct, but gained nothing; he managed to alienate Stratford, by opposing his nomination to the see of Winchester, and the bishop subsequently drew up the articles of deposition (p. 13).

Statute of Carlisle, 1307.

Edward II.

His quarrels with the Bishops.

During the reign of Edward III the nation regarded the condition of the church with growing discontent. The prelates absorbed the chief offices of state, and neglected their ecclesiastical for their secular duties, the lower clergy were as a rule ignorant and careless, and the religious orders openly attempted to secure immunity from the national taxation. Bitter complaints were made of non-residence and pluralities, of the lack of discipline, of the oppression of the spiritual courts, of the general decline in the character of the clergy¹, and of their opulence in the midst of almost

The Church and the Nation under Edward III and Richard II.

¹ The Black Death had seriously lowered the clerical standard. Nearly half the clergy were swept away, and it was necessary to recruit their ranks from men of inferior education.

universal distress. In 1340 the chancellorship was for the first time given to a layman—Sir Robert Bourchier (p. 256), and the Parliament of 1371 complained so loudly of the appointment of clerical ministers, that William of Wykeham the chancellor, and the bishop of Exeter the treasurer, were obliged to resign their offices in favour of laymen. At the same time a proposal was made to seize the temporalities of the wealthy clergy, and apply them to the expenses of the war, the clerical tenth was exacted from small livings which had hitherto escaped taxation, a heavy tax was levied on all land which had fallen into mortmain since 1292, and in 1391 the Statute of Mortmain was re-enacted and enlarged¹.

Anti-papal feeling.

On the other hand, the anti-papal feeling which had grown up in Edward I's reign, and had found expression in the Parliament of Carlisle, received a great impetus from the French war. Although the Pope was the avowed ally of France, he claimed an annual tribute of 1000 marks² as overlord of England (p. 279), and received an annual sum of £200 as composition for Peter's pence. By the system of provisions and reservations he set aside the rights of English patrons, and appointed his own nominees to English benefices, even during the lifetime of the incumbent. It was intolerable that England's money should go to enrich England's foes, and that a French pope should exercise jurisdiction in the country in defiance of the national wishes, and in opposition to the common law. In the early part of his reign Edward acquiesced in the system, and his occasional protests lost their force through his constant petitions for the promotion of his own friends. But in 1351 the matter was taken up by Parliament, and the *Statute of Provisors* (25 Ed. III, st. iv) was passed at the petition of the Lords and Commons. Fresh penalties were added in 1365, and it was re-enacted in 1390. It maintained the rights of patrons and threatened all who procured promotion by papal provision with forfeiture and

Statute of Provisors 1351.

¹ See Fasciculi Zizaniorum (Shirley), Rolls Series, Introduction, xx.

² The tribute had fallen into arrear since 1333. R. Lane Poole, Wycliffe and the Movements for Reform, 55.

banishment. The lords spiritual refused to assent to the Act, but it was always treated as a valid Statute. The king, however, connived at the evasion of its provisions, and the frequency with which it was re-enacted shows that it was seldom observed¹.

The Statute of Provisors was framed for the defence of patronage: two years later it was supplemented by an ordinance intended to prevent encroachments on English jurisdiction. This ordinance became a Statute in 1365, and in spite of the protests of the lords spiritual it was enlarged and confirmed in 1393 as the *Statute of Praemunire* (16 Ric. II, c. 5). By its provisions the penalty of a praemunire² was to fall on all persons who procured from Rome any bull or process which touched the person, realm or dignity of the Crown. Although it seems improbable that any immediate use was made of this Statute, it was greatly dreaded by the popes, and they made many efforts to obtain its repeal.

Statutes of
Praemunire
1365, 1393.

The question of the papal tribute still remained to be dealt with. When in 1366, Urban V demanded the payment of the arrears of tribute due since 1333, Edward laid the request before Parliament, and it was unanimously refused. For a short time even the payment of Peter's pence was stopped.

Papal
tribute.

During the latter half of the 14th century, church abuses were vigorously attacked by John Wycliffe. The great reformer struck at the root of clerical privilege by denying the doctrines of transubstantiation and the necessity of a priestly mediator between God and man; he challenged the claims of the papacy by asserting that papal decrees were only

The teaching
of Wycliffe.

¹ 'It was rather for the king's interest to make use of the pope's pretension for the benefit of his own candidates, than to surrender it in obedience to the national complaints.' R. Lane Poole, Wycliffe, 76.

² Praemunire, 'a barbarous word for praemoneri,' is an offence so called from the words *praemunire facias A. B.* (cause A. B. to be forewarned) with which the writ commenced. The original offence was the introduction of a foreign power and the creation of an *imperium in imperio* by paying that obedience to papal process which constitutionally belonged to the sovereign alone. The penalties were outlawry, banishment and forfeiture. Wharton, Law Lexicon.

binding when in conformity with the Word of God; and he endeavoured to bring back the clergy to their proper sphere by laying down that the state might justly confiscate the temporal goods of the church if she failed in her duty. Much of his teaching was socialistic in tendency. Dominion, he said, belonged to God alone, and was dealt out to men in fiefs on condition of obedience to his commands. Mortal sin annulled the contract, and no sinner therefore had a right to priesthood or lordship.

Although Wycliffe was careful to warn his readers that such theories must not be carried into practice, they obtained a great hold on men's minds through the preaching of his poor priests, and though we have no evidence to connect the reformer with the Peasants' Revolt of 1381, his enemies naturally regarded it as the direct outcome of his teaching.

The Lollards. His followers, under the name of Lollards¹, became a very numerous and powerful body in the reign of Richard II, and were in considerable favour at court. An enactment to check the spread of their doctrines which passed the Lords in 1382, was repealed next year at the petition of the Commons, and in 1382 and again in 1395 they presented petitions to Parliament, remonstrating against abuses and laying stress on some of the most extreme points of Wycliffe's teaching. For some years, no general attempt was made to repress them, but with the accession of the House of Lancaster, the close ally of the church, came a turning point in their history. In 1401 was passed the celebrated Statute *De Heretico Comburendo*, which condemned the impenitent heretic to be burnt to death². In 1404 and 1410 Lollard proposals were made in the Lower House for the confiscation of the church's property, but Lollardry rapidly declined, and no further action for its repression was found necessary after 1417.

De heretico
Comburendo,
1401.

The Church
during the
Wars of the
Roses.

During the Wars of the Roses, the church still further

¹ The word has been variously derived from *lollen*, to sing, *lolia*, tares, and *loller*, an idler.

² Only two heretics are known to have suffered the extreme penalty. R. Lane Poole, Wycliffe 116.

lost its hold on the nation; its dignitaries, such as Cardinal Beaufort, established a closer relation with Rome, and as a means of defending themselves against their enemies, formed a strict alliance with Edward IV, and his successors.

In spite of the many attempts, which had been made at various times, to check the power of the Pope in England, and to reform ecclesiastical abuses, the state of the church at the time of the accession of Henry VIII, was such as to render its severance from Rome by the strong hand of the king peculiarly acceptable to the people¹.

Henry, who in 1521 had received from Leo X the title of *Defender of the Faith* (a title still borne by the sovereign) in recognition of his services in having published a book against Luther, was urged on to rectify ecclesiastical abuses by the Parliament known as the *Reformation Parliament*, which met in November, 1529, and sat for seven years.

Defender of the Faith.

The Reformation Parliament, 1529.

Anxious for popularity and not averse to projects of reform, the king allowed the House of Commons to commence that attack on ecclesiastical abuses which, under his guidance, developed into an attack on the papal power.

Reform began by the passing of three Acts to regulate *probate and mortuary fees*, and to check *non-residence and pluralities* (21 Hen. VIII, cc. 5, 6, 13). At the end of 1530, Henry told the astonished clergy that they had brought themselves within reach of the Statute of Praemunire by recognising the legatine authority of Wolsey. Resistance was useless, and after they had paid over £118,000 (the Convocation of Canterbury £100,000, that of York £18,840), and acknowledged the king as the 'one and supreme head of the church and clergy of England, they received a pardon by Statute (22 Hen. VIII, c. 15, and 23 Hen. VIII, c. 19).

1529. Church fees. 1530.

The Clergy incur the penalties of praemunire.

¹ 'Under the shadow of this majestic unity' (i. e. of church and state), 'grew ignorance, errors, superstition, imperious authority and pretensions, excessive wealth, and scandalous corruption. . . . From the time of Wickliffe to the Reformation, heresies and schisms were rife; the authority of the Church, and the influence of her Clergy were gradually impaired; and, at length, she was overpowered by the ecclesiastical revolution of Henry VIII. With her supremacy perished the semblance of religious union in England.'—May, iii. 61.

But the Commons seeing that they too might be involved in the same charge, refused to pass the bill unless they were included: whereupon the king 'of his special grace, pity, and liberality,' vouchsafed the laity a pardon in a separate Act (22 Hen. VIII, c. 16).

1532. Next year (1532) limitations were placed on benefit of clergy, and a very important Act was passed to restrain the payment of *annates* (23 Hen. VIII, c. 20). *Annates*, or the first year's income of bishoprics and benefices, had been first exacted in England by Alexander IV in 1256, and were demanded by almost all subsequent popes to the great oppression of the clergy. A clause of the Act provided that it should not be carried out until Henry had tried to compound with the Pope. In 1533 came the famous Statute in restraint of *appeals* (24 Hen. VIII, c. 12), which, after asserting the national character and historic independence of the English church, forbade appeals to be carried to the papal courts. In ordinary cases they were to be heard in the Archbishop's court, but if the case touched the Crown must be taken to the upper house of Convocation.

Annates.

1533.
Appeals.

Until the passing of this Act there had been no open breach with Rome, but before the next session events had happened which greatly influenced subsequent legislation. In May 1533 Cranmer decided in favour of the divorce, in March 1534 his verdict was overruled by the Pope. Before the Pope had come to a decision appeals had been further regulated¹, and the Act for the *Submission of the clergy* (25 Hen. VIII, c. 19) provided that no canons should be issued without the royal license. Neither *Peter's pence* nor *annates* were henceforth to be paid (25 Hen. VIII, cc. 20, 21), and papal interference with episcopal appointments was forbidden; vacant sees were to be filled by the Crown under the form of a *congé d'élire*² (25 Hen. VIII, c. 20).

1534.

¹ An appeal was now allowed from the archbishop's court to the king in Chancery.

² *Congé d'élire*, i. e. leave to elect. On a see becoming vacant, the sovereign sends a writ to the dean and chapter of the diocese to proceed

When Parliament met for the autumn session of 1534, Clement's verdict had become known, and was followed by vigorous measures. The *Act of Supremacy* (26 Hen. VIII, c. 1) declared Henry the 'only Supreme Head on earth of the Church of England,'—the limiting words of 1531 being omitted—and the Act of 26 Hen. VIII, c. 3, bestowed all first fruits and tithes on the Crown. With the exception of Mary, subsequent sovereigns always exacted them until they were given up by Anne (p. 302). Act of Supremacy.

This rupture with Rome, which had so great an effect in increasing the national spirit of the English Church, was quickly followed by the *suppression of the lesser Monasteries* whose annual income was £200 and under, Feb. 1536; by 27 Hen. VIII, c. 28; the ground of the suppression was the profligacy of the inmates of the Monasteries. The confiscated revenue was transferred to the Crown, and administered by the *Court of Augmentation* (p. 57). The immediate result of the suppression of the lesser Monasteries was the insurrection in Yorkshire, known as the Pilgrimage of Grace, which was with difficulty suppressed, owing to the action of the ejected monks. Three years later, by 31 Hen. VIII, c. 13, the greater Monasteries were dissolved, bringing an enormous increase of wealth to the king, whilst the House of Lords suffered a considerable diminution in its numbers by the exclusion of the mitred abbots (p. 124). Suppression of the lesser Monasteries, 1536.

But though so great changes had been made in the constitution of the church, very little had been done for the encouragement of Protestant doctrines, and in 1539 the hopes of the reforming party received a severe blow by the *Statute of the Six Articles* (31 Hen. VIII, c. 14). It upheld the doctrine of transubstantiation, declared that communion in both kinds was unnecessary, that priests might not marry, Pilgrimage of Grace, 1536.

to elect a bishop. The person to be elected is nominated by the crown, in *letters missive* introduced by Henry VIII, and must be chosen, under pain of the chapter incurring the penalties of *Præmunire*. Where there is no dean and chapter, as in the case of new bishoprics, such as Liverpool, the appointment is made at once by the crown by *Letters Patent*. Hook, Church Dictionary. Suppression of the Greater Monasteries, 1539.

The Six Articles, 1539.

that vows of chastity ought to be observed, that private masses should be continued, and that auricular confession was 'expedient.' Denial of these doctrines was punishable by forfeiture and death.

Uniformity
Acts, 1549-
1552.

With the accession of Edward VI, the Protestant party obtained the upper hand, and in 1549 was passed the first *Act for the Uniformity of Service* (2 and 3 Ed. VI, c. 1) which enjoined the use of 'the order of Divine worship' contained in a book of common prayer which had been drawn up by a committee of bishops in the previous year; tithes were regulated by the same Parliament (c. 13), and celibacy of the clergy was abolished (c. 21). A second Act of Uniformity, containing an amended Prayer Book, was passed in 1552 (5 and 6 Ed. VI, c. 1).

In spite of the disfavour into which the Church of Rome had fallen, the change of doctrine was by no means universally popular, and was protested against by risings in the east and the west of England. But the persecutions of Mary's reign materially aided the cause of the Reformation, and on the accession of Elizabeth, the reformed religion was accepted without demur by the greater part of the nation.

Elizabeth's
policy.

The reigns of Edward VI and Mary had shown that an extreme policy had little chance of success, and Elizabeth accordingly reverted to the lines laid down by her father. While maintaining the supremacy of the sovereign over the church, she tried to establish a compromise between the rival forms of religion. Such a policy won the politicians and indifferent, but lost the earnest men of both sides¹. The Roman Catholic saw that it clashed with his allegiance to the pope, the Protestant found that it was incompatible with the establishment of a Presbyterian system. Roman Catholicism and Presbyterianism were equally distasteful to the queen; she would tolerate no rivals to her allegiance, and no system which opposed her own. Uniformity must be imposed by persecution.

¹ Wakeman, *The Church and the Puritans*, 7.

In 1559 was passed the *Act of Supremacy* (1 Eliz. c. 1), which restored 'the ancient jurisdiction of the Crown over the state ecclesiastical and spiritual,' abolished the reactionary laws of Mary, and revived the anti-papal legislation of Henry VIII. It swept away all foreign authority, and though it did not restore the title of 'supreme head,' it vested in the Crown for ever the supreme power over the national church¹. All ecclesiastical and lay officials were to take an oath acknowledging the Queen as supreme governor in church and state, and all persons who upheld the authority of any foreign potentate were condemned to forfeiture for the first offence, incurred the penalties of *praemunire* for the second, and suffered death for the third.

Act of
Supremacy,
1559.

In 1559, too, was passed a new *Act of Uniformity* (1 Eliz. c. 2), confirming the revised edition of the Prayer Book issued under Edward VI (1552), imposing heavy penalties on those who refused to make use of the authorized service book, and making attendance at church compulsory. First-fruits and tenths were again given to the Sovereign by an Act of the same session (p. 287). In 1563, the *Thirty-nine Articles of the Church of England* were passed by Convocation², and were confirmed by Parliament in 1571.

Third Act of
Uniformity,
1559.

The Thirty-
nine Articles,
1563.

In 1562, a severe Act was passed against the Catholics, who were again made the subjects of repressive legislation 1571, 1580, 1585, 1593; whilst the Court of High Commission (p. 55) on several occasions carried its action against them to bitter persecution. The sympathy of the Catholics with Elizabeth's rival, the Queen of Scots, and the various plots set on foot by the Jesuits, led, in 1584, to the formation of the 'Association for the Protection of the Queen,' which was authorised by Act of Parliament (27 Eliz. c. 1); and the formal deposition of Elizabeth by a Bull of Pius V (1570), and the threatenings of the Spanish Armada had no other effect than to increase the rigorous treatment of the Catholics.

Legislation
against
Roman
Catholics,
1562, 1571,
1580, 1585,
1593.

* Association
for the Pro-
tection of
Elizabeth,¹
1584.

¹ Prothero, *Const. Documents*, Introduction, p. xxxi.

² The original articles, forty-two in number, had been issued in 1553.

Puritan
Persecution.

The Nonconformist or Puritan party, though faring better than the Catholics, were also subject to constant persecution.

Archbishop
Parker's
'Advertisements,' 1565.

In 1567, after the issue of the 'Advertisements' of Archbishop Parker, which 'prescribed the minimum of ritual which would be tolerated', proceedings against the Puritans began, and, in spite of the efforts of such Puritan members of Parliament as Mr. Strickland (p. 107), continued until the end of the reign, with the result that there sprang up a Puritan opposition to the state church, and to the arbitrary government of the Crown, which subsequently cost Charles I his head.

Chief dates in Church History from James I.

Millenary
Petition,
1603.

Hampton
Court Con-
ference, 1604.

In 1604, in consequence of the presentation to the King of the *Millenary Petition*², in the preceding year, praying for reformation in ecclesiastical matters, the *Hampton Court Conference* was held, between the Church party and the leaders of the Puritans; in this it was decided to revise the various versions of the Bible (the authorised version of 1611 being the result), but no important concession was made to the 'dissentients'; the Prayer Book was revised, and the authorised version of the Scriptures agreed on.

Attacks on
Episcopacy.

The hatred of episcopacy, which the folly of Charles I, and the harshness of Laud and the High Commission Court (p. 55) had engendered, led to the introduction of a measure for the extinction of episcopacy called the *Root and Branch Bill* (1641). It met with much opposition and was finally dropped, but in 1642 the *Bishops Exclusion Act* deprived the prelates of their seats in the House of Lords. In 1645 the House of Commons adopted Presbyterianism in its parochial form, and one of the clauses of the Treaty of Uxbridge (1645) demanded the total abolition of episcopacy and the substitution of Presbyterianism.

Establish-
ment of
Presby-
terianism.

¹ Perry, Church Hist. ii. 290.

² So called as being supposed to bear the signatures of 1000 Puritan Clergy. In reality it does not appear to have borne any signatures at all. Gardiner, Hist. of England, i. 148, note.

In 1646 the Parliament issued an ordinance providing for the general establishment of the Presbyterian system throughout England.

In December, 1661, was passed the *Corporation Act*, Corporation Act, 1661. (13 Car. II, st. 2, c. 1), which compelled all holders of municipal office to take 'the Sacrament of the Lord's Supper according to the rites of the Church of England,' and which, says Mr. Hallam, 'struck at the heart of the Presbyterian party, whose strength lay in the little oligarchies of corporate towns, which directly or indirectly returned to Parliament a very large proportion of its members¹.' This Act, as well as the *Test Act* (p. 292), remained in force (in spite of various motions against them, *e.g.* by Mr. Beaufof 1787, 1789, Mr. Fox 1790) until 1828, when Lord John Russell carried a motion for their repeal. It had, however, been customary since 1727 to pass annual *Acts of Indemnity*, releasing Dissenters from the penalties incurred by their having accepted office without taking the necessary oaths.

In 1662, the *Act of Uniformity* (14 Car. II, c. 4) enjoined Fourth Act of Uniformity, 1662. episcopal ordination, and the use of the established form of the Prayer Book, compelled ministers and schoolmasters to take the oath of non-resistance, and placed certain severe restrictions upon the Nonconformists.

In 1664, the *Conventicle Act* (16 Car. II, c. 4) forbade, Conventicle Act, 1664. under heavy penalties, the assembly of Conventicles², as contrary to the Act of Uniformity; its duration was limited to three years, but on its expiration in 1670 it was renewed (22 Car. II, c. 1). In 1665, by the *Five Mile Act* (17 Car. II, c. 2), Five Mile Act, 1665. clergy who refused to take the oath of non-resistance imposed by the Act on all who had not subscribed the Act of Uniformity, were forbidden to come within five miles of a corporate town; no nonconformist might teach in any school under heavy penalties. These persecuting Statutes were abrogated for a time by the *Declaration of Indulgence*, Declaration of Indulgence, 1672.

¹ Const. Hist. ii. 330.

² A conventicle was defined by the Act as 'any meeting for religious worship at which five persons were present besides the household.'

1672, but the Declaration itself had to be withdrawn in the following year.

Test Act,
1673.

In 1673, the *Test Act* (25 Car. II, c. 2) compelled all holders of office to take the Sacrament in accordance with the ceremony of the English Church, to take the oath of supremacy, and to make a declaration against transubstantiation; whilst in 1678, after the false evidence of the informer, Titus Oates, the *Parliamentary Test Act* declared Catholics incapable of sitting in either House of Parliament.

Catholics
debarred
from Par-
liament, 1678.
Declaration
of Indul-
gence, 1687.

In April, 1687, James II issued his *Declaration of Indulgence* which suspended (p. 172) all penal statutes against Catholics and Nonconformists, and led to the *case of the Seven Bishops* (App. B).

After the accession of William and Mary, new oaths of supremacy and allegiance were instituted (1 Wm. & Mar. c. 8), to be taken by all office-holders before Aug. 1689. About four hundred clergymen, including Archbishop Sancroft and six bishops, refused to take them and were ejected from their preferments in consequence: these recusants were known as 'Nonjurors.'

Nonjurors.

Toleration
Act, 1689.

In May, 1689, the *Toleration Act* (1 Wm. & Mar. c. 18), the reward of the aid given to William by the Dissenters, extended a certain amount of toleration to Nonconformists, though not to Roman Catholics, nor to the Unitarians; it did not, however, relax the provisions of the *Test* and *Corporation Acts*, which were not repealed until 1828.

In 1711, too, the *Occasional Conformity Act* (10 Anne, c. 2), deprived of office any civil or military officer who should attend a dissenting meeting during his term of office after having complied with the *Test Act* in taking the Sacrament.

Schism Act,
1713.

In 1713, the *Schism Act* (13 Anne, c. 7), limiting the profession of schoolmaster to members of the Church of England licensed by the bishop, increased the hardships of Dissenters and Catholics, but was repealed in 1718, and from the time of George II it became customary to pass an annual *Act of Indemnity* for those who held office

whilst disqualified by the *Corporation* and *Test Acts*. Various attempts were made to remove the disabilities of the Roman Catholics in 1778, 1801, 1805, and 1810, but were frustrated mainly through the bigotry of George III, and though small measures of relief were passed in 1813 and 1817, it was not till 1829 that the full measure of enfranchisement came. By the *Catholic Emancipation Act* (10 Geo. IV, c. 7), Roman Catholics, on taking a new oath instead of the oath of supremacy, were admitted 'to both Houses of Parliament, to all corporate offices, to all judicial offices, except in the ecclesiastical courts; and to all civil and political offices, except those of Regent, Lord Chancellor in England and Ireland, and Lord Lieutenant of Ireland'¹.

Catholic
Emancipa-
tion Act,
1829.

Ecclesiastical Courts.

Ecclesias-
tical Courts.

Up to the reign of William I, the temporal and spiritual courts were united; the bishop and ealdorman sat side by side in the shire courts (p. 68), and took cognizance of ecclesiastical as well as of civil causes. William I, however, as some sort of return for the countenance of the Pope in his acquisition of England, issued an undated charter, by which he separated the spiritual and temporal courts², ordaining at the same time that any one thrice refusing to obey the jurisdiction of the bishop's court should be amenable to the 'strength and justice of the king or sheriff.' Stephen, who had been warmly supported by the clergy, declared in his second Charter of Liberties, that 'justice and power over ecclesiastical persons and all the clergy, and their goods, and the distribution of ecclesiastical property was in the hands of the bishops'³. By the *Constitutions of Clarendon*, 1164 (App. A, and p. 277), the abuses which had crept into the ecclesiastical courts were regulated, and the immunity of guilty clerics from secular punishment was provided against. After the murder of Becket, Henry II promised to annul the Constitutions, but at a council held at Westminster Abbey in 1176, it was conceded, that the Crown might impeach the clergy

¹ May, iii. 169.

² Sel. Charters, 85.

³ Ib. 120.

in the secular courts for offences against the forest laws and for 'fees to which the duty of lay service was attached¹.'

In 1275 (3 Ed. I, § 2) the *Statute of Westminster I* ordained that clergy accused of felony were to be tried in the king's courts, before being handed over to the ordinary, whilst the authority of the spiritual courts was defined and restrained by the Writ *Circumspecte Agatis*, 1285 (13 Ed. I). Nevertheless their abuses continued, and were frequently the subject of complaint. The church courts claimed exclusive jurisdiction over the clergy not only for spiritual offences, but even for breaches of the common law. However grave the crime which a clerk had committed, he was only liable to degradation for his first offence. Such misplaced leniency was practically a license to break the law, 'and the first effect of amenability to merely spiritual penalties, seems to have been an increase of violent crime on the part of ecclesiastics².'

Their jurisdiction over
(1) clergy,

(2) laymen.

In addition to their jurisdiction over the clergy, the spiritual courts claimed to hear and determine all matrimonial and testamentary cases, and to try laymen for breaches of faith and morality, for heresy and for offences committed against the clergy. Their punishments were fines, penances, imprisonment, and in extreme cases excommunication.

The various Ecclesiastical Courts were—

The various ecclesiastical courts.

(1) *The Court of the Archdeacon*, the lowest ecclesiastical court, presided over by the archdeacon or a judge appointed by him. In the Middle Ages the archdeacon exercised jurisdiction over a great variety of cases. His court survived the Reformation, but its business rapidly declined during the 18th century. From it an appeal lay to

(2) *The Consistory Court* of the bishop, held before the episcopal chancellor and taking cognizance of ecclesiastical causes arising in the diocese. Their jurisdiction was limited by the Clergy Discipline Act of 1840 (3 and 4 Vict. c. 86).

¹ Horc, *Hist. of the Church of England*, 140.

² D. J. Medley, *Eng. Const. Hist.* 521. See pp. 513-523 for a clear treatment of the whole question of ecclesiastical jurisdiction.

(3) *The Provincial courts of the province of Canterbury*, which were four in number; viz.

(a) The Prerogative Court, for the trial of testamentary causes. In 1857 its jurisdiction passed to the Probate Court.

(b) The Court of Audience, in which the primate or his vicar-general decided cases reserved for the archiepiscopal hearing. It is now practically obsolete.

(c) The Court of Arches, so called from being originally held in the church of St. Mary-le-Bow (Sancta Maria de Arcubus), was the court of appeal from the diocesan courts, and also a court of first instance in all ecclesiastical cases. The president was the Dean of Arches, the representative of the archbishop of Canterbury.

(d) The Court of Peculiars, which exercised jurisdiction over thirteen London parishes which were exempt from the supervision of the bishop of London. The president was the Dean of Arches, who was at first distinct from the official presiding over the Court of Arches, but the two offices were eventually held by the same man.

(4) *The Provincial Courts of the province of York*, viz. the Chancery and, prior to 1857, the Prerogative Court.

(5) *The Final Court of Appeal*. By 25 Hen. VIII, c. 19 (1534), it was provided that ecclesiastical appeals should lie to the King in Chancery, and in the same year a court of final appeal was constituted by nominating a committee of Delegates of Appeal by commission under the Great Seal. This *Court of Delegates* continued to be the final court of appeal in ecclesiastical cases until 1832, when the Act of 2 and 3 Wm. IV, c. 92 transferred its powers to the King in council. As this arrangement proved cumbersome, ecclesiastical appeals were referred to the *Judicial Committee of the Privy Council* by 3 and 4 Wm. IV, c. 41 (1833). Section 21 of the Judicature Act of 1873 (36 and 37 Vict. c. 66) empowered the Crown to transfer such appeals to the new Court of Appeal by orders in council, but this was repealed by 39 and 40 Vict. c. 59, § 24 (1876). In consequence the Judicial Committee of the Privy Council

remained the final court of appeal in ecclesiastical cases, and provision was made for the attendance of ecclesiastical assessors (§. 14).

The Ecclesiastical Courts were regulated by Statute in 1689, 1813, 1832, 1840 and 1857; the Probate and Divorce courts were established in 1857.

Convocation. **Convocation.**

In the Anglo-Saxon period, ecclesiastical councils were either assemblies of the whole church such as were held at Cloveshoe and Hertford, or provincial gatherings of the clergy of York and Canterbury. Diocesan synods were only instituted after the Norman Conquest, and prior to that date membership of the provincial synods was confined to the episcopate. Abbots and archdeacons were added after the Conquest, and in 1225 Archbishop Langton summoned not only the bishops, abbots, priors, deans and archdeacons, but also representatives from the cathedral and monastic clergy. In 1283 Archbishop Peckham included representatives from the parochial clergy, and thus completed the formation of a representative assembly or *Convocation* in the provinces of York and Canterbury. Jealousy between the two archbishops prevented the formation of a national church council, and the discussion of ecclesiastical questions thus devolved on the two houses of Convocation. These bodies possessed considerable legislative powers, but in accordance with the rules drawn up by William I, none of their edicts were valid unless they had previously received the sanction of the Crown. Prior to the formation of a representative assembly, it had been customary to consult the diocesan synods and cathedral chapters on matters of taxation, but in 1295 Edward I attempted to include the clerical estate in the parliamentary system of taxation. The clergy were extremely reluctant to agree to this arrangement and preferred to grant their own taxes in Convocation. The Crown was obliged to give way, and from the end of the 14th century there is no evidence of the presence of clerical proctors in Parliament. Clerical taxes were voted by Convocation, and

Establishment of representative assemblies.

for the sake of convenience, it became usual to summon it at the same time as Parliament.

Under Edward I, Convocation came into frequent collision with the King on the subject of taxation, though it invariably had to yield. During the Middle Ages, the business of Convocation was chiefly confined to granting subsidies to the King, and to discussing various ecclesiastical questions such as the Great Schism, the Statutes of Provisors and Praemunire, the administration of wills and the growth of heresy. In 1429, by 8 Hen. VI, c. 1, § 1, the members of Convocation were granted the privileges of freedom from arrest already enjoyed by members of Parliament. In 1529, a petition was presented to Henry VIII by Convocation, demanding the fulfilment of certain privileges, and declaring that 'Parliament ran great risk of sin in passing any Statute which touched clerical liberties, without first consulting the clergy in their Convocations¹.'

History from
Edward I.

In 1531 the clergy were told by the King that they had incurred the penalties of praemunire, and only obtained pardon on payment of £118,840 (p. 285). In 1534 the Act for the submission of the clergy provided that the royal assent was necessary to the validity of measures passed by Convocation, and transferred the power of summoning that body from the archbishops to the king. From this time its chief function was to decide questions of doctrine and ritual. Thus in 1548 it agreed to a reformed version of the church service, and sanctioned the marriage of the clergy. The prayer book of 1552 does not seem to have received its sanction, but in the following year it probably gave its approval to the *Forty-two Articles*². In 1563 it confirmed the *Thirty-nine Articles* and allowed the publication of a new book of homilies. In 1571 it drew up canons which the Queen refused to sign, and in 1576 it passed certain Articles with regard to church discipline; in 1585 it drew up some fresh canons, and in 1597 promised reform in

The Royal
Supremacy,
1534.

Thirty-nine
Articles,
1563.

¹ Perry, Church Hist. ii. 69.

² Hore, Hist. of the Church of England, 277.

Canons of
1604.

the ecclesiastical courts, whilst in the same year it granted the Queen a benevolence (p. 200). In 1604, the famous canons of Archbishop Bancroft were issued, inveighing against the Puritans, and regulating Church discipline and ritual; these canons, however, did not receive the consent of Parliament, and are, in consequence, not binding on any but the clergy.

Convocation
surrenders
the right of
taxing the
clergy, 1664.

In 1640 Charles I continued the session of Convocation after the dissolution of Parliament; fresh canons were passed dealing with questions of ritual, asserting the divine right of kings and the duty of the subject to give freely to the Crown, and promulgating the famous etcetera oath¹. They were voted illegal by the Commons in the December of the same year. In 1661 Convocation issued a revised edition of the prayer book by order of the King, and it was accepted by both houses of Parliament in the following year. In 1664, by a verbal agreement between Clarendon and Archbishop Sheldon, the clergy surrendered their right to self-taxation, and were thenceforth included in the taxation of the laity. This step removed the chief guarantee for the summons of Convocation, and seriously impaired its political importance. In return for this surrender of their privilege the clergy acquired 'by tacit consent, the right to vote for knights of the shire, as freeholders, in respect of their glebes²,' a right which they had not previously possessed. In 1701 the lower house of Convocation attempted to increase its powers, but was checked by a prorogation. During the reign of Anne bitter quarrels broke out between the upper and lower house, the former sympathising with Latitudinarian and Whig doctrines, the latter with the Tories and the High Church party. In 1717 the lower house of Convocation strongly condemned the views of Hoadley, bishop of Bangor³,

Hoadley and
Convocation.

¹ The oath ran as follows:—'I, A. B. do swear that I do approve the doctrine . . . or government, established in the Church of England . . . and that I will not . . . ever give my consent to alter the government of this Church by archbishops, bishops, deans, and archdeacons &c.' Gardiner, *Hist. of Eng.* ix. 146.

² Anson, i. 46.

³ The lower house resolved that Bishop Hoadley's works were

who denied the necessity of a visible church or of ecclesiastical government. Before the report was presented to the upper house, Convocation was prorogued by a special order from the King, and although allowed to assemble with every Parliament, did not meet for the despatch of business until Nov. 1852. 'To this gross outrage on the Church of England,' says Mr. Perry¹, 'most of the mischiefs and scandals, which impeded her progress during the eighteenth century, are distinctly to be traced. The Church, denied the power of expressing her wants and grievances, and of that assertion of herself in her corporate capacity which the constitution had provided for her, was assaulted at their will by unscrupulous Ministers of the Crown, and feebly defended by Latitudinarian bishops in an uncongenial assembly.'

Convocation ceases to transact business, 1717-1852.

Since its revival in 1852 Convocation has frequently regulated matters affecting church doctrine and ritual. In 1861 it framed a new canon on Sponsors, which failed to become law, and in 1865 decided to modify the terms of subscription to the articles, and obtained the ratification of its decision by letters patent. In 1872 it drew up a scheme for a shortened form of service, which was adopted by Parliament in the *Uniformity Amendment Act*, and two years later it protested unsuccessfully against the Public Worship Regulation Act of 1874 (37 & 38 Vict. c. 85). In 1887 it passed a useful measure extending the hours during which the marriage service might be performed.

Recent work of Convocation.

The revival of Convocation was followed by the establishment of *Church Congresses* and the renewal of *Diocesan Conferences*. A further step was taken in 1886 by the institution of the *House of Laymen*, a representative body of laymen, summoned by the archbishop of each province to sit during the sessions of Convocation and to confer with both houses on subjects submitted to or initiated by itself.

Church Congresses.

House of Laymen, 1886.

'subversive of all government and discipline in the Church of Christ, and tended to reduce His Kingdom to a state of anarchy and confusion, to impugn and impeach the Regal supremacy in cases ecclesiastical, and the authority of the legislature to enforce obedience in matters of religion by civil sanction.'

¹ Church Hist. ii. 585.

Constitution
of Convoca-
tion.

The constitution of Convocation has remained unaltered since the days of Edward I. It consists of two assemblies representing respectively the provinces of Canterbury and York, and since 1534 has been summoned by the writ of the Sovereign addressed to each archbishop at the beginning of a fresh Parliament. Each Convocation consists of two houses, the upper containing the archbishops and bishops, the lower, the deans, archdeacons and proctors. The province of Canterbury is represented by one proctor for each cathedral chapter, and by two proctors for the clergy of each *diocese*. The province of York sends one proctor for each cathedral chapter, and two proctors to represent each *archdeaconry*. Until 1884 both houses sat together, but since that year the upper house deliberates apart from the lower. 'The legislative powers of Convocation are confined to the making, repealing or altering of canons: and the effect of these canons, unless Parliament affirm them, is to bind the clergy only¹.' Numerous projects have been mooted with a view to reform its procedure and its composition. It still represents only half the clergy, and its debates are often rendered ineffective by the continued separation of the two provinces.

Tithes.

Tithes have been defined as 'the tenth of the increase yearly arising from the profits of lands, the stock upon lands, and the personal industry of the inhabitants.' They were of three kinds: (1) *predial*,—tithes of crops and wood, (2) *mixed*,—tithes of wool, pigs, etc., (3) *personal*²,—tithes of various trades and fisheries. In England, the custom of paying tithes dates from very early times. It is mentioned in the penitentials of Theodore, and its institution is ascribed by the laws of Edward the Confessor to Augustine³. Previous to 787 the payment of tithes was purely voluntary, but the legatine councils of that year, which acquired the authority of a witenagemot through the attendance of the

¹ Anson, ii. 387.

² The payment of personal tithe never became general in England.

³ Stubbs, i. 228, note.

kings and ealdormen, made it compulsory on all landowners. It was thenceforth a recognised part of the law of the land and was frequently enforced by subsequent legislation¹. In Anglo-Saxon times there appear to have been no definite rules with respect to the appropriation of tithes, but they were usually received by the cathedral chapter, and distributed by the bishop. After the Norman Conquest many landowners devoted a large part of their tithes to the maintenance of religious houses, thus depriving the parish priest of the provision for his support. To cure this evil the council of 1200 laid down that the parochial clergy had the first claim on tithes, but by that date a large proportion of the tithe of the kingdom had been annexed to monastic foundations, and accordingly passed to the Crown at the dissolution of the monasteries. From time to time these tithes were granted out to subjects who became known as lay rectors or impropiators. The payment of tithes was occasionally regulated by statute, *e.g.* in 1536 (27 Hen. VIII, c. 20), 1540 (32 Hen. VIII, cc. 7, 22), 1545 (37 Hen. VIII, c. 12, when the tithe payable in London was to be 2s. 9d. on every £1 rent), 1549 (2 & 3 Ed. VI, c. 13), 1696 (7 & 8 Wm. III, c. 6), and 1705 (3 & 4 Anne, c. 16). Tithes were originally paid in kind, but the inconveniences which resulted from this practice were so great that it became customary to commute them for a fixed money payment. The *Tithe Commutation Act* of 1836 provided for the commutation of tithes in England and Wales for a rent charge or money composition varying with the current price of corn, and redeemable at not less than twenty-five times their annual amount. The *Tithe Rent Recovery Act* of 1891 provided for the suspension or reduction of tithes under certain circumstances, and in ordinary cases of non-payment substituted a process in the county court in lieu of distraint by the tithe owner.

¹ The grant of a tenth part of his possessions by Ethelwulf, which has sometimes been regarded as the origin of the tithe system, was merely a private act of the king.

Queen Anne's Bounty.

In 1534, by 26 Hen. VIII, c. 3, all first-fruits and tenths formerly paid to the Pope were made over to the Crown; they were restored by Mary in 1555 (2 & 3 Phil. & Mar. c. 4), but again taken by the Crown in 1559 (1 Eliz. c. 4); they continued to be paid to the Sovereign until 1704, when they were given up by Anne (2 & 3 Anne, c. 20¹), in order to form the provision for augmenting the incomes of poor benefices, known as Queen Anne's Bounty. In 1707, livings of not more than £50 annual value were exempted from the payment of first-fruits and tenths (6 Anne, c. 24). This Bounty was increased by Parliamentary Grants amounting to £1,100,000 between the years 1809-1820. The Bounty is administered by a Board of Governors, on the principle of adding as much again to any sum raised by parishioners, or others, for the increase of the income of a benefice.

Summary of
dates.

Summary of the Chief Dates in Church History.

Conversion of Kent by Augustine, 597 (p. 272).

Separation of the Ecclesiastical and Temporal Courts *temp.*

William I (Sel. Charters, 85) (p. 274).

The Contest about Investitures, 1103 (p. 276).

Constitutions of Clarendon, 1164 (p. 277 and App. A).

Annates first claimed in England, 1256 (p. 286).

First Statute of *Mortmain*, or *de viris religiosis*, 1279 (7 Ed. I, st. 2) (p. 280).

Statute of Carlisle, 1307 (p. 281).

First Statute of *Provisors*, 1351 (25 Ed. III, st. 4), (p. 282).

First Statute of *Præmunire*, 1353 (27 Ed. III, st. 1), (p. 283).

Second Statute of *Provisors*, 1390 (13 Ric. II, st. 2, c. 2).

Second Statute of *Mortmain*, 1391 (15 Ric. II, c. 5).

Second Statute of *Præmunire*, 1393 (16 Ric. II, c. 5).

Statute *de heretico comburendo*, 1401 (2 Hen. IV, c. 15), (p. 284).

The Reformation Parliament, 1529-1536 (p. 285).

¹ This is cap. 11 in some editions of the Statutes.

Appeals to Rome forbidden, 1533 (24 Hen. VIII, c. 12), and 1534 (25 Hen. VIII, c. 19), (p. 286).

Payment of Annates forbidden, 1534 (25 Hen. VIII, c. 20), (p. 286).

First Act of Supremacy, 1534 (26 Hen. VIII, c. 1), (p. 287).

Dissolution of the Smaller Monasteries, 1536 (27 Hen. VIII, c. 28), (p. 287).

Dissolution of the Larger Monasteries, 1539 (31 Hen. VIII, c. 13), (p. 287).

Act of Six Articles, 1539 (31 Hen. VIII, c. 14), (p. 287).

First Act of Uniformity, 1549 (2 & 3 Ed. VI, c. 1), (p. 288).

Second Act of Uniformity, 1552 (5 & 6 Ed. VI, c. 1), (p. 289).

Second Act of Supremacy, 1559 (1 Eliz. c. 1), (p. 289).

Third Act of Uniformity, 1559 (1 Eliz. c. 2), (p. 289).

The Thirty-nine Articles issued, 1563 (p. 289).

Establishment of the Court of High Commission, 1583 (p. 55).

The Hampton Court Conference, 1604 (p. 290).

Exclusion of the Bishops from the House of Lords, 1642¹ (p. 290).

Corporation Act, 1661 (13 Car. II, st. 2, c. 1), (p. 291).

Fourth Act of Uniformity, 1662 (14 Car. II, c. 4), (p. 291).

The Clergy surrender the right of self-taxation, 1664 (p. 298).

Conventicle Act, 1664 (16 Car. II, c. 4), (p. 291).

Five Mile Act, 1665 (17 Car. II, c. 2), (p. 291).

Test Act, 1673 (25 Car. II, c. 2), (p. 292).

First Declaration of Indulgence, 1672, withdrawn 1673.

Catholics debarred from Parliament, 1678 (30 Car. II, st. 2, c. 1), (p. 292).

Second Declaration of Indulgence, 1687 (p. 292).

Toleration Act, 1689 (1 Wm. & Mar. c. 18), (p. 292).

Occasional Conformity Act, 1711 (p. 292).

Schism Act, 1713 (13 Anne, c. 7), (p. 292).

Convocation ceases to sit, 1717-1852 (p. 299).

¹ The Bill for the exclusion passed the Commons in October 1641, but only received the royal assent in February 1642.

Catholic Emancipation Act, 1829 (10 Geo. IV, c. 7),
(p. 141).

Jewish Relief Act, 1858 (21 & 22 Vict. c. 49), (p. 239).

Uniformity Acts Amendment Act, 1872 (35 & 36 Vict.
c. 35) (which makes provision for shortening, and altering
on occasions, the order of Divine Worship).

Public Worship Regulation Act, 1874 (37 & 38 Vict. c. 85).

CHAPTER X.

THE DEFENCES OF THE REALM.

ENGLISH military systems have been based in turn on the three principles of allegiance, homage and pay. The first was represented by the *fyrd*, or national militia, the second by the *comitatus* and the later feudal levy, and the third by the mercenary troops of the Middle Ages and the regular army of to-day. English military systems.

(1) Allegiance.

In Anglo-Saxon times the *trinoda necessitas* made service in the *Fyrd*, or national militia, incumbent on every freeman. Such service was a personal obligation and dated from the time when 'the host was the people in arms¹,' and military organisation was largely dependent on tribal and family relations. The *fyrd* was an infantry force, led to battle by the ealdorman, and all who failed to comply with the summons to its ranks were liable to a heavy fine called *fyrdwite*². (1) Allegiance.
The Fyrd.

The importance of the *fyrd* was considerably lessened by the development of the *comitatus* into a body of professional warriors, but its decline was arrested by the Danish wars of the 9th century. But though the national levies fought gallantly enough when well led, it was soon obvious that they were no match for the Dane. They could not be called out without the consent of the local folkmoot, and when they Danish wars.

¹ Stubbs, i. 189.

² By the laws of Ini, a landowner was fined 120 shillings and deprived of his land, a landless man 60 shillings and a ceorl 30 shillings. Sel. Charters, 62, c. 51.

appeared in the field they found themselves outmatched at all points. They were inferior to their opponents in armament, tactics, training, and mobility, their slow moving forces were baffled by the rapidity of the Danish marches, and concerted action was often prevented by provincial jealousies or the treachery of rival ealdormen. It was clear that the Vikings could only be successfully opposed by professional troops, and Alfred turned to the thegnhood (p. 309) to supply him with the basis of a new military organisation. At the same time he reformed the fyrd by dividing it into two halves, each of which took the field in turn, while the other was employed in defending the burghs.

Reform of
the fyrd.

Toward the close of the Anglo-Saxon period, the organisation on which the fyrd had been based was falling into abeyance. Domesday shows us that towns and even shires were allowed to compound for the service due from individual inhabitants, and at the same time the growth of commendation transferred the obligation of service from the commended man to his lord. But the fyrd was retained by the Conqueror as a useful weapon against the baronage, and at the celebrated gemôt at Salisbury (1086) all landholders, whether tenants in chief or not, were required to take an oath of allegiance to the king¹. The fyrd did good service against the disaffected Normans in the reigns of Rufus and Henry I², and under Stephen and Henry II beat the Scots at Northallerton in 1138 and at Alnwick in 1174. As a rule it was not called upon for foreign service, but in 1094 Rufus ordered 20,000 of the national militia to be sent to Normandy: on their arrival at Hastings, Ranulf Flambard seized the journey money of ten shillings per man with which their shires had furnished them, and then sent them penniless home³. The unpopularity of his mercenary troops, and the fidelity of the English militia during the rebellion of 1174 induced Henry II to reorganise the fyrd by the *Assize of Arms* (1181). All freemen except the greater barons, the Jews, and the villeins⁴

Retained by
William I.

Assize of
Arms, 1181.

¹ Sel. Charters, 82.

² Ib. 92, 98.

³ Ib. 93.

⁴ Villeins were made liable in 1252, Sel. Charters, 371.

were to arm themselves in proportion to their wealth, and their liability was to be declared by a jury before the itinerant justices¹. In 1205, 1217 and 1231 writs² were issued for the levy of the fyrd, and the Assize of Arms was confirmed and enlarged by a writ of 1252 and by the Statute of Winchester³ (1285). This Act appointed two constables in every hundred to 'hold the view of arms' and present defaulters to the justices. During the later Plantagenet reigns the military duties of the fyrd became unimportant, and it was mainly employed for police purposes. By degrees it developed into the

MILITIA

which, by an Act of 1327, finally confirmed in 1402, was not to serve out of its own county, except in case of invasion. Revived 1558, but

The liabilities of the ancient fyrd were revived by Edward VI and Mary, and by the Statutes of 1550 and 1558 men were compelled to keep arms in proportion to their wealth, while the command of the militia was taken from the sheriff and vested in the lords lieutenant. But these Statutes were repealed by 1 Jac. I, c. 25, § 46 (1604), and in the same year the *Trained Bands* (or Train Bands) were instituted. These were bodies of urban militia combining a large volunteer element with the principle of the fyrd⁴; they, however, were abolished at the Restoration. abolished in 1603.

The attempt of the Long Parliament in 1642 to control the appointment of the militia officers precipitated the Civil War, and accordingly, the Act of 13 Car. II, st. 1, c. 6 (1661), while providing for the organisation of the militia under lieutenants of counties appointed by the king, declared that the command of all forces by land and sea, including the militia, was vested in the Crown alone.

During the first half of the 18th century the militia lost much of its importance, but in 1757, in consequence of rumours of a French invasion, it was reorganised on a different footing by 30 George II, c. 25. Each county was The Militia in the 18th century.

¹ Sel. Charters, 153 sq.

³ Ib. 472, VI.

² Ib. 281, 343, 359.

⁴ Dict. of Eng. History.

to contribute a definite quota, to be chosen by ballot from men between the ages of eighteen and forty-five: when on service the militia were to receive the same pay as the regulars, and be subject to the Mutiny Act, while the Crown was given a veto on the appointment of officers and empowered to embody the force in case of invasion or rebellion, subject to the subsequent sanction of Parliament. The ballot, however, has been annually suspended by Act of Parliament since 1829, and from the peace of 1815 until its reconstitution in 1852 the militia had little more than a nominal existence. An important constitutional change was introduced by the Army Act of 1871, which deprived the lords lieutenant of the control of the militia, and vested it in the Crown, and practically amalgamated the force with the regular army. At the present day militiamen are raised by voluntary enlistment, though ballot may be resorted to in case of need, are required to submit to a specified period of training during which they are subject to military law¹, and cannot be compelled to serve outside the United Kingdom. The control of the Crown over the militia is exercised through the Secretary of State and, by 45 and 46 Vic. c. 49 (1882), the force may be embodied by order in Council, subject to subsequent reference to Parliament.

Act of 1871.

The present militia.

THE VOLUNTEERS.

But the militia are not the only troops who represent the principle of allegiance. Voluntary association for the defence of the country can be traced back as far as the reign of Henry VIII, and toward the close of the eighteenth century the aggressive policy of Napoleon led to the enrolment of large bands of Volunteers to protect our shores from invasion. With the exception of the *Yeomanry*, or heavy cavalry, these troops were disbanded after the peace of 1815, and our present Volunteer force owes its origin to the threatening attitude of France at a moment when England's resources were strained to the utmost by the Indian Mutiny

Volunteers.

¹ Militia officers are always subject to military law.

and the War with China. Fear of invasion caused a panic, and in 1859 the enrolment of Volunteers was authorised by a circular letter issued to the lords lieutenant by the Secretary for War. The troops thus raised were the beginning of a permanent Volunteer force, which by the Volunteer Act of 1863 might be called out by the Crown whenever an invasion was feared. In 1871 the Volunteers were placed under the direct control of the War Office, and they were reorganised by the Regulation of Forces Act of 1881. At the present day they number over 200,000 men, consisting of riflemen, artillery, engineers, and light horse. Heavy cavalry is supplied by the Yeomanry. Parliament makes an annual grant for the maintenance of the force.

THE TERRITORIAL FORCE.

By the 'Territorial and Reserve Forces Act, 1907' (7 Ed. VII. c. 9) the Militia and Volunteers became extinct, and their place was taken by the force now known as the 'Territorials'. This new force, like the Volunteers and, in later times, the Militia, is raised by voluntary enlistment, and is not compelled to serve outside the United Kingdom. Generally speaking, however, the Territorials are not subject to martial law except when they are actually in training or 'embodied', but it may be pointed out that a man who fails to present himself on the embodiment of the force is liable to be tried by court martial. Embodiment converts the Territorials into a Territorial Army, but even then, as stated above, it cannot be ordered abroad. There is also a Special Reserve of the Act of 1907 which may largely consist of what was once the Militia. The Yeomanry were not to be affected by the Act for three years, after which time they would come under its operation.

(2) Homage.

(2) Homage.

One of the effects of the Norman Conquest was to introduce a military system based on the principle of homage. Such a principle was not entirely new, and may be discerned in the earlier institutions of the *comitatus*

The Thegn-
hood.

and the *thegnhood*. The comes of Tacitus, closely attached by personal ties to the leader of his choice, gradually developed on English soil into the warrior thegn. His valour was rewarded by gifts of conquered territory, and he became a professional soldier, liable to service at his own expense, and ready to take the field at the first news of an enemy. It was to the thegnhood that Alfred turned when sorely pressed by the Danes. He extended its duties and privileges to all holders of five hides of land, and thus laid the basis for a permanent military organisation, and further strengthened the connexion between land tenure and military service. But this tendency was never completed in Anglo-Saxon times. Although the thegn kept armed retainers and was liable to serve the Crown at his own expense, he had received his estate as the reward of past, not as an earnest of future service, and we have no evidence to show that his duties involved military service apart from the fyrd¹.

But with the Norman Conquest, military service became inseparably bound up with land tenure.

The feudal
levy.

The king as supreme landowner granted out estates to his followers on condition of military service. They in turn sublet their holdings to other tenants, and gradually the country was divided up into a number of knights' fees,² the holder of each being liable to furnish a fully equipped horse-soldier to keep the field for forty days. It has hitherto been supposed that the liabilities of each landowner varied in exact proportion to the size of his estate, but a writer in the *English Historical Review* has recently maintained that the tenant's service was arbitrarily fixed by his overlord when he was put in possession of his fief.³

The feudal levy was called together by writs closely resembling those issued for the summons of the *Commune Concilium*. The greater barons were summoned by special

¹ Mr. A. H. Johnson, *Syllabus of the Select Charters*.

² This was not complete till the reign of Henry II.

³ *Eng. Hist. Review*, vol. vi. p. 442.

writ addressed to them individually, while the lesser tenants-in-chief received a general summons through the Sheriff¹.

But the feudal levy soon proved unsatisfactory. The power which the existence of such a force put in the hands of the barons, rendered it a constant source of danger to the Crown, while its insubordination², its contempt for tactics or strategy, the limited nature of its service and its occasional refusal to serve abroad, rendered it ineffective as a military force. Six weeks might suffice to crush a rebellion but was far too brief a period in which to bring a foreign campaign to a successful conclusion. Attempts were therefore made to modify and ultimately to supersede it. By the *Oath at Salisbury* (1086), all landholders were forced to swear allegiance to William, who wished to thereby deprive vassals of any excuse for adhering to their overlords in opposition to the Crown. A still more important step was the institution of *Scutage* in 1159 (p. 188), which enabled the Crown to hire mercenary troops and to strike an indirect blow at the power of the greater landholders. By applying the principle of the *Quota* to the feudal levy, Henry II lessened its numbers and obtained a force which would keep the field for a proportionately longer time³. The character of the feudal army was further modified by its gradual confusion with the fyrd. The Assize of Arms and the Statute of Winchester applied to both⁴, and in 1217 Henry III ordered the Sheriff to summon the fyrd and the feudal levy at the same time and place⁵, while in 1278 *Distraint of Knighthood* compelled all holders of land worth £20 a year⁶ to assume the duties of knightly tenure on pain of a heavy fine.

Its drawbacks.

Attempts to modify it.

¹ Stubbs, ii. 278.

² 'Assembled with difficulty, insubordinate, unable to manœuvre, ready to melt away from its standard the moment that its short period of service was over,—a feudal force presented an assemblage of unsoldierlike qualities such as has seldom been known to co-exist.'—Oman, *Art of War in the Middle Ages*, p. 49.

³ *E.g.* in 1157 he called on two knights to furnish a third who should serve for four months.

⁴ *Sel. Charters*, 154, § 1; 472, § vi.

⁵ *Ibid.* 343.

⁶ The qualifying sum was raised to £40 under the Tudors, but *Distraint of Knighthood* itself was abolished by the Long Parliament.

The decay of the feudal spirit, and the introduction of fresh methods of raising troops hastened the decline of the feudal levy, and it had fallen into disuse by the end of the 14th century. However, its liabilities did not disappear until the abolition of feudal tenures at the Restoration, and it was called out as late as 1640 for service against the Scots.

Abolished,
12 Car. II.

(3) Pay.

(3) Pay.

The principles of allegiance and homage eventually gave way to the principle of pay, though for a long time the hired soldier, being usually a foreigner was regarded with intense hatred by Englishmen. The *Huscarls* of Canute, a permanent force of three to six thousand men, are the first paid soldiers met with in English history, but they did not survive the Conquest. However, the impossibility of carrying on a foreign campaign with a feudal force, compelled the Norman kings to rely on mercenary troops who were more amenable to discipline, and would serve as long as their wages were regularly paid. The Conqueror employed a force of French and Breton mercenaries to repel Canute of Denmark, and Henry I carried on his Norman wars with bodies of Flemish adventurers. During the civil war of Stephen's reign mercenaries were employed by both sides, and the treaty of Wallingford expressly provided for their dismissal¹. Henry II carried on his foreign wars with a force of 10,000 Brabançons, but he only brought them into England once, and then to repel an invasion. Richard raised a force of Basques and Navarrese, while John employed mercenary troops to resist the threatened French invasion of 1213. The fifty-first article of Magna Carta stipulated that they should be withdrawn as soon as peace was restored. Foreign mercenaries were occasionally used by Henry III, but were rarely employed in England after his reign, although a body of German horse were brought over as late as 1549 to quell the insurrection in the west.

Canute's
huscarls.

Foreign
mercenaries.

English
soldiers
hired.

In the 14th century, the foreign mercenary was re-

¹ Sel. Charters, 128.

placed by English soldiers serving for pay. The king either hired troops himself or contracted with his lords to supply a given number of men, armed in a specified way to serve for a year at a stipulated scale of wages. The battles of the Hundred Years War were mainly fought by English troops raised in this fashion, and since their pay was higher than that of the agricultural labourer and there was always a prospect of plunder, there was no difficulty in inducing men to serve¹.

Troops were also raised by *Commissions of Array*, by which the king empowered royal officers to impress a specified number of men in each county. They were first issued in the reign of Edward I, and were employed to raise a certain quota from the men who were liable to service either in the feudal levy or the national militia. Strictly speaking, commissions of array might only be issued to raise troops to repel an invader, and in Edward I's reign their expenses were paid by the Crown. But the system was soon abused. Sometimes levies were raised for foreign service, sometimes the commissioners were allowed to impress as many men as they could, while Edward II forced the shires and towns which furnished the troops to pay their wages and provide them with better arms than the law required. Limitations were placed on the power of impressment by a Statute of 1327, and in 1349 it was provided that no one, who was not so bound by the conditions of his tenure, should be called on to supply men at arms, hobblers or archers, except by the consent of Parliament². Abuses were further restrained by 4 Henry IV, c. 13 (1402), which enacted that no one should be compelled to serve out of his county except in case of invasion, and that troops sent on foreign service must be paid by the Crown³.

¹ Some idea of the cost of campaigning may be gathered from the list of the expenses for the army with which Edward III was besieging Calais. Bishops and earls received 6/8 a day, barons 4s., knights 2s., guides and esquires 1s., mounted archers 6d., unmounted archers 3d., Welsh footmen 2d. These sums should be multiplied by 15 when compared with the money of to-day.—Warburton's *Edward III*. Epochs of Modern Hist. p. 69.

² Stubbs, ii. 285.

³ Ib. iii. 279, note 1.

Commissions of Array

Statutes of 1327, 1349 and 1402.

Commissions of array were employed by the Tudors to organise the national militia. They were issued by the Crown to leading personages in the kingdom who were thereby authorised to draw up lists of able-bodied men in their districts, to regulate their arms and equipment, and to drill and exercise them. When required for actual service these troops were placed under the lords lieutenant, and in addition to their pay received an allowance for their uniform and travelling expenses¹. This was called *Coat and Conduct Money*, and its levy by Charles I during the Scotch War was a revival of the old abuse of forcing the local districts to pay for troops raised for offensive warfare.

THE STANDING ARMY.

Few changes of any moment took place in our military system from the days of the Plantagenets to the middle of the 17th century. The Tudor despotism was not based on force, and the Tudor Sovereigns were content to rely on the national militia and a small permanent force known as the *Yeomen of the Guard*. It is to the Great Rebellion and the organising power of Cromwell that we owe the beginnings of our present standing army. In 1645 the different corps of local militia and loose levies which composed the parliamentary forces were united under one commander in chief and converted into a disciplined professional force of 22,000 men, paid by taxes levied on the whole kingdom. During Cromwell's protectorship this force was kept up and enlarged, and in 1653 the Instrument of Government provided for the maintenance of a standing army of 30,000 men. Feared and distrusted by the Royalists, these troops, with the exception of 5,000 men, were disbanded at the Restoration, and the abolition of feudal tenures left the national militia the only military force recognized by the constitution. The king could indeed raise troops by contract if Parliament would grant the necessary supplies, but when they were not on

¹ Prothero, *Statutes and Const. Documents*. Introduction cxix, cxx.

Coat and
Conduct
Money.

Standing
Army.

The New
Model,
1645.

Disbanded,
1660.

actual service it was practically impossible to maintain discipline, because the law treated any departure from the rules which regulated the conduct of the ordinary citizen as an infringement of the liberty of the subject¹. On the other hand, Parliament was disinclined to grant supplies for the maintenance of a military force. Cromwell's Government had shown how despotic a ruler might become when backed by a disciplined body of troops, and the rule of his Major Generals had aroused a very strong feeling against a standing army. Consequently, although Charles II was allowed to retain about 5,000 troops for garrison and guard duty, any attempts to increase their numbers were regarded with suspicion and invariably called forth remonstrances from Parliament. But James II, heedless of the attitude of the nation, seized every opportunity to add to the numbers of his standing army. He attempted to suppress the militia, took advantage of Monmouth's rebellion to raise fresh regiments under reliable officers, and formed a permanent camp at Hounslow Heath. But his plans were overthrown by the Revolution of 1688, and the Bill of Rights expressly declared that the maintenance of a standing army in time of peace, without the consent of Parliament, was illegal.

Charles II and James II attempt to raise a standing army.

The standing army as a constitutional force dates from the reign of William III. The French war necessitated the maintenance of a permanent body of troops, and in 1689 Parliament provided for the maintenance of discipline by the *Mutiny Act* (1 Wm. & Mary, c. 5) which empowered the Crown to punish mutiny and desertion by courts martial. The long wars of the 18th century accustomed Englishmen to the existence of a standing army, and all fear that it might be employed to override national liberties gradually passed away².

Mutiny Act 1689.

¹ Anson, ii. 339.

² Instances of the old dislike are sometimes found—thus in 1731 (8 Geo. II, cap. 30), troops were forbidden to come within two miles of any town not garrisoned during an election, and in 1741 the calling in of the troops to quell an election riot at Westminster was stigmatised as 'a high infringement of the liberties of the subject, a manifest violation of the freedom of elections, and an open defiance of the laws and constitutions of this kingdom.'

At the present day the numbers of the army and the sums to be spent on it are settled by an annual vote of Parliament, based on estimates presented by the Minister of War. The old system of raising men by a series of contracts between the king and his influential subjects has been abandoned in favour of a direct contract between the Crown and the soldier¹, and the term of service, which since the introduction of a standing army had lasted for the soldier's lifetime, has been curtailed to a maximum period of twenty-one years. By Letters Patent of February 6, 1904, the office of Commander-in-Chief was abolished and the duties transferred to the Army Council consisting of three civil members and four military members.

Martial Law,

Court of
Chivalry.

Articles of
War.

That is, law enforced by a military court was originally administered by the *Court of Chivalry* (p. 64). During the mediæval period complaints were often made of its arbitrary proceedings, and in the reign of Richard II its action was limited by Statute to times of war. It fell into abeyance under the Tudors and discipline could then only be enforced by *Articles of War*, issued by the Crown in virtue of its prerogative, and carried into effect by specially appointed officials. These articles were only valid in times of war or rebellion, but the power which they placed in the hands of the Crown was frequently abused. Elizabeth did not hesitate to apply martial law to civilians, and Charles I made use of it in time of peace². In 1588 all persons bringing papal bulls into England were declared subject to martial law, and in 1595 Sir Thomas Wilford was appointed Provost Marshal of London and directed to seize 'notable rebellious persons,' and execute them by military law³. In 1627 provost-marshalshs were appointed in every shire to punish rioters by martial law⁴, and in the same

¹ The Crown first began the work of recruiting in 1783, although the old system was employed as late as the Crimean war.—Medley, Eng. Const. Hist. 430.

² Medley, Eng. Const. Hist. 427.

³ Hallam, i. 242.

⁴ Gardiner, Hist. of Eng. vi. 156.

year soldiers were billeted on individuals who refused to contribute to the forced loan. Both billeting and the enforcement of martial law were condemned by the *Petition of Right*¹ (1628), but though Charles gave his assent to this measure he nevertheless continued to quarter soldiers on private persons².

It has been said above that Articles for the regulation of the troops might only be issued in war time. But as soon as a standing army was set on foot, a fresh arrangement proved indispensable. It was impossible to maintain a permanent force in time of peace so long as desertion could only be punished by a civil court and insubordination was an offence unrecognized by the law. Accordingly the *Mutiny Act* of 1689 (1 Wm. & Mary, c. 5), which sanctioned the existence of a standing army, made mutiny and desertion punishable with death and empowered the Crown to commission courts martial to deal with such offences in time of peace³. In consequence of the Jacobite rebellion of 1715 further disciplinary powers were conferred on the Crown by the Mutiny Act of that year, and by its provisions the Sovereign was authorised to make Articles of War to regulate troops in the United Kingdom *in time of peace*. In 1803, however, the royal prerogative of issuing any such articles was merged in the Act of Parliament⁴. In 1879 the 'provisions of the Mutiny Act and of the Articles of War were consolidated into a code of military law⁵,' and in 1881 this was superseded by an amended code called the *Army Act* which is annually passed by Parliament for one year. It sanctions the maintenance of a standing army for the defence of the kingdom and provides for its regulation by military law. The Act is of very great constitutional importance: being passed for one year only it guarantees

First Mutiny Act. 1689.

Army Act of 1881.

¹ Sel. Charters, 516, vi. vii.

² The Yorkshire gentry petitioned the Crown on this subject in 1640. See Gardiner, Hist. of Eng. ix. 177 and 187.

³ Anson, ii. 348. With a few breaks, a Mutiny Act has been annually passed by parliament since 1689, until superseded by the Army Act of 1881.

⁴ Enc. Brit. art. *Military Law*.

⁵ Anson, ii. 348.

an annual session of Parliament, and should the two Houses refuse to re-enact it, military discipline would be at an end.

Impressment.

Impressment.

(1) for Army.

(1) *For the Army.* Impressment was the arbitrary seizure of individuals for service in the army or the navy. Statutory limitations had been placed on its employment for the army as early as 1327, but it was not until 1641 that it was effectively restrained. By 16 Car. I, c. 28, impressment of his majesty's subjects was declared illegal except 'in case of necessity of the sudden coming in of strange enemies into the kingdom, or except they be otherwise bound by the tenure of their lands.' Since the passing of this Statute impressment for the army has never been resorted to by virtue of the royal prerogative, although it has occasionally been sanctioned by parliament: thus in 1779 (19 George III, c. 10) the Crown was empowered to impress idle and disorderly persons who were not engaged in trade, or who did not possess sufficient substance for their maintenance. The system has been entirely abandoned during the present century in favour of voluntary enlistment.

(2) for Navy.

(2) *For the Navy.* Impressment for the navy has never been declared illegal and has on the contrary been frequently sanctioned by Parliament, *e. g.* in 1378 (2 Ric. II, c. 4), 1555 (2 & 3 Phil. and Mary, c. 16), 1562 (5 Eliz. c. 5), 1696 (7 & 8 Will. III, c. 21), 1703 (2 & 3 Anne, c. 6), 1705 (4 & 5 Anne, c. 19), 1740 (13 George II, cc. 17. 28), and even as recently as 1810 and 1836. Impressment was regarded as indispensable for providing sailors for the navy, and it was not until the Crimean War that a fleet was manned without recourse to it¹. Although the law only allowed seafaring men to be pressed, the pressgangs did not scruple to seize apprentices, artisans and labourers, and thereby leading to great hardships and oppression. The prerogative has never been renounced by law, but it would probably prove impossible to enforce at the present day, and its future employment has been rendered unnecessary by the formation of a naval reserve². Naval Volunteers have been raised under the various Acts of Parliament dealing with the Navy.

¹ Medley, Eng. Const. Hist. 435.

² *Ibid.*

Chief Dates in the History of the Army.

Chief dates
in the
history of
the Army.

The Huscarls, a standing force of mercenaries, introduced by Canute about 1020.

The Norman Conquest introduces the feudal levy (p. 310).

The Militia win the Battle of the Standard, 1138, and Alnwick, 1174.

Introduction of Scutage, 1159 (p. 188).

Assize of Arms, 1181.

Issue of Commissions of Array, 1282 (p. 313).

Statute of Winchester, 1285.

Impressment for the army forbidden, 1327 (p. 318).

Repeal of the Statutes of Armour, 1603.

Martial law forbidden, 1628.

Impressment for the army finally declared illegal, 1641.

A standing army set on foot, 1645, but (p. 314)

Disbanded at the Restoration, 1660.

Bill of Rights declares a standing army illegal, if not sanctioned by Parliament, 1689.

The first Mutiny Act, 1689 (p. 317).

The reorganisation of the Militia, 1757.

The Militia revived, 1852.

Volunteers enrolled, 1859 (p. 309).

Abolition of Purchase, 1871.

Crown resumes its control over the Auxiliary Forces, 1871.

Army Discipline Act, 1879 (42 & 43 Vict. c. 33).

Regulation of the Forces Act, 1881 (44 & 45 Vict. c. 57).

Army Act, 1881 (44 & 45 Vict. c. 58).

Militia Act, 1882 (45 & 46 Vict. c. 49).

Territorial and Reserve Forces Act, 1907 (7 Ed. VII. c. 9).

The Navy. The English navy as an organised force dates from the reign of Henry VIII. Earlier sovereigns had been content with a system which provided an efficient force in time of war, without burdening the Crown with the expense of a permanent navy.

The ravages of the Vikings in the 9th century made the need of a fleet strongly felt, and Alfred endeavoured to meet the want by building larger vessels than had been hitherto

The Anglo-Saxon Navy

constructed and by manning them with Frisian 'pirates.' In 1008 Ethelred ordered every 300 hides of land to furnish a ship, seaboard and inland districts being equally liable. This system, however, was soon abandoned, and the unopposed invasion of the Norwegians and Normans in 1066 shows that the navy was of no practical value at the time of the Conquest.

The Cinque Ports.

The efforts of the Conqueror were more successful. In 1066 he incorporated the Cinque Ports (p. 220) which, in return for certain privileges, were to furnish the Crown with fifty-two vessels to serve for fifteen days in the year. Until the formation of a permanent navy by Henry VIII the Cinque Ports' contingent 'probably formed the nucleus of any English force upon the sea¹.' The growing importance attached to the navy is shown by a provision in the Assize of Arms (1181), forbidding the sale of any ship or timber to foreigners², and by one in the Statute of Winchester (1285), prohibiting the cutting down of oaks or great trees³. John paid special attention to the fleet, and commenced the practice of appointing administrators to control the king's ships and the vessels provided by the Cinque Ports. The title of admiral is not met with until Edward I's time. The earlier part of his grandson's reign is famous in our naval annals, but English shipping was much hampered by commercial restrictions, and with the failure of the war the fleet was neglected and the coast left without adequate protection. In 1378 the navy was too weak to keep even English waters free from pirates, and it was owing to the patriotism of a London merchant named John Philpot that a private fleet was fitted out which captured the Scottish pirate Mercer⁴. In 1381 was passed the first *Navigation Act*, which aimed at fostering the navy by giving Englishmen a monopoly of the carrying trade, but our shipping had so diminished that it was found impossible to enforce the statute. The Lancastrian kings made several attempts to protect the coasts from pirates,

First Navigation Act, 1381.

¹ Medley, Eng. Const. Hist. 434.

³ Ib 474.

² Sel. Charters, 136.

⁴ Enc. Brit. art. *Navy*.

but with indifferent success, and though Henry V built a few large vessels of the Genoese type, the decline of the navy under Henry VI was so marked that foreigners bade Englishmen take a sheep rather than a ship for their emblem. Another Navigation Act, closely resembling the previous one of 1381, was passed in 1463, but it soon became a dead letter, and though the commercial treaties of Edward IV did something to encourage English shipping, it was not until the reign of Henry VIII that any attempt was made to organise the navy as a permanent force. That monarch established dockyards at Deptford, Woolwich, and Portsmouth, appointed controllers to supervise the civil affairs of the navy, raised the officers to a distinct profession, and incorporated the *Fraternity of the Holy Trinity* at Deptford, authorising them to 'frame articles concerning the science and art of mariners¹.' Elizabeth and the first two Stuarts paid considerable attention to the navy, and great improvements were made in the construction of vessels. In 1648 the navy was weakened by the secession of Prince Rupert with twenty-five ships, but the vigorous measures of Cromwell enabled England to cope successfully with the Dutch navy, at that time the finest in existence.

Work of
Henry VIII.

Between the Restoration and the Revolution, mainly owing to the energetic policy of Samuel Pepys and James Duke of York (afterwards James II), great improvements were made in the administration of the navy, and its numbers were largely increased. The introduction of the *half-pay system* enabled a permanent body of officers and men to be retained in time of peace, and these new regulations were left untouched at the Revolution. In 1708 the office of Lord High Admiral was put in commission (p. 257), and in 1832 the Navy Board which superintended the pay and the stores, and the Victualling Board which managed the commissariat, were abolished, and since 1835 the supervision of the navy has rested entirely with the Admiralty Board² (p. 258).

Pepys and
James II.

At the outbreak of the great Civil War the management of

Naval
Discipline.

¹ Cunningham, Eng. Industry and Commerce, i. 441.

² Anson, ii. 176.

the navy fell into the hands of Parliament, and the latter retained its control after the Restoration. In 1661 provision was made for naval discipline by the issue of Articles of War, which enumerated various offences and their punishments, and empowered the Lord High Admiral to issue commissions to hold courts martial¹. Various alterations were made from time to time, and the regulations dealing with naval discipline were amended and consolidated in 1866 by the *Naval Discipline Act*, which stands in the same relation to the navy as the Mutiny Act does to the army.

Impressment
of merchant
vessels.

Although the right of impressment has never been definitely given up (p. 317) the navy is now manned by the voluntary enlistment of sailors who serve on ships provided by the Crown. But for centuries it was customary to impress not only men but also vessels for the king's service. The Cinque Ports' fleet and the few ships belonging to the Crown were reinforced by a number of pressed or hired merchant vessels. Out of 730 ships with which Edward III blockaded Calais only twenty-five belonged to the Crown, and even as late as 1588 the royal navy only contributed thirty-four vessels to the 176 which routed the Armada². But the 17th century witnessed a change. The cowardice and insubordination of the merchant captains and their crews in the Cadiz expedition of 1625, showed that trained men and special vessels were needed if the honour of the English flag was to be maintained. At the same time the rapid development of naval architecture rendered merchant vessels of little use for actual fighting; men of war became a special class, and it was necessary to make large additions to the existing navy.

At the present day, the ships which compose the royal navy are provided by the Crown, but in the event of a war, the Admiralty would have the power of engaging vessels suitable for transport, or other warlike purposes.

¹ Ibid. ii. 351.

² Enc. Brit. art. *Navy*.

APPENDIX A.

A SUMMARY OF SOME OF THE MORE IMPORTANT CHARTERS, ASSIZES, AND STATUTES RELATING TO CONSTITUTIONAL HISTORY.

Charter of Liberties, issued by Henry I at his coronation at London, August, 1100.

Consists of fourteen Articles, on which *Magna Carta* (p. 15) is mainly founded.

1. The Church to be free; and all evil customs to be abolished. (*See Magna Carta, Article 1.*)

2. Reliefs to be just and lawful, both to the King's barons, and to his barons' men. (*M. C. 2.*)

3. Barons, or other of the King's men, to give their daughters in marriage to whom they please, except to an enemy of the King. Widows not to be given in marriage against their will. (*M. C. 8.*)

4. The guardian of the land and children of a deceased baron to be the wife, or some other of the relatives who should be so more justly; and the tenants-in-chief to act similarly towards the children and wives of their men.

5. The common mintage, not existing in the time of Edward the Confessor, henceforward forbidden. Any coiner, or other person, found with false money to be brought to justice (p. 181).

6. All pleas and debts, owed to William II, are remitted, 'except the King's just *ferms*, and those which had been agreed upon for the inheritances of others, or for those things which more justly concerned others.'

7. Testamentary disposition not to be interfered with; the property of an intestate to be divided 'by his wife, or children, or relatives, or lawful men, as shall seem to them best.' (*M. C. 27.*)

8. Fines for forfeiture, treason, and felony are to be exacted in proportion to the crime, and not at the King's mercy, as in the days of the Conqueror and of Rufus. (*M. C. 20.*)

9. Murders committed before the King's coronation are pardoned; those committed since, to be punished according to the law of Edward the Confessor.

10. The King retains, with the common consent of the barons, those forests which his father held.

11. Holders of land by knight-service have their demesne arable land free from taxes, but they must in return equip themselves well with chargers and weapons for the King's service, and for the defence of his realm.

12. The King's peace to be kept henceforward throughout the country.

13. The law of Edward is given back, together with those amendments made by William I with the consent of his barons.

14. Any one who has taken any of the King's or any one's possessions, after the death of William II, to make full restitution under heavy penalties.

First Charter of Stephen; probably at his coronation, Dec. 26, 1135.

Confirms all the liberties, and good laws, of Henry I, and Edward the Confessor, and forbids any interference with them.

Second Charter of Stephen, issued at Oxford, 1136.

Church. Simony is forbidden. Jurisdiction over ecclesiastics to be in the hands of the Bishop; dignities, and customs of the Church to remain inviolate; possessions, and tenures of the Church confirmed. Ecclesiastics to be allowed to devise their goods by will; if they die intestate, their property to be distributed as seems good to the Church. Vacant sees to be in the custody of clergy, or honest men of the same Church, until a pastor is appointed.

Forests made by William I and William II retained, those made by Henry given up (p. 184).

All exactions to be done away with; good laws, and ancient and just customs confirmed, *saving the King's royal and just dignity.*

Charter of Henry II, issued at his coronation, Dec. 1154.

Confirms the Charter of Henry I, and abolishes all bad customs done away with by that King.

Constitutions of Clarendon, issued at Clarendon, near Salisbury, January, 1164; annulled after Becket's death, 1170.

Summary:

1. Disputes as to advowsons and presentations to be decided in the King's Court.

2. Churches in the King's fee not to be granted in perpetuity without his consent.

3. Accused clerks to be brought before the King's Court, which would then decide whether they should be tried there or handed over to the spiritual court. In the latter case the Justices would send an officer to watch the proceedings, and if the accused were found guilty, the Church must not protect him.

4. No Clerk to leave the kingdom without the King's licence, and without giving a pledge not to prejudice the interests of the kingdom.

6. If a powerful layman is charged, and no one dare accuse him, the Sheriff, at the Bishop's request, is to empanel twelve lawful men to give testimony according to their conscience.

7. No tenant-in-chief, or King's officer, to be excommunicated without the King's leave.

8. Appeals to lie from Archdeacon to Bishop, from Bishop to Archbishop, and finally to the King.

9. Disputes between the Clergy and Laity, as to the tenure of land, to be decided by the Chief Justice on the recognition of twelve lawful men.

10. Persons refusing to appear before the Ecclesiastical Court may be put under interdict, but not excommunicated until a royal officer had inquired into the case.

11. Clerical tenants-in-chief hold their lands as baronies subject to the usual obligations. They must take part in the judgements pronounced by the King's Court except in cases involving loss of life or limb.

12. The King to have the custody and revenues of vacant Sees. Elections to bishoprics to be made by the principal beneficed clergy of the Church in the King's Chapel, with the assent of the King, and the advice of the beneficed clergy of the realm.

14. The Church not to detain the chattels of those in the King's forfeiture.

15. The King's Court to have jurisdiction over all pleas of debts.

16. Sons of villeins not to be ordained without the consent of the lord.

Assize of Clarendon, 1166.

Deals with questions of justice, and lays down directions for the Justices in Eyre, for the formation of juries, and the like. Twenty-one Articles.

1. Inquests to be held by twelve lawful men of each hundred, and by four lawful men of each township, under the direction of the Justices and Sheriff; and all robbers, murderers, thieves, and their harbourers, to be presented.

2. Criminals, so presented, to go to the ordeal of water.

4. If a judicial circuit is not imminent, notice is to be given to the nearest Justice of the capture of a criminal; the Justices are to inform the Sheriff when they can hear the case: the latter is then to bring up the criminal and with him two lawful men of the hundred or township where he was captured, who are to declare on oath the verdict of their district.

6. Sheriffs to receive criminals without delay.

7. Provides for the building of gaols.

8. All to come to the courts to make oath. No man to refuse on account of any liberty, court, or *soc* he may have.

9. All to lie in a frankpledge; no franchise is to exclude the Sheriff.

10. In cities and towns, all who harbour strangers are to be responsible for them.

11. No one to obstruct the Sheriffs in the execution of their duty.

12. A man of ill repute possessed of stolen profits, if he has no surety, is to have no law, and is to be sent to the ordeal by water, if not already condemned by public report.

13. Statements of guilt made before lawful men, not to be withdrawn.

14. Men of ill repute to leave the country.

15. 16. No vagrant or stranger to lodge anywhere except in a town, and to remain there only one night, unless his horse be sick.

17. Sheriffs to take criminals escaped from other counties, when warned of their offence.

18. Sheriffs to keep a list of those who have fled their counties.

19. Sheriffs to appear, as soon as summoned, with their counties before the Justices Itinerant.

20. None of the common people to be received as a monk, until the circumstances of his case are known.

21. The heretics, excommunicated at Oxford, are not to be received by any one.
22. This assize to hold good during the King's pleasure.

Inquest of Sheriffs, 1170 (p. 250).

1. Inquiry to be made from the Sheriffs, and their bailiffs, how much they have received from every hundred, and township, and from every man; and what they have received by the judgement of the county, or hundred, and what without.
2. Inquiry to be made as to what the prelates and magnates have received for their lands from each of their hundreds, townships, and men.
3. Inquiry to be made from those who have had the custody of other bailiwicks of the King.
4. And from the King's bailiffs, what has been given them, and what they have demanded.
5. The chattels of those who have fled, or been convicted by the Assize of Clarendon, to be inquired into, and enrolled. And inquest to be made whether any one has been wrongfully accused for gain or malice, or whether any criminal has been released for money.
6. Inquiry to be made into the aids for marrying the King's daughter, what was paid, and to whom, from each hundred and township.
7. Inquiry to be made into the receipts of the foresters and bailiffs, and into the forfeitures of the forests.
8. All accused persons to give bail for their appearance, or to go to prison.
9. Inquiry as to whether the Sheriffs, or bailiffs, have received anything as hushmoney.
10. Or whether any one has been released for money, or through favour.
11. A list to be made of those who owe homage, and have not paid it.
12. Inquiry to be made as to the state of repair of the buildings etc. on the King's demesne.
13. Sheriffs and bailiffs, to swear that they will lawfully attend to the inquest to be made on the barons' lands.

Assize of Northampton, 1176.

Contains thirteen Articles, concerned chiefly with the regulation of the Judicial Courts and business, and with the maintenance of peace.

1. Any one presented to the Justices by the oath of twelve knights of the hundred, or of twelve lawful freemen, for murder, robbery, arson, or forgery, is to go to the ordeal of water, and to lose a foot if convicted. If he be acquitted, he may remain in the country on finding sureties, unless he had been charged with murder, or other disgraceful felony, in which case he is to quit the realm within forty days.
2. No one in any borough or town is to give lodging to a stranger for more than one night without good reason. When the stranger goes, he must go openly.
3. Any one taken in the act of committing a felony, and confessing his guilt, cannot plead not guilty before the Justices.
4. When a freeholder dies, his heirs are to remain in the same possession as their father held at the day of his death. If the lord of

the fee disputes the seisin, a recognition shall be taken by twelve lawful men. (*Mort d'ancestor*, p. 87.)

5. The Justices shall also cause a recognition to be made concerning dispossessions. (*Novel disseisin*, p. 87.)

6. Fealty to be taken from earls, barons, knights, free tenants, and even rustics, who wish to remain in the country. Homage to be paid to the King by all who have not already done so.

7. All dues and rights, which belong to the King, are to be exacted by the Justices from half a knight's fee and under, unless the matter is too great to be settled without the King. The Judges are to do all they can for the advantage of the King.

8. They are to provide for the demolition of castles, under penalty of being proceeded against.

9. To make inquiry concerning escheats, churches, and land in the gift of the King.

10. The King's bailiffs are to answer to the Exchequer for all perquisites, except those belonging to the Sheriffs.

11. Inquiries to be made as to the Keepers of Castles.

12. A thief is to be given into the Sheriff's custody, when caught, or to the nearest Castellan if the Sheriff is absent.

13. People who have quitted the realm to be sought for, and if they refuse to return, and stand their trial in the King's Court, to be outlawed.

Assize of Arms, 1181.

1. 2. 3. Regulate the arms to be provided, according to position and income.

4. Fealty to be sworn to, and the arms kept for the service of, the King. No arms to be parted with on any pretext.

5. Arms on the death of a possessor to go to the heir; if a minor, to be kept in ward for him.

6. No one need keep more arms than are required by this Assize.

7. No Jew to keep arms.

8. No one to take arms out of England, except with the King's leave.

9. The assessment to be made by lawful knights, or free and lawful men of hundreds and towns.

12. No one shall buy or sell any ships out of England. No timber to be taken out of England (p. 319).

Assize of Woodstock (or the Forest), 1184.

1. No one to trespass on the King's, hunting, or forests, under the penalties laid down by Henry I.

2. No one to have bows, arrows, or dogs in the King's forests without a warrant.

3. Nothing except firewood (*estoveria*), to be taken from the woods, and that with the cognizance of the forester.

4. Provides for the appointment of qualified and proper foresters.

5. The royal foresters to see that the woods of persons whose property lay within the royal forests are not destroyed.

6. Foresters to take an oath that they will keep the assize and not encroach on forest privileges granted to other persons by the King.

7. When the King has hunting in a county, twelve knights to be appointed to keep his venison and vert (p. 64), and four knights for

agisting the woods (*i. e.* turning cattle into them), and for receiving *pannage* (*i. e.* privilege of feeding swine).

9. Clerics not to trespass with impunity.

10. The King's clearances in the forests, and his encroachments and wastes, to be viewed every third year.

11. Attendance at the Forest Court necessary (modified by *Magna Carta*, Art. 44).

13. Every one of the age of twelve years within the jurisdiction of the hunting shall swear to keep peace.

14. Expedition to be continued where it has been the custom.

15. No tanner, or leather bleacher, to live in the King's forests outside a town.

16. No hunting to take place at night.

Magna Carta.

Chief Clauses, with references to corresponding Clauses in the Articles of the Barons.

1. Church to be free (p. 279).

2. Reliefs to be customary, *i. e.* £100 for an earl, or baron, £5 for a knight (p. 212). *A. B.*, 1.

3. 4. 5. 6. Remedy abuses of wardship and marriage (p. 213). *A. B.*, 2, 3.

7. 8. Widows to have their dowers, and not to be forced to marry against their will. *A. B.*, 4, 17.

9. 10. 11. Alleviate treatment of debtors. *A. B.*, 5.

12. No scutage or aid to be imposed, unless *per commune consilium regni*, except to ransom the King's person, to make his eldest son a knight, and to marry his eldest daughter once; these aids must be reasonable, and 'so shall the aids of the City of London be' (p. 186). *A. B.*, 32.

13. London, and all towns, to have their ancient liberties and customs (p. 268). *A. B.*, 32.

14. 'And to take the common council of the realm about assessing an aid, other than in the three cases above mentioned, or about assessing a scutage, we will cause archbishops, bishops, abbots, earls, and greater barons to be summoned *each severally by our letters*, and moreover, we will cause all those who hold of us *in capite* to be summoned *by a general summons through our sheriffs and bailiffs*, on a certain day, at least forty days distant, and to a certain place. And in all letters of summons we will declare the cause of summons, and when summons has been made, the business assigned for the day shall proceed, according to the advice of those present, although not all who were summoned come.'

15. No baron to take any aid from his men except the three usual ones. *A. B.*, 6.

16. Services for a knight's fee to be only what is due. *A. B.*, 7.

17. Common Pleas shall not follow our Court, but be held in some fixed place (p. 59). *A. B.*, 8.

18. 19. The King, or in his absence the Justiciar, will send to each county four times yearly, two Justices, who with four knights elected by the county, are to hold assizes of Novel Disseisin, Mort d'Ancestor, and Darrein Presentment (pp. 87, 253). *A. B.*, 8.

20. 21. 22. Fines to be proportionate to the offence, and imposed

according to the oath of honest men of the neighbourhood. No amerement to touch the tenement of a free man, the merchandise of a merchant, or the wainage of a villein; earls and barons to be amerced by their equals. *A. B.*, 9, 10.

23. No one to be compelled to make bridges, unless it is his duty. *A. B.*, 11.

24. No Sheriff, Constable, Coroners, or other bailiffs of the King, shall hold pleas of the Crown. (*This goes further than A. B. 14, which asks that no Sheriff shall meddle with pleas of the Crown without the Coroners.*)

25. All counties, hundreds, and tithings to be at the old *ferm*, saving the King's demesne. *A. B.*, 14.

26. On the death of a debtor to the King, the Sheriff may seize chattels to the value of the debt. *A. B.*, 15.

27. Property of intestates to be distributed by the next of kin, under the supervision of the Church. *A. B.*, 16.

28. No constable, or bailiff of the King, to take any corn, or chattels, without paying at once (p. 179). *A. B.*, 18.

29. Knights on service to be free from duty of castle ward. *A. B.*, 19.

30. No Sheriff, or bailiff, to impress conveyances for the King's service except with the owner's consent (p. 179). *A. B.*, 20.

31. No wood to be taken for the King's use without consent of the owner. *A. B.*, 21.

32. The lands of those convicted of felony to be held by the Crown for a year and a day only. *A. B.*, 22.

33. Wears (*Kydelli*), to be abolished, except on the coasts. *A. B.*, 23.

34. The writ *Præcipe* shall not be issued so that a freeman shall lose his right of jurisdiction. *A. B.*, 24.

35. Weights and measures to be uniform. *A. B.*, 12.

36. Nothing shall be given, or taken, for the future for the Writ of Inquisition of life or limb, but it shall be freely granted, and not denied (p. 240). *A. B.*, 26.

37. The wardship of land held of an intermediate lord by a tenant who holds other land of the King, shall not belong to the King. *A. B.*, 27.

38. No one to be brought to trial on the bare word of a bailiff, without trustworthy witnesses. *A. B.*, 28.

39. No freeman shall be seized, or imprisoned, or dispossessed (of his land), or outlawed, or exiled, or in any way injured, nor will we go against him, or send (a force) against him, except by the lawful judgement of his equals, or by the law of the land (pp. 239 sq.). *A. B.*, 29.

40. 'To no one will we sell, or deny, or delay, right of justice. *A. B.*, 30.

41. All merchants to have a safe conduct throughout the country, to buy and sell without any evil tolls according to ancient and lawful customs; in time of war foreign merchants to be detained until it is seen how English merchants are treated by the enemy (p. 232). *A. B.*, 31.

42. Freedom of entering, and quitting, the realm allowed, except in war time. *A. B.*, 33.

43. The tenants of escheated baronies to pay the same relief as if the baronies were still held of the barons. *A. B.*, 36.

44. Persons dwelling outside the forests need not attend the forest courts, unless impleaded (p. 184). *A. B.*, 39.

45. Constables, Sheriffs, and bailiffs to be appointed from those who know the law, and will keep it. *A. B.*, 42.

46. Barons who have founded abbeys to have the custody of them, when vacant. *A. B.*, 43.

47. All forests afforested in John's reign to be disafforested (p. 184). *A. B.*, 47.

48. All evil customs connected with forests to be inquired into by twelve sworn knights elected in each county, and to be abolished (p. 184). *A. B.*, 39.

49. All hostages, and title deeds, delivered to the King as security of peace, or of faithful service, to be given back. *A. B.*, 38.

50. Certain individuals to be removed from their bailiwicks. *A. B.*, 40.

51. All foreigners and mercenaries to quit the realm (p. 312). *A. B.*, 41.

52. Restitution to be made to those unlawfully dispossessed; disputed cases to be settled by twenty-five barons. *A. B.*, 25.

53. Justice to be done in disafforesting, after the King's return from the Crusade.

54. No one shall be seized, or imprisoned, on account of the appeal of a woman about the death of any one but her husband.

55. Unjust fines to be remitted. *A. B.*, 37.

56. 57. 58. Justice to be done to the Welsh, in cases where they have been ill-used. *A. B.*, 44, 45.

59. The rights of Alexander of Scotland to be restored. *A. B.*, 46.

60. All the aforesaid customs and liberties to be observed by the Clergy and Laity to their retainers. *A. B.*, 48.

61. Provides for the proper execution of the provisions of the Charter by a Committee of twenty-five barons. *A. B.*, 49.

62. Announces the reconciliation between the King and people.

63. The English Church to be free, and *every one in the kingdom* to have and hold all the aforesaid liberties, rights, and concessions.

Provisions of Oxford, 1258.

The Church to be reformed as the Council see time or place.

The Justiciar, Treasurer, and Chancellor to be appointed for a year, and at the end to give an account of their proceedings, while in office, to the King and Council (p. 47).

The Chancellor is to seal nothing by the sole will of the King.

The salaries of the Judges to be raised, to prevent their taking bribes.

The Sheriffs to be loyal and substantial, to hold office for a year, and to give an account of their period of office (pp. 249).

Magna Carta to be kept, and no tallage taken except in accordance with it.

Three Parliaments to be held annually.

The scheme of Government is drawn out (p. 17).

Provisions of Westminster, 1259.

Re-enacted 1262, 1264, and embodied as the Statute of Marlborough, 1267. *Twenty-four Articles; chief of which are—*

1. Limits the right to exact suit and service, where it is not due.

2. If an estate is liable for one suit only, and is divided amongst several heirs, the eldest shall discharge the suit, the others paying their share.

3. Limits the right of distraint.

4. Exempts magnates from attendance at the Sheriff's tourn, which is to be held as was customary (p. 71).

7. Regulates Darrein Presentment, and the plea *quare impedit*, about vacant churches.

8. Exemption to knights from serving on juries.

9. 10. Check abuse of wardship, and succession.

11. Limits the right of feudal lords to distrain.

12. Extends to *socage tenants* certain advantages of military tenants with regard to wardship and marriage.

13. Amercement, for default of common summons, only to be made by the Justiciar, and Itinerant Justice.

14. Religious persons not to enter on the fee of any one without the leave of the lord from whom the estate is immediately held. *See Mortmain Statute* (p. 280).

16. Pleas of false judgement made in the court of his tenants, to be reserved for the King.

18. Distraint on freehold requires the royal writ.

19. 20. Against fraudulent bailiffs and farmers.

22. Death by misadventure shall not come before Itinerant Justices, but only cases of persons feloniously killed.

Dictum de Kenilworth, 1266.

Forty-one Articles.

1. The King to freely exercise his dominion, authority, and royal power, without any one's hindrance or contradiction, through which, contrary to the approved rights, laws, and customs of the realm long established, the dignity of the King may be assailed.

2. 3. The King to respect all Liberties and Charters and to appoint fit persons to administer justice.

4. Grants, made spontaneously by the King, to be kept; liberties and customs of the Church to be respected.

5. The rebels, who come into the King's peace within forty days, to have an amnesty.

6. Act of Resumption.

7. Provisions of Oxford, and writings, obligations, and instruments consequent thereon, to be annulled.

10. Against purveyance (p. 179).

11. Asks for the reform of London.

12. Rebels to be able to redeem their lands.

23. Twelve Commissioners to be appointed to execute these Provisions, which are to be firmly observed and maintained by the King and his heirs.

37. The King's peace to be firmly kept.

The other Articles are mainly Articles of reconciliation and amnesty.

Statute of Marlborough, 1267.

Is simply the Provisions of Westminster, 1259, in Statute form.

Statute of Westminster I, 1275 (3 Ed. 1).

Fifty one Clauses, chiefly—

Regulating feudal incidents such as aids and reliefs;

Checking feudal abuses ;
 Providing for the freedom of Elections ; and
 Regulating judicial matters.

Statute of Mortmain (*de viris religiosis*), 1279 (7 Ed. I, c. 2).

Provides that no 'religious' person, or any other, shall presume to buy or sell any lands or tenements, or under pretence of a gift, or term, or any other title whatsoever, receive from any one, or in any manner, either by device or craft, appropriate to himself lands or tenements so that they come in any way into *Mortmain* (i.e. the *dead hand* of a Corporation (p. 269 note), under penalty of forfeiture of the same. Its germ may be seen in the 43rd Article of the second re-issue of the Charter, 1217, and in the 14th Article of the *Provisions of Westminster*.

Statute of Westminster II, June, 1285 (*de donis conditionalibus*, p. 214), 13 Ed. I.

Allows entail, regulates the judicial system, providing that Justices of Assize go on circuit to every county twice or three times a year, and confirms a good deal of previous legislation.

Statute of Winchester, Oct. 1285.

1. Forbids the compounding, or concealment, of felonies.
2. Districts, in which felonies are committed, are to produce the bodies of the culprits within forty days, or be liable.
4. Regulates the watch and ward in towns ; strangers to be questioned, and, if suspicious, detained ; if they will not conform to this rule, the hue and cry to be raised.
5. High roads to be cleared of trees and bushes up to two hundred feet on either side, so that robbers may not lurk therein.
6. Every man to have in his house 'armour to keep the peace, according to the ancient assize.' Two constables to hold a view of armour twice a year.

Statute of Westminster III, 1290 (*quia emptores*).

Checks subinfeudation (p. 214), and provides 'that henceforth it shall be lawful for any freeman to sell at will his land tenement, or any part of it ; *provided that* the receiver of the fee shall hold that land or tenement from the same chief lord, and on the same conditions of service, and the same customs, as the alienor of the fee formerly held it.'

Confirmation of the Charters, 1297.

1. *Magna Carta* and the *Charter of the Forest*, are to be kept in every point, and published, together with the Confirmation, throughout the kingdom.
2. Any judgement given contrary to these Charters to be void.
3. The Charters to be kept in the Cathedrals, and read twice a year.
4. Those who infringe the Charters to be excommunicated.
5. The aids, tasks, and prises obtained from the people are not to be a precedent (p. 18).
6. No such aids, or prises, to be taken henceforth except by the common consent of the realm, and for the common profit, except the ancient aids, and the due and customary prises.

7. The Maletote of 40/. on the sack of wool not to be exacted without the common assent, saving the customs of wool, skins, and leather already granted by the commonalty.

Petition of Right, 1628 (3 Car. I, c. 1).

Eleven Articles.

1. Quotes the *De tallagio non concedendo* (p. 19) and the Act of 25 Ed. III as Statutes forbidding the King to exact tallages or loans without the consent of Parliament.

2. Complains of commissions recently issued to levy money, and of the punishment of imprisonment being inflicted on those refusing to pay, in defiance of the Statute.

3. Quotes *Magna Carta*.

4. Quotes 28 Ed. III, on the liberty of the subject.

5. Complains that these Statutes have been violated and that on many writs of *Habeas Corpus* (p. 242) no cause of imprisonment has been shown except '*your Majesty's special command.*'

6. Complains of the practice of billeting soldiers and sailors.

7. 8. 9. Complain of martial law being enforced against private individuals contrary to 25 Ed. III (p. 315).

10. 11. Sum up the grievances of benevolences, illegal taxation, illegal imprisonment, billeting, and martial law, and pray for relief.

This 'Petition' became a Statute by the assent of the King, '*Soit droit fait come est desire.*'

Habeas Corpus Act, 1679 (31 Car. II, c. 2).

Twenty-one Articles.

2. Mentions the frequency of illegal imprisonment, and the delay in issuing *Habeas Corpus* writs.

2. Provides that, except in cases of commitment for treason (pp. 3-7), or felony, gaolers must, within three days of the reception of the writ, produce the prisoner 'before the Lord Chancellor, or Lord Keeper of the Great Seal of England for the time being, or the Judges, or Barons of the Court from whence the said writ shall issue'; if the Court is more than twenty miles distant, the time is extended to ten days, and if more than a hundred miles distant, to twenty days.

5. No gaoler may plead ignorance; if a commitment is made during the vacation time, an appeal may be made to the Chancellor, or one of the Judges, who shall issue a writ returnable within two days, and shall take such sureties for the prisoner's appearance as he may deem advisable, unless the prisoner is 'detained upon a legal process, order, or warrant out of some Court that hath jurisdiction of criminal matters,' or is committed for an unailable offence.

4. No *Habeas Corpus* to be granted in vacation time to persons neglecting to demand one for two terms.

5. Gaolers refusing to make returns, or to give a copy of the warrant of commitment, within six hours after it is demanded, to forfeit £100 for the first offence, and £200 for the second.

6. No one set at large upon any *Habeas Corpus* to be re-committed for the same offence, except by the Court having jurisdiction of the cause, under a penalty of £500.

7. Persons committed for high treason, or felony, may be liberated on bail, if not indicted in the second term of their commitment.

8. The Act not to apply to cases of debt.

9. No one to be removed from one prison or gaol to another except by *Habeas Corpus*, or some other legal writ.

10. *Habeas Corpus* may be obtained from the Courts of Chancery, Exchequer, King's Bench, or Common Pleas, and must not be denied to any one, under a penalty of £500.

11. A writ of *Habeas Corpus* may run in any County Palatine (p. 219), Cinque Port (p. 220), or other privileged place, and into the Channel Isles.

12. 13. 14. 15. 16. All imprisonment beyond the seas declared illegal, except when prayed for.

17. All offences against the Act must be sued against within two years.

18. 19. Provide against persons avoiding the Assizes by claiming their *Habeas Corpus*.

21. The Act not to apply to persons committed on reasonable suspicion of petty treason and felony.

Bill of Rights, 1689 (1 Wm. & Mar. sess. 2, c. 2).

1. After rehearsing the various illegal acts whereby James II abdicated the government, and the throne was declared void, declares the following illegal:—

(i.) The exercise of the suspending power, without the consent of Parliament (p. 172).

(ii.) The dispensing power, 'as it hath been assumed and exercised of late' (p. 171).

(iii.) The Court of Commissioners for ecclesiastical causes (p. 55).

(iv.) Levying money by pretence of prerogative, without grant of Parliament.

(v.) Interference with the presentation of petitions to the King. (*See Case of the Seven Bishops*, App. B.)

(vi.) Raising, or maintaining, a Standing Army without the consent of Parliament (p. 315). It also enacted—

(vii.) That Protestants may keep suitable arms for their defence.

(viii.) That the election of Members of Parliament should be free.

(ix.) That freedom of speech in proceedings in Parliament shall not be questioned, except in Parliament.

(x.) That excessive bail, fines, and punishments are illegal.

(xi.) That jurors must be duly empanelled, and in cases of High Treason must be freeholders.

(xii.) That grants of fines and forfeitures, before conviction, are void.

(xiii.) And that 'for the redress of grievances, and the amending, strengthening, and preserving of the laws, Parliament ought to be held frequently.

2. It settles the succession (i.) on William and Mary, and the heirs of the body of Mary; (ii.) in default of such issue, on the Princess Anne of Denmark, and the heirs of her body, and, failing them, on the heirs of the body of William III.

3. It substitutes new oaths to be taken 'by all persons of whom the oaths of allegiance and supremacy might be required by law.'

4. Recites the acceptance of the Crown on these conditions by William and Mary.

5. Parliament to sit to provide for 'the settlement of the religion, laws, and liberties of this kingdom.'

6. All the clauses in the Declaration of Right are 'the true, ancient, and indubitable rights and liberties of the people of this realm.'

7. James II 'having abdicated the government,' William and Mary are King and Queen.

9. Excludes from the succession those who hold communion with the Church of Rome, profess the Popish religion, or marry a Papist.

10. The Sovereign to assent, on succession, to the Act, 13 Car. II, for disabling Papists from sitting in either House of Parliament.

12. Declares the invalidity of dispensation by *non obstante*.

Act of Settlement, 1701 (12 & 13 Wm. III, c. 2).

1. After referring to the Bill of Rights, which excluded Roman Catholics from the succession, and declared that if a Papist obtained the Crown, 'the people of these realms shall be, and are thereby, absolved of their allegiance,' the Act settled the Crown on the Electress Sophia, and the heirs of her body being Protestants.

2. Excludes all persons holding communion with the Church of Rome, professing the Popish religion, or marrying a Papist.

3. Provides that, to secure the religion, laws, and liberties of the country—

(i.) The Sovereign shall join in communion with the Church of England as by law established.

(ii.) No war shall be undertaken in defence of any territories not belonging to the Crown of England, except with the consent of Parliament.

(iii.) The Sovereign not to quit Great Britain and Ireland without the consent of Parliament.

(iv.) All matters cognizable in the Privy Council to be transacted there, and resolutions to be signed by the councillors advising the same (p. 45).

(v.) Aliens (although naturalized, or denizens, except they are born of English parents), declared incapable of becoming Privy Councillors, Members of Parliament, of holding any civil or military post of trust, or of holding lands from the Crown.

(vi.) No placeman, or pensioner, to sit in Parliament (p. 143).

(vii.) Judges to hold office *quamdiu se bene gesserint*.

(viii.) No pardon under the Great Seal to be pleadable to an impeachment by the Commons (p. 155).

4. All laws for securing the established religion, and the liberties of the people, to be confirmed and ratified.

The Protestant succession was confirmed, and further secured, on various occasions, *e. g.* 1702, 13 & 14 Wm. III, c. 6; 1706, 4 & 5 Anne, c. 20; 1707, 6 Anne, c. 41; and 1709, 8 Anne, c. 15.

Riot Act, 1715 (1 Geo. I, st. 2, c. 5.), (p. 5).

Assemblies of Twelve, or more, rioters not dispersing within one hour of being ordered by a magistrate to do so, by Proclamation in the King's name, shall be guilty of felony, and if killed whilst being dispersed by force, those killing them shall not be guilty of murder.

APPENDIX B.

SOME OF THE MORE IMPORTANT CASES IN CONSTITUTIONAL HISTORY.

Ashby v. White, 1702-1704 (p. 113).

Ashby, an elector of Aylesbury, brought an action against *White*, a returning officer, for refusing his vote, and obtained a verdict; this decision was reversed in the Court of Queen's Bench, but confirmed by the Lords, Jan., 1704. The action of the Lords led to a quarrel with the Commons, who declared that the decision of the rights of electors lay with the Lower House. The dispute was ended for a time by a prorogation, though the question remained undecided. (*See Case of the Aylesbury Men.*)

Aylesbury Men, Case of the, 1703-1704 (p. 113).

On the decision in *Ashby v. White* (*above*) being given, five Aylesbury men brought actions against the returning officers, and were committed by the Commons for breach of privilege. A writ of error to the Lords was refused by the Commons, and the Upper House requested the Queen to interfere. A prorogation ensued, and the Aylesbury men, continuing their action, won their case against the returning officers.

Barnardiston v. Soame, 1674 (p. 112).

An action brought against *Soame*, Sheriff of Suffolk, for making a double return in the County election; the plaintiff, *Barnardiston*, being one of those returned. *Barnardiston* at first obtained a verdict, but this was set aside by the Exchequer Chamber, and by the House of Lords. By an Act of 1679 double returns were declared illegal, but they have nevertheless been sanctioned by subsequent parliamentary usage.

Bate's Case, or Case of Impositions, 1606 (pp. 198-199).

John Bate, a Turkey merchant, was summoned before the Exchequer Court for refusing to pay an imposition of 5s. 6d. a hundredweight on currants. It was held that the King had power to impose the tax because he exercised complete control over foreign trade, and because his absolute, as opposed to his ordinary power, could not be limited by law.

Bradlaugh v. Gosset, 1884 (p. 140).

An action brought by *Mr. Bradlaugh*, Member for Northampton, against *Sir Ralph Gosset*, Sergeant at Arms, for excluding him from the House, in consequence of a resolution preventing his taking the oath in accordance with the *Parliamentary Oaths Act* of 1866 (29 & 30 Vict. c. 19). It was held that the House had the power of exclusion, and therefore had the power of enforcing their action.

Burdett v. Abbott, 1810 (p. 119).

Brought for trespass by *Sir Francis Burdett* against the Speaker, who had issued a warrant against him for contempt; in the execution of this warrant, the plaintiff's house was broken into. The trespass was held to be justifiable, as the power of the House to commit for contempt was undoubted.

Bushell's Case, 1670 (p. 86).

Two Quakers, Mead and Penn, tried under the *Conventicle Act* (p. 291), were acquitted, contrary to the direction of the Recorder of London. The jury were fined for contempt, and *Bushell*, their foreman, in default of payment, was imprisoned: on his suing out his writ of *Habeas Corpus*, Lord Chief Justice Vaughan held that finding a verdict 'against full and manifest evidence, and against the direction of the Court,' was not sufficient ground for imprisonment. *By this decision, the immunity of juries was established.*

Butler v. Crouch, 1568 (p. 228).

Involved a question of Villenage. *Butler* having entered on the lands of *Crouch*, as being his villein was ejected by the defendant, in whose favour a decision was given.

Calvin's Case, or Case of the Postnati, 1608 (p. 236).

James I wished to obtain a decision as to whether Scotchmen born after 1603 (*postnati*) were naturalized Englishmen. An action was therefore brought in the name of Robert Calvin or Colvill, born in 1605, against two persons who were alleged to have deprived him of his estates. As an alien could not hold English land the decision of the Exchequer Chamber in Calvin's favour, was practically a decision in favour of the naturalization of the *Postnati*.

Commendams, Case of, 1616 (pp. 27, 89).

An action was brought against Neile, Bishop of Lichfield, for holding a living *in commendam* (*i. e.* together with his bishopric), by two persons who claimed the presentation to the living. James I, thereupon, ordered the Judges not to proceed in the case until he had consulted with them; they disobeyed, and were severely reprimanded. All made submission but Chief Justice Coke, who was in consequence dismissed by the King.

Damaree and Purchase, Case of, 1710 (p. 4).

Daniel Damaree, and *George Purchase*, having participated in a riot, arising out of the impeachment of Dr. Sacheverell, were convicted of treason; the decision being that their action in setting fire to *certain* meeting houses, was proof presumptive of a design to burn down *all* meeting houses, and was therefore an overt act of levying war.

Darnel's Case, 1627 (p. 241).

Sir Thomas Darnel, being imprisoned for refusing to give a forced loan to the King, sued out his writ of *Habeas Corpus*. The Warden of the Fleet returned that he was imprisoned 'by the special command of the King.' Counsel for the defendant argued that a specific charge ought to be named in the warrant, while the Crown lawyers maintained that reasons of State often made it inexpedient to specify the charge on which a political prisoner was detained. The judges declined to admit Darnel to bail, but would not face the broad issue.

Eliot's Case, 1629 (p. 108).

Sir John Eliot, Denzil Holles, and Benjamin Valentine were imprisoned by the Court of King's Bench for words spoken in the Commons, the judges urging that the Act of 1512 (see Strode's case) was merely a private Act. These proceedings were declared illegal in 1641, and the decision was formally reversed by the Lords in 1668.

Ferrer's Case, 1543 (p. 104).

George Ferrers, a member of the Commons, arrested as surety for a debt, was released by the Sergeant at Arms, acting under the authority of the House, which also committed to prison all those concerned in the arrest. The Commons, refusing a *Writ of Privilege* offered them by the Lord Chancellor, established (1) their right to demand the delivery of a Member, (2) their right to commit others to prison.

Godden v. Hales, 1686 (p. 172).

A collusive action brought by a servant of *Sir Edward Hales* against his master, for breaking the provisions of the Test Act. *Sir Edward* pleaded the King's dispensation, which was held to be a good defence.

Hampden's Case, or Case of Ship-money, 1637 (pp. 199-200).

John Hampden refused to pay ship-money, on the ground that it was an illegal tax. The case was tried in the Court of Exchequer. Counsel for the defence contended that the Crown could not raise taxes without the consent of Parliament. The Crown lawyers laid down that it was the King's duty to defend the country and he must not be hampered by Acts of Parliament. Seven Judges decided for the Crown, five for Hampden.

Haxey's Case, 1397 (pp. 106, 107).

Sir Thomas Haxey, a Member of Parliament, was imprisoned and found guilty of treason for introducing a Bill to regulate the expenses of the Royal Household. He was subsequently pardoned, and his sentence was annulled by Richard II and again reversed in 1399, the privilege of freedom of discussion being thus recognized.

Murray's Case, 1751 (p. 118).

Alexander Murray, charged by the Returning Officer of Westminster with insulting him in the execution of his duty, was sent to Newgate, and ordered to receive his sentence on his knees. He refused, and sued out his writ of *Habeas Corpus*, but the Judges declined to admit him to bail, holding that they had no power to judge of the privileges of the House, and that committal for contempt of the House of Commons was sufficient.

Peacham's Case, 1615 (p. 4).

In 1615 *Edmund Peacham*, a clergyman, was convicted of high treason for having written a sermon which made libellous reflections on the Crown and the government, *but which had been neither printed nor published.*

Pigg v. Caley, 1617 (p. 228).

The last case in which villeinage was pleaded in a Court of Law. *Pigg* having brought an action against *Caley* for stealing his horse, *Caley* pleaded that *Pigg* was a *villein regardant* of a manor of which he was seized. *Pigg* declared that he was free, and the decision was in his favour.

Proclamations, Case of, 1610 (p. 171).

The Judges, headed by Lord Chief Justice Coke, decided that the King's Proclamation could create no new offence, but merely admonish men to observe existing laws.

Prohibitions, Case of, 1607 (p. 88).

On James I attempting to assert the King's right to hear cases and to give judgment thereon, it was held by Chief Justice Coke that no such power was vested in the Sovereign, who, although he might sit in the Court of King's Bench, might not interfere with the course of Justice.

Seven Bishops' Case, 1688 (p. 245).

In 1688, James II commanded a Declaration of Indulgence to be read in all the Churches. Seven Bishops, *viz.* Archbishop Sancroft, Bishops Lloyd of St. Asaph, Trelawney of Bristol, Ken of Bath and Wells, Lake of Chichester, White of Peterborough, and Turner of Ely, drew up a petition against the Declaration, and were tried for a seditious libel, but acquitted. The Bishops not only possessed as subjects the right of petitioning the Crown, but, as Peers of Parliament, they had the right of individual access to the Sovereign.

Shirley's Case, 1603-4 (p. 105).

On *Sir Thomas Shirley*, a Member of the Commons, being imprisoned for debt, his release was refused by the Warden of the Fleet, on the ground that, if the prisoner was set at liberty, his gaoler would become answerable for his debt. *Shirley* was, however, released at the King's request, and an Act was passed to the effect (1) that any gaoler releasing a Member of Parliament imprisoned for debt should not become liable to the creditor; (2) that the creditor might sue the Member when Parliament had ceased to sit.

Shirley v. Fagg, 1675 (p. 120).

Shirley having appealed to the Lords from a decision of Chancery in favour of *Sir John Fagg*, the Commons declared that the Lords had no appellate jurisdiction from the Courts of Equity. The dispute ended in the Lords retaining their right.

Sidney's Case, 1683 (p. 4).

In 1683, *Algernon Sidney*, being tried on a charge of high treason for having participated in the Rye House Plot, was convicted through the

admission, instead of a second witness, of a manuscript found in his house, which contained certain remarks of a treasonable nature. (*See Peacham's Case.*)

Skinner v. The East India Company, 1668 (p. 120).

Skinner made a successful appeal to the Lords against the Company, who thereupon addressed a petition to the Commons. The latter denied that the Lords possessed original jurisdiction and a violent quarrel between the two Houses was the result, ending in a reconciliation at the instance of the King. The Lords have not exercised an original jurisdiction in civil actions since this time.

Smalley's Case, 1575 (p. 105).

Smalley, the servant of Arthur Hall, a Member of the House of Commons, being imprisoned for debt, was released by the Serjeant at Arms. Subsequently, however, he was punished for having fraudulently obtained his release with the object of freeing himself from the obligation of the debt.

Sommersett's Case, 1771. *Sommersett*, a slave, being brought to England, left his master, who thereupon detained him with the object of getting him conveyed abroad, and sold. A writ of *Habeas Corpus* being issued, it was decided by Lord Chief Justice Mansfield that slaves, landing in England, obtain their freedom, and cannot be compelled to leave the country.

Stockdale v. Hansard, 1836-40 (pp. 119, 246).

An action for libel was brought against Messrs. *Hansard*, the parliamentary printers, for printing a report, by order of the Commons, in which a book by *Stockdale* was described as 'disgusting and obscene.' The defence was the order and privilege of the Commons; the Court of Queen's Bench refused to admit this plea, and Lord Denman laid down that no one who published a parliamentary report containing a libel on any man, might plead the authority of the Lower House as a justification. The threatened collision between Parliament and the law courts was averted by the passing of an Act (3 & 4 Vict. c. 9), which provided that all proceedings against persons who had published reports under the authority of either House should be stayed on production of a certificate stating that such publication was sanctioned by Parliament.

Strode's Case, 1512 (p. 107).

Richard Strode, a Member of Parliament, was imprisoned by the Stannary Courts (p. 66), for having introduced a Bill to regulate the tin mines. *Strode* was released by Writ of Privilege, and an Act was passed declaring 'all suits and condemnations for a Bill, or speaking in any matter concerning the Parliament to be utterly void and of none effect.' (4 Hen. VIII, c. 8.)

Thomas v. Sorrell, 1674 (p. 172).

An Act, 7 Ed. VI, 1553, forbade the sale of wine without a licence. James I having relaxed this Statute in favour of the Vintner's Company, of which Sorrell was a member, an action was brought by the plaintiff against the defendant for selling wine without a licence, but it was held

that James patent, granted *non obstante* any Act to the contrary, was valid.

Thorpe's Case, 1453 (p. 104).

Thomas Thorpe, Speaker of the Lower House, was imprisoned at the instance of the Duke of York. The Commons appealed to the Lords, who referred the matter to the Judges. The latter declared that Members of Parliament arrested on any charge except treason, felony, or breach of the peace, were usually allowed to discharge their parliamentary duties, but declined to adjudicate on the particular question before them. The Lords refused to release Thorpe, and the Commons were admonished to elect a new Speaker. Thorpe was subsequently released and the proceedings were characterized as 'begotten by the iniquity of the times.'

Throckmorton's Case, 1554 (pp. 54, 86).

Sir Nicholas Throckmorton was tried for high treason, and acquitted; thereupon the jury were imprisoned, and heavily fined, by the Court of Star Chamber.

Wason v. Walter, 1868 (pp. 110, 246).

An action was brought against the proprietor of the *Times* for publishing a parliamentary debate which contained passages reflecting on the plaintiff. The court decided that a newspaper was justified in publishing a faithful report of a parliamentary debate, with fair comments on the proceedings, even though the character of an individual were injuriously affected thereby.

Wilkes v. Wood, 1763 (p. 243).

A general warrant had been issued against the authors, printers, and publishers of No. 45 of the *North Briton*, and under its authority forty-nine arrests had been made. The editor, *Wilkes*, brought an action against the messengers who had effected the arrests and the Secretaries of State who had authorised them. The court held that *general warrants* were illegal and awarded heavy damages to the plaintiff.

Entick v. Carrington, 1765 (p. 243).

In 1762 Lord Halifax had issued a *general search warrant* empowering messengers to seize the person, books and papers of *John Entick*. When the question came before the law courts, Lord Camden wholly denied the legality of such warrants.

APPENDIX C.

SHORT REFERENCES TO CANADA, AUSTRALIA, AND SOUTH AFRICA.

Canada.

Canada is the birthplace of colonial self-government, and developed between the years 1840 and 1850; but the Dominion of Canada, as we know it to-day, was crystallized in the British North America Act, 1867 (30 Vict. c. 3), which granted a 'constitution similar in principle to that of the United Kingdom.' Legislation is by the Dominion Parliament and the Provincial Parliaments. The Senate of the Dominion Parliament is nominated by the Governor-General, and the members hold their seats for life. The representation is proportioned to the population of each Province. Certain subjects are assigned to the Provincial Parliaments and others to the Dominion Parliament, but in case of conflict the latter prevails. The Constitution is the law of the land, and, except within certain narrow limits allowed by the Act of 1867, it can only be altered by the sovereign power of the British Parliament. Legislation of the Province is subject to the veto of the Governor-General, who appoints and can also dismiss the Lieutenant-Governors of the Provinces¹.

Australia.

The Commonwealth of Australia Constitution Act (63 & 64 Vict. c. 12) brought all Australia under one Governor-General and a Commonwealth Parliament, and is in the strictest sense a federal government. The Parliament of the Commonwealth is constituted so as to guarantee within reasonable limits the maintenance of the rights of each State. The House of Representatives represents numbers, whereas in the Senate each of the Original States is entitled to an equal number of Senators irrespective of its size or population. Each State sends six Senators for six years. Parliaments of the States have unrestricted power of legislation, but the Commonwealth Parliament is restricted to certain subjects affecting the Commonwealth as a whole. Should, however, a State Parliament legislate on a subject assigned to the Commonwealth Parliament in a sense repugnant to that of the Federal Legislature the latter would prevail. The Governors of the States are appointed by the Crown¹.

South Africa.

The South Africa Act, 1909 (9 Ed. VII. c. 9) brought United South Africa into being, and gave a Constitution to that Colony somewhat similar to the self-governing Colonies of Canada and Australia. The Governor-General is appointed by the King, and has the unusual power of being able to dissolve both the Senate and the House of Assembly simultaneously, or to dissolve the Assembly only. The Senate may not, however, be dissolved during the first ten years. The House of Assembly is to be composed of members directly chosen by the voters of the Union. Reference should be made to 'South Africa Union,' by A. Berriedale Keith, Esq., in *The Journal of the Society of Comparative Legislation* (New Series, No. 21), October 1909.

¹ As to all non-sovereign law-making bodies and federal governments reference should be made to Anson's *Law and Custom of the Constitution* and to Dicey's *Law of the Constitution*, where the subject is most fully dealt with.

APPENDIX D

AT the time of going to press the Constitutional question, which has become so acute during the present year, has not been settled, though several suggestions have been made towards finding a solution of the difficulty. The House of Lords themselves have put forward schemes for their own reform, and the House of Commons has a Bill already prepared to pass when Parliament meets in 1911. What will be the result of that Bill it is not easy to forecast.

The Rosebery Committee, which considered the whole matter very carefully, made many useful and far-reaching proposals for the reform of the House of Lords, foremost among which was the reducing of the number of peers entitled to sit and the eliminating of the hereditary principle altogether by causing the right to sit to be subject to election or having held or holding some high office under the Crown, and also the making of a number of Life Peers exclusive of the Lords of Appeal in Ordinary. In the event of a deadlock between the two Houses, the will of the people was to be ascertained by the Referendum, i. e. submitting the question to the people for their direct opinion on it.

The Government in power, however, propose to pass a Bill curtailing the Veto of the Lords to the extent that should a Bill be sent up from the Commons three times in one Parliament and the Lords refuse to pass it, the Government may take it straight to the Throne for Assent without the sanction of the House of Lords.

There has also been a suggestion that should the House of Lords not pass the Parliament Bill as proposed by the House of Commons the Prime Minister should get guarantees from the King to create 500 Peers in order to swamp the opposition in the Upper House.

All these proposals are under consideration by the Government, and the discussion of their merits or demerits is not within the scope of this Appendix.

APPENDIX E

THE Regency Act, 1910, provides that Queen Mary shall become Regent and guardian of any child of King George V who may succeed him on the throne until that child is eighteen years of age. It also provides that the Regent shall not assent to any Act that alters the order of succession to the Crown or the Faith of the Sovereign, and that in the event of the Regent becoming a Roman Catholic or marrying a Roman Catholic she shall cease to be Regent or guardian.

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