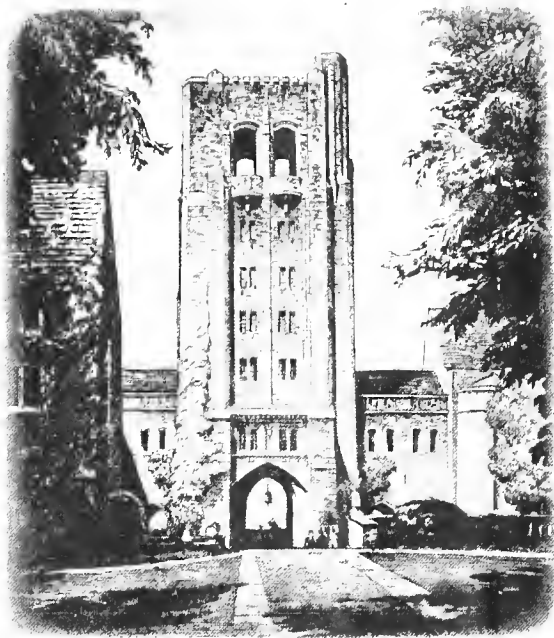




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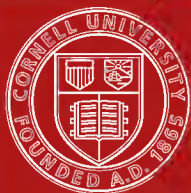
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L I V E S
OF
THE LORD CHANCELLORS
AND
KEEPERS OF THE GREAT SEAL
OF
ENGLAND,

FROM THE EARLIEST TIMES TILL THE REIGN OF KING GEORGE IV.

By JOHN LORD CAMPBELL, LL.D., F.R.S.E.

FOURTH EDITION.

IN TEN VOLUMES.—Vol. VI.

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L I V E S

OF THE

LORD CHANCELLORS OF ENGLAND.

CHAPTER CXXI.

LIFE OF LORD MACCLESFIELD FROM HIS BIRTH TILL HE RECEIVED THE GREAT SEAL.

WE next come to a Chancellor, who, instead of "fetching his life and being from men of royal siege," and boasting of an illustrious pedigree for a thousand years, was the son of an obscure village lawyer, but who inherited from nature a most acute and vigorous intellect, who raised himself by unwearied perseverance and a stupendous store of acquired knowledge to the highest offices in the state, who, though precipitated from power by the judgment of his peers, was more unfortunate than criminal, and whose descendants, now flourishing and distinguished in the peerage of England, ought, notwithstanding the sentence pronounced upon him, to be proud of the founder of their house.

It might have been more interesting to have traced his career through difficulties and discouragements, than if it had been the easy result of birth and fortune; but unluckily he has suffered more from biographical neglect than even Somers or Cowper, and the materials have perished from which it might have been hoped that tardy justice would still have been done to his memory. Unless when he was actually mixing in public transactions, little can be known of him by this age or by posterity.^a

^a His venerable representative, the present Earl of Macclesfield, in a very kind answer to my inquiries respecting him, says—"I regret extremely that I cannot give you any information as regards the early life of my ancestor, the Lord Chancellor Macclesfield, or after his retirement from public to private life. In the large collection of MS. letters I

Thomas Parker, afterwards Lord Chief Justice of England, Lord High Chancellor of Great Britain, and Earl of Macclesfield, was born on the 23rd of July, 1666 (the "annus mirabilis"), at Leeke, in Staffordshire, where his father carried on the business of an attorney, and by the savings of a long life accumulated a fortune of nearly 100*l.* of annual rent. Having been taught to read by his mother,^b he was put for two or three years to a free grammar school, in the neighbouring town of Newport, in Shropshire. The two cleverest boys there were Tom Parker, and Tom Withers, the son of a shoemaker. They were in the same form, and friends though rivals. The prognostications with respect to the latter were the most favourable, and he displayed such parts and application, that there was an attempt made to send him to the University by a subscription among the neighbouring gentry. This failing, he was bound apprentice to his father, and flourished for many years as a shoemaker; but, not observing the maxim "ne sutor ultra crepidam," he kept up his classical learning, quoted Homer and Virgil to his clerical customers, and fell into misfortunes in his old age. It is pleasant to think that the two schoolfellows socially met when the one occupied a stall at Newport, and the other was Lord

possess at Shirburn Castle there are very few of his, and I am sorry to add *none* that would be of use to your Lordship for the valuable work you are now publishing. Had it been otherwise, I should with pleasure have forwarded them to you."—30th April, 1846.

After the publication of the first edition of this work I received from the Earl of Macclesfield a pedigree representing his ancestor as descended from the ancient family of the Parkers of Park Hall,—which may be correct, although, from an unfortunate fire at Park Hall, the documents to prove it were destroyed. I have most unintentionally, and to my great mortification as well as surprise, given offence to some of the Chancellor's descendants by my *Life* of him. As he was a good *Wbig*, I had every desire to do him honour, and I really thought I should be accused of showing a bias in his favour. All the authentic accounts of him which have appeared represent that he was of obscure origin, that he was brought up as an attorney under his father, and that by extraordinary energy of character he conquered the difficulties of his early career. Therefore, I could not, and I cannot, narrate that, being the son of a

wealthy father as well as of high connections, he was early destined to the bar; that, after being at a public school, he went through a regular course of academical education at Cambridge; that he was then transferred to the Inns of Court, and that he advanced to eminence in the common-place progress of a high-born, university-bred barrister.

^b She was of a respectable Cheshire family of the name of Venables. In the diary of "Oliver Heywood, an ejected minister and one of the founders of the Presbyterian congregations in the county of York," there is a curious notice respecting her, indicating that her marriage with the Leeke lawyer was considered a *mésalliance*:—"July, 1666. Went to Leeke, in Staffordshire, and visited one Mrs. Parker, Col. Venables' daughter, who married against her father's consent. The thing is sadly aggravated, and he wonderfully exasperated against her. She weeps bitterly. Hath buried two children."—*Life of Heywood by Hunter*, p. 179. This must have been immediately before the birth of her son Thomas. Little did the Cheshire squire think that he was to be grandsire to an earl, and placed in the pedigree of an illustrious house.

Chief Justice of England,—and that they afterwards renewed their correspondence when the one, having lost all his customers, was reduced to penury, and the other had been precipitated with disgrace from the highest station a subject can hold in this kingdom.

Young Parker, although he picked up a smattering of Greek and Latin while at school, then knew little more than the peasantry among whom he was reared, and he may be considered as in a great measure self-taught. But he had acquired a taste for reading and a habit of steady application, to which all his future greatness must be ascribed. While still a boy he was placed in his father's office, and was articled as a clerk—to become himself an attorney. It is said that he displayed from the tenderest years most wonderful diligence and steadiness, and that, not contented with making himself perfect in the routine of his father's business, he read all the books of amusement and instruction on which he could lay his hands—spending the perquisites which came to him as clerk in the purchase of a little library of his own.

The father about this time removed from Leeke to Newcastle-under-Lyne; and the dutiful son following him, still displayed, we are told, the same attention to business and desire of self-improvement.

While he was so engaged, there is respecting him, in the admission book of the Inner Temple, the following perplexing entry:—

“Thomas Parker, Gent., sonne and heir apparent of Thomas Parker, of New Castle under Lyne, in the county of Stafford, Gent.
Admitted 14th February, 1683[4].”

No explanation can be given of his admission to an Inn of Court when he was only in his eighteenth year, and in the middle of his apprenticeship. It may be conjectured that his father had humoured his ambitious design of being one day a counsellor; or that, being sent up to do some law-business during the term in London, he had got himself admitted without his father's knowledge. Still greater perplexity arises from the following entry, to be found in the books of Trinity College, Cambridge:—

“Thomas Parker Fil. Thomæ natus Newcastle under lime, Com. Stafford. E schola Derbensi M^{ro} Ogden ludimagistro. Ætat. 18. Octob. 9. 1685. pens.

M^{ro} Tho. Boteler Tutore.”

The same Thomas Parker appears to have been matricu-

lated on the 17th of December following. The first question
A.D. 1686-- is, whether this individual was Lord Macclesfield,
1690. who certainly was born at Leeke, not at Newcastle-
 under-Lyne; who certainly had been educated at the free
 grammar school of Newport;^c and who, at the above date,
 was in his twentieth year. I have likewise ascertained that
 at the end of the 17th century there was another family of the
 name of Parker residing at Derby. I am inclined, however,
 to believe that Lord Macclesfield was the Thomas Parker
 here designated, for at some period or another his name had
 been inscribed as a member of Trinity College; and no other
 entry that can refer to him can be found in the books of that
 society. The probability is, that, ambitiously contemplating
 a call to the bar at some future period, he wished to have the
éclat of being a Cambridge-man, and that a year and a half
 after he had entered himself of the Inner Temple he thus entered
 himself of Trinity College, not being very scrupulous as
 to the particulars which he gave of his place of birth and of his
 age.

It is certain, that he went on working in his father's office
 till, having regularly served his time, he was placed on the roll
 of attorneys in the year 1686.

To prosecute his profession with more advantage, he estab-
 lished himself at Derby, a flourishing town, in which a
 wealthy client of his father had lately settled in trade, and
 promised to patronise him. Here he prospered beyond his
 most sanguine hopes, and, from his great skill and diligence,
 in a year or two his business, in point of extent and respect-
 ability, was equal to that of any attorney in the county. We
 know no farther particulars of his history while he remained
 in this department of the profession, except that his house
 in Derby was in Bridge Street, at the foot of the bridge
 next the Three Crowns. We may imagine that, when the
 assizes came round, he was at first struck with immense awe
 at beholding the Judges in their scarlet robes, and could
 scarcely venture to speak to the leaders of the Midland Circuit
 on delivering them briefs in the causes which he had entered
 for trial; that his reverence for these dignitaries gradually
 dwindled away; that he began sometimes to think he himself
 could have examined witnesses quite as well as the barristers
 employed by him, and even, by making a better speech to

^c This education at Newport has been stoutly denied, but is placed beyond all doubt by his
 letter to Lord Chancellor King, post, 56.

the jury, have won verdicts which they lost; that he was likewise hurt by the distance at which he was in public kept by all members of the superior grade of the profession, while some of them were intensely civil to him in private; that he thought it hard, having with great labour prepared a case of popular expectation so as to insure victory, another should run away with all the glory; that he measured himself with those who were enjoying high reputation as advocates and had the prospect of being elevated to the bench; that, possessing the self-respect and confidence belonging to real genius, he felt himself superior to them; and that he sickened at the thought of spending the rest of his days in drawing leases, in receiving instructions from country bumpkins to bring foolish actions, in preparing briefs, and in making out bills of fees and disbursements which any discontented client might tax before the Master. Whatever his train of feeling or of reasoning might be, he soon resolved that he would quit his position of an attorney for that of a barrister.

Not having been at any public school or resided at a university, and having started in life so very early on his own account, he was still quite a young man when he had laid by enough decently to support him for some years to come. Instead of going on to accumulate a large fortune, which was easily within his reach, he nobly put all to hazard, that he might invest himself in the long robe. He is said to have had that presentiment of future greatness which sometimes springs up under very adverse circumstances, and leads to victory over all obstacles. He accordingly renounced his profitable business as an attorney at Derby, and removed to complete his terms as a student of law in the Inner Temple.

I regret exceedingly that I can find no particulars whatever of the next period of his life; and I am quite ignorant of the course of study he pursued, and the companions with whom he associated. That he was very diligent, we need not doubt—still mingling professional acquirements with an attention to more liberal pursuits.

Some have supposed that he now fixed himself at Cambridge, but no trace of him can be found in the books of Trinity College after his admission in 1685, and there seems great reason to doubt whether he ever revisited this celebrated seat of learning. Yet, when he became Lord High Chancellor of Great Britain, his flatterers, while they discovered that he was descended from "Reginald Le Parker," who had accom-

panied Edward I., when Prince of Wales, to the Holy Land, asserted that he had gained great academical distinction on the banks of Cam. Thus wrote Eusden, the Poet-laureat—expecting a good sinecure in the Court of Chancery :—

“ Prophetic Granta, with a mother's joy,
Saw greatness omen'd in the manly boy,
Who mad'st her studies thy belov'd concern,
Nor could she teach so fast as thou couldst learn.
Still absent, thee our groves and muses mourn,
Still sighing echoes the sad sound return ;
And CAM, with tears, supplies his streaming urn.”

Parker was called to the bar on the 24th day of May, 1691.^d
A.D. 1691. And doubtless he began his new career with greater advantages—with a far better chance of getting on—than if he had been the younger son of an earl, and had taken a high degree at Oxford or Cambridge. Many attorneys and attorneys' clerks, whom he had known on a footing of familiar intimacy, were now desirous of pushing him forward ; and from his former experience he was, when consulted, better able to assist them in the conduct of suits than barristers who, after graduating at the University, had merely gone through the usual curriculum at Lincoln's Inn or the Temple. The danger is, that a man who begins with the less liberal department of forensic procedure may not be able to enlarge his mind so as to perform the duties of a great advocate, and that when pleading before a special jury, or at the bar of the House of Lords, he may dwell earnestly on small and worthless points. This may be the reason why, with splendid exceptions, attorneys turned barristers are generally unsuccessful. But it is quite certain that, whatever was Parker's course of study, he acquired a profound and scientific knowledge of the most abstruse branches of the law—that he rendered himself a most accomplished jurist, and that he became a consummate advocate.

His progress at the bar was rapid and steady. Of course he chose the Midland Circuit, and in a few years he was at the head of it. Yet he passed others without exciting envy or ill

d “ Interius Templum Willus Farrer, Arm ^r Sob Dñe Regine Thesaurarius ihm. }	Parllament tent 24 ^o Die Maij Anno Dñi 1691, &c.
--	--

“ At this parliament, Mr. Thomas Parker (and others) are called to the Bar, and to be utter Barristers of this Society.”

will; and his brother circuiters, acquitting him of making any improper use of the advantages he derived from the early part of his career, candidly ascribed his extraordinary success to his extraordinary merit. He was now designated the "silver-tongued Parker," and the "silver-tongued counsel." It was some time before he had much business in Westminster Hall, but by degrees his circuit fame extended to the metropolis, and he was retained in most of the great causes which came on in the Court of Queen's Bench, sitting either in London or in Middlesex.

He first attracted the attention of the public as counsel for the defendant in the great case of *Regina v. Tutchin*, tried at Guildhall, before Lord Holt, November 4, 1704.^c This A.D. 1704. was an information by the Attorney-General against the publisher of a journal called the "Observer," for various alleged libels upon the Queen's Ministers, charging them with incapacity and an unskilful management of the navy. Parker, who was throughout life a consistent politician, had strongly attached himself to the Whigs, and had been noticed by Somers, Cowper, and the leaders of that party, as a rising lawyer. Along with Montague, the brother of Lord Halifax, he was now selected to defend their partisan. The alleged libels contained no reflection on the private characters of the Ministers, and the defendant's counsel contended that their public conduct was a fair subject of observation; but, to our surprise and mortification, we find that enlightened Judge, Lord Holt, telling the jury they were to consider "whether the alleged libels did not tend to beget an ill opinion of the administration of the government?"^f The defendant was found guilty; but he was saved from punishment by an objection afterwards taken to the regularity of the jury process. Parker's argument on this question (too technical for the general reader) is most masterly, and by genuine lawyers is perused with enthusiasm.^g

His appearance in this case acquired him such *éclat* that his

^c 14 St. Tr. 1095.

^f Some have supposed that Holt, who was a decided Whig, was subject to the weakness of a great mind, and that, to avoid the suspicion of partiality, he showed a leaning in favour of the Tory Ministers; but I believe that this doctrine was then considered to be law, and it will continue to be occasionally brought out till there is (as there ought to be) a statutable definition of the limits of free discussion.

^g The admiration which has been expressed of Parker's argument on the "*Distringas*," reminds me of a saying of my deceased friend DUVAL, the greatest conveyancer of his day, who being asked by me "whether the constant perusal of abstracts of title was not weary work?" answered me, "Why, it is sometimes a little dull; but every now and then one meets with a *brilliant deed*, which is a reward for all one's labour!!!"

promotion was considered certain if ever the Whigs should come into office.

There was a partial change in the Administration in the following year,—when, taking the degree of the coif, he was made a Queen's Serjeant, and was knighted. He gave rings on this occasion to Queen Anne and Prince George of Denmark, with the complimentary motto, "MORIBUS, ARMIS, LEGIBUS."^b

From strong local connection, he had been before appointed Recorder of Derby, and at the general election, which A.D. 1704—
1710. soon followed, he was returned to parliament as member for that borough, along with Lord James Cavendish. We know that he made a most favourable impression on the House, and that he frequently took part in debate, being a terror to the High Church party, and a praise and protection to such as supported religious and civil liberty; but, unfortunately, there is not to be found the smallest fragment of any of his speeches in parliament till the impeachment of Sacheverell.

Not being in the Cabinet, he is not answerable for this foolish measure. He probably regretted and condemned it, along with Somers and the other Whig lawyers; but when it was commenced, he did his best to bring it to a fortunate conclusion. He was appointed one of the managers on the part of the Commons. Burnet, giving an account of the trial, says, "Jekyll, Eyre, Stanhope, King, *but, above all, Parker*, distinguished themselves in a very particular manner: they did copiously justify both the Revolution and the present Administration." I must confess, however, that I have perused the report of his two long harangues at the bar of the House of Lords on the 4th article, which was assigned to him, with considerable disappointment; and I can extract little from either of them to interest us in these times. He contended that the defendant had falsely and maliciously charged her Majesty's Administration, both in ecclesiastical and civil affairs, as tending to the destruction of the constitution.

Why those who entertained such a bad opinion of her Majesty's Administration should not have been at full liberty to ex-

^b He had a few months before been made a Bencher of the Inner Temple—whether by ballot I know not:

<p>"Interius Templum Thomas Walker, Arm^r Thesaurarius ibm.</p>	}	<p>Parliament tent decimo Octavo die Maij, 1705, &c.</p>
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"At this parliament, Mr. Thomas Parker (and others) are called to the Bench." He does not appear ever to have been "Reader," or "Treasurer."

press it, we are rather at a loss to understand. But Serjeant Parker, in the name of the Commons of England, upbraids "the Doctor" for his rudeness in assailing the character of the Ministers and the measures of their government. He is rather happy in contrasting the defendant's incitements to insurrection with his doctrine of non-resistance. "Not in terms of lamentation," said Serjeant Parker, "not as grounds of humiliation, or in a language that might become one that thought the only arms of the Church to be prayers and tears, does he assail the Government; but with all malice, bitterness, reviling, insolence,—endeavouring to raise in his auditors the passions himself puts on, and pointing out (as far as he dares) to arms and violence for a cure: On his own principles, he ought to have taught the people to do their duty, submitting wholly to the Queen and those in authority under her, and to leave the rest to God: But, following his advice, they would instantly rise in a mass, and if they did not at once restore the Pretender, they would forcibly expel from office, and utterly crush, all who, on the doctrine of resistance to tyranny, were concerned in the Revolution: Is this sermon an exhortation to piety and virtue? or is it not manifestly a trumpet to rebellion? Does the preacher show his congregation their own faults that they may amend their lives, or attempt to expose the faults of the Government with a view to a forcible change? The duty of passive obedience is so warmly inculcated to cause the destruction of those who deny it: The whole discourse exhorts to insurrection, and not to submission." He thus concluded:—"My Lords, the Commons have the greatest and justest veneration for the clergy of the Church of England, and it is with regret and trouble that they find themselves obliged to bring before your Lordships, in this manner, one of that order. But when we find Dr. Sacheverell stripping himself of all that peaceful and charitable temper which the Christian religion requires of all its professors, deserting the example of our Lord and Master, and of his holy apostles, and with rancour branding all who differ from him (though through ignorance) with the titles of hypocrites, rebels, traitors, devils; reviling them, exposing them, conducting them to hell, and leaving them there; treating every one who falls in his way worse than Michael the Archangel used Satan; despising dominion, speaking evil of dignities; like raging waves of the sea, foaming out his own shame; then labouring to sap the establishment, and railing and declaiming against the Government; crying *to arms!* and

blowing a trumpet in Sion to engage his country in seditions and tumults, and overthrow the best constitution and betray the best Queen that ever made a nation happy, and this with Scripture in his mouth; the Commons looked upon him, by this behaviour, to have severed himself from all the rest of the clergy; they thought it their duty to bring to justice such a criminal; and they are in no fear of being thought discouragers of those who preach virtue and piety because they, in the supreme court of justice, prosecute him who preaches sedition and rebellion, or to have any design of lessening the respect due to the clergy by bringing to punishment him who disgraces that sacred order.”ⁱ

Serjeant Parker afterwards replied to the speeches of the counsel for the defendant, and of the defendant himself, and obtained loud applause for the unsparing manner in which he assailed them:—“My Lords,” said he, “I am amazed that a person in holy orders, in his distinguished habit, before this awful assembly, should dare to take the tremendous name of God into his lips, and appeal to the Supreme Being for the sincerity and integrity of his heart at the very time when he stands under such a charge, and is neither able to repel it, nor has the sincerity and honesty to repent—to take shame upon himself in the most public way, and to ask pardon of God and of the world for the sin and the crime of which he is guilty. I hope the clergy will be instructed not to preach the doctrine of submission in such manner as to prepare the way to rebellion.” But by far the finest part of the reply was the felicitous quotation from Scripture:—“In what moving and lively colours does the holy Psalmist paint the crafty insidiousness of such wily *Volpones*! ‘Wickedness is therein; deceit and guile go not out of their streets. For it is not an open enemy that hath done me this dishonour, for then I could have borne it: neither was it mine adversary that did magnify himself against me, for then, peradventure, I would have hid myself from him. But it was even thou, my companion, my guide, and mine own familiar friend. There is no faithfulness in their mouths, their inward parts are very wickedness; their throats are open sepulchres, and their words are smoother than oil, yet be they very swords! Like Joab, they pretend to speak peaceably, and smite us mortally under the fifth rib.’”^k

Whatever we may think of the Serjeant’s performances on this occasion, they gave the highest possible satisfaction to the

ⁱ 15 St. Tr. 186.

^k Ib. 454.

true VOLPONE, whose the impeachment was; and Lord Chief Justice Holt having died while the proceeding was pending, Serjeant Parker was instantly appointed to succeed him,—the Attorney and Solicitor-General, who had been less zealous in the prosecution, being passed over.^m According to Burnet, an inference was drawn from “this great promotion”—that the Queen, who had attended during the whole of the trial, favoured the prosecution, “for none of the managers had treated Sacheverell so severely as he had done;”ⁿ but, in reality, she had only constitutionally taken the advice of her ministers while she employed them, though she was eagerly desirous to get rid of them.

Parker remained Chief Justice of England for eight years, and it could not be said of him, as of some popular lawyers, who, upon their elevation to high judicial office, have disappointed public expectation, “*Omnium consensu capax imperii nisi imperasset.*” His fame as a common law chief is not quite equal to that of his immediate predecessor; but this probably arises from there not having been in his time any controversies between the two Houses of Parliament, or any questions of great political interest coming before him for judicial decision. He was during this part of his career never suspected of any sort of corruption, and the only charge I find brought against him is of having been sometimes rather discourteous to the bar. This is not enough to lower him much in our estimation. Although I can conceive no more striking proof of a mean spirit than for a barrister, when put upon the bench, really to behave with insolence or ill temper to his former competitors at the bar, it is rather difficult for a Judge altogether to escape the imputation of discourtesy if he properly values the public time; for (according to a dictum of the great Lord Lyndhurst) one of his duties is “to render it disagreeable to counsel to talk nonsense.”^o Chief Justice Parker’s judg-

^m This appointment took place on the 13th of March, and judgment was not given on Sacheverell till the 23rd of the same month.—2 *Lord Raymond*, 1309.

ⁿ Burnet, iv. 285. De Foe thus jeeringly addressed the High Churchmen on this appointment: “You are desired to take particular notice of her Majesty having severely punished Sir Thomas Parker, one of the managers of the House of Commons, for his barbarous treatment of the Doctor, in pretending in a long speech to show, as he called it, the im-

patience and superficial jingle of the Doctor’s speech. Her Majesty being, as you know, heartily concerned for this prosecution, hath testified her care of the Doctor’s character in most justly punishing that forward gentleman, having condemned him for his boldness to perpetual confinement, being appointed to the constant drudgery of Lord Chief Justice of the Queen’s Bench, a cruel and severe sentence indeed!”

^o I wrote this when I had no prospect of becoming a Judge. Having now been a

ments show an accurate acquaintance with his subject, a logical mind, and great power of illustration.

He began his judicial career with the trial of Damaree and Purchase for being concerned in the Sacheverell riots and assisting to pull down dissenting meeting houses. Although this prosecution was, I think, exceedingly discreditable to the Whig Government, I know not that the Lord Chief Justice of the Queen's Bench can be much blamed for it, as we cannot suppose that he was consulted respecting the manner of shaping the offence; and if it was charged as high treason, there were distinct authorities for holding it to be so, although most lawyers probably now think that thereby the statute of Edward III. was overstrained, if not perverted. He would have acted a nobler part if he had summed up for an acquittal; but he pressed for a conviction. In commenting upon the evidence in favour of the character of the prisoners, he said—"There is another unfortunate circumstance I must observe, that we are in a time when many people were led into a belief that doing these actions was a commendable thing; that it was a showing their zeal to the Queen and the Church. And if that be the case, reputation and previous good behaviour are of no avail, and raise no presumption against guilt." Dr. Sacheverell (I would not reflect upon him; he has undergone a censure elsewhere) fell foul of the Toleration Act, and these people, thinking him a confessor for the Church, thought they could do no less than pull down meeting houses, which they considered the seminaries of schism. The doctrine of non-resistance, pronounced to be the doctrine of the Church, is to be propagated by resistance; these people will resist, to show they are not for resisting. The Queen's guards are to be attacked, to illustrate the rule of passive obedience. When a madness has got among the people, many unaccountable things will be done by men of reputable character. Those who honour Dr. Sacheverell for the things which parliament has condemned, might think it honourable to demolish meeting houses, and to raise seditions and riots which are not to be borne in a civilised country." Upon the law of the case he was clear and explicit: "A brothel," said he, "is a nuisance, and may be punished as such; and being a particular nuisance to any one, if he enters to abate it, he may only be guilty of a riot; but if he will presume to pull

Judge near seven years, I adhere to the performed without the imputation.—*Sept.*
sentiment, hoping that the duty may be 1856.

down all brothels, he has taken the Queen's right out of her hand, and has committed high treason by compassing her death, and levying war against her in her realm.—Of brothels, so of meeting houses." Let us hope that the Lord Chief Justice was ashamed to feel himself obliged to talk such nonsense, although backed by the other Judges; and that it was through his merciful interference that the prisoners, though found guilty, and sentenced to a cruel death, were reprieved and pardoned.^p

When the change of government took place in the autumn of the same year, Harcourt wishing to continue in the office of Attorney-General, and Lord Cowper declining to remain Chancellor, the Great Seal was offered to Lord Chief Justice Parker, and even pressed upon him. He is much lauded for his virtuous self-denial, and it is sarcastically observed that "he is the first lawyer who ever refused an absolute offer of the Seals from a conscientious difference of opinion."^q I am very sorry to appear to detract from his merit; but, principle not considered, he would have acted very foolishly to have given up his place of Chief Justice, which he held for life, in exchange for an office the tenure of which would have been very insecure; for, till after Guiscard's desperate attempt, Harley expected almost daily to be turned out;—and, at any rate, such a sudden change to the High Church party by the most distinguished manager of the late impeachment, would have reasonably led to the conclusion that he would give his first piece of preferment to the "Doctor," and would have covered him with such infamy that he must have been treated contumeliously by his colleagues, and kicked out by them whenever they wished to get rid of him. The wonder, therefore, is that the offer should have been made—not that it was rejected.

Parker was out of parliament for the rest of this reign, and he devoted himself exclusively to the discharge of ^{A.D. 1710—}his judicial duties. In prosecutions for libels during ^{1714.} the Tory government, he was supposed to bear very hard

^p 15 St. Tr. 522—703. No other Crown case of any importance came before him while Chief Justice; and his only opinion as a Common Law Judge in a civil case which attracted much notice was on the question whether the word "purchase," in 11 & 12 W. 3, c. 4, against Papists acquiring property, was confined to the acquisition of property by "purchase" in common parlance, or meant every acquisition of property ex-

cept by "descent." Being called in to assist Lord Chancellor Harcourt, he was for giving the word its largest sense, although occurring in a penal statute, that he might effectuate the intention of the legislature in putting down Popery. The Chancellor decided the other way; but his decree was reversed by the House of Lords.—*Roper v. Radcliffe*, 9 Mod. 167; 1 Br. P. C. 450.

^q Parkes's "Court of Chancery," 291.

upon those who attacked the Whigs. He had caused some alarm to Swift, the most virulent of libellers^r—as we learn from the following anecdote related in the “Journal to Stella:” “I was to-day at a trial between Lord Lansdowne and Lord Carteret, two friends of mine. It was in the Queen’s Bench for about 6000*l.* a year. I sat under Chief Justice Parker, and his pen falling down I reached it up. He made me a low bow; and I was going to whisper him that ‘I had done good for evil, for he would have taken mine from me.’ I told it Lord Treasurer and Bolingbroke. Parker would not have known me if several Lords on the bench and in the court, bowing, had not turned every body’s eyes and set them a whispering. I owe the dog a spite, and will pay him in two months at farthest, if I can.”^a

This threat Swift afterwards executed, by inserting the following passage in his famous pamphlet, entitled “The Public Spirit of the Whigs,” denouncing the Chief Justice as a favourer of publications which attacked the Tories, while he punished High Church publications with relentless severity, and as having become a keen supporter of the Protestant succession after having been a rank Jacobite:—“I look upon it as a great evil to see seditious books dispersed among us, apparently striking at the Queen and her Administration, at the constitution in church and state, and at all religion; but whether this remissness may be imputed to Whitehall or to Westminster Hall, is other men’s business to inquire. As for the poor nonjuring clergyman who was trusted with committing to the press a late book on the subject of hereditary right, by a strain of *summum jus*, he is now, as I am told, with half a score children, starving and rotting among thieves and pickpockets in the common room of a stinking jail. However, I would fain ask one single person in the world a question—‘Why he has so often drank the abdicated King’s health upon his knees?’ But the transition is natural and frequent, and I shall not trouble him for an answer.” If the taunt against Parker as against Somers had been that he was “sprung from the dregs of the people,” however ungenerous it might have been, there would have been some colour for it; but the reckless invention of a falsehood seems necessary to give full

^r Morpew, the publisher of Swift’s “Conduct of the Allies,” had been summoned before the Chief Justice, threatened with severe punishment if he persisted in concealing the

author’s name, and bound over to appear next term to plead to an indictment for a seditious libel.

^a 28th October, 1712.

gratification to Swift's malignity. Well might the renegade Whig say that "transitions were natural, and frequent."—The Chief Justice wisely took no notice of this libel; and the Scotch nobility would have acted a more dignified part if they had imitated his example, instead of whiningly going in a body to Queen Anne and insisting that a reward should be offered for the discovery of the author, because it likewise attacked them, saying that "their whole revenues before the union would have ill maintained a Welsh justice of peace, and that some of them had since gathered in England more money than ever any Scotchman who had not travelled could form an idea of."[†]

De Foe, who had celebrated Parker's elevation to the bench, had recently been gained over by the personal civilities of Queen Anne; and, being brought before him on a charge of libel, the Chief Justice is said to have expressed satisfaction "that so notorious a libeller was about to be punished for going against his old friends and principles." This story is highly improbable; but the Chief Justice certainly somehow had offended the Journalist very deeply, for he was now violently vituperated in the "Review," a periodical in which Daniel for a time assailed the Whigs under pretence of going beyond them in liberality.

The Chief Justice was sworn of the Privy Council at the time when he was raised to the bench, and he was summoned to give his advice upon the Recorder's report of capital convictions at the Old Bailey. As he was not a member of the Cabinet, and he still avowedly adhered to the party opposed to the Government, we should have thought this the only occasion when he would have attended on being summoned; but I am perplexed by meeting in Swift's "Journal to Stella," under date April 7, 1713, with the following entry: "At a council held to-night the Lord Chief Justice Parker, a Whig, spoke against the peace; so did Cholmondeley, another Whig, who is treasurer of the household." I can only conjecture that a general meeting of the Privy Council had been held for formal business, when these two individuals, without being asked, took this opportunity to express their opinion on the great question of peace and war in the Queen's hearing."

[†] This seems to have been the notion of the Earl of Salisbury, who, to cure the extravagance of James I., caused to be exposed upon a table, in silver, for the King's inspection, a sum of money for which his Majesty

had given a written order on the Exchequer.

[‡] Cholmondeley for this impertinence was immediately turned out of the household.—*Journ.* April 8, 1713. Parker luckily held "quamdiu se bene gesserit."

The last instance I have discovered of the interference of the Chief Justice of England as a magistrate of police was by Parker in Queen Anne's time,—to counteract the plot that was going on shortly before her death to bring in her brother to succeed her. An information being laid before him as Chief Justice respecting the unlawful enlistment of soldiers, he granted a warrant, under which one Kelly was arrested a few days after at Deal, with five men he had enlisted, bearing a pass from the Earl of Middleton, Secretary of State to James III.,—whereupon Bolingbroke was reluctantly obliged to issue a proclamation offering a reward for the apprehension of the Pretender if he should land in England.*

Under the Regency Bill the Chief Justice of the King's Bench had important functions to perform on a demise of the Crown, being one of the seven official Lords Justices who, together with those personally appointed by the successor, were to carry on the government till his arrival. Upon the summons of all Privy Councillors to attend, after the Queen with a dying hand had delivered the Treasurer's staff to the Duke of Shrewsbury, Chief Justice Parker immediately repaired to Kensington, and joined in the measures which were taken to secure the succession of the House of Hanover.

When George I. landed at Greenwich, Chief Justice Parker was on the beach along with the other Lords Justices, and met with a very flattering reception from the new Sovereign, who had been told that he was a good Whig, and a warm friend to the Revolution settlement. He, who had started as an attorney's clerk in a small provincial town, and had got on by a vigorous intellect joined with stupendous application to business, now showed in a marvellous manner the versatility of his powers, by becoming a courtier and making himself personally agreeable to George I. and the German attendants who accompanied him, male and female. Whether, like Sir Robert Walpole, he conversed with the King in bad Latin, or how he made himself intelligible to the others, I have not been able to ascertain, but he certainly was early a great favourite with them, and they wished to give him the Great Seal,—probably from an expectation that a new Chancellor entirely of their own making would pass whatever grants to them they chose to ask.

There were intrigues for this purpose on foot so early as the spring of 1715, although I cannot say that Parker was him-

* 6 Parl. Hist. 1368.

self privy to them, and they gave rise to reports of Lord Cowper's speedy resignation. Subsequently an in-^{March 10,} effectual attempt was made to induce him to exchange ^{1716.} his office for that of President of the Council—from a pretended regard for his health, but from a real dislike of a Chancellor who had objected to improper grants of honours and money. Meanwhile Parker was raised to the peerage by the title of Baron Parker, of Macclesfield, in the county of Chester; and, the better to enable him to support this dignity, a pension for life was bestowed upon him of 1200*l.* a year.

Being now legitimately restored to politics, he was very diligent in his attendance in the House of Lords, and took an active part in debate, although still we have to lament that we have hardly any remains of his oratory. His maiden speech as a Peer is said to have been *against* the Septennial Bill, which surprises us much, as the measure was supported by almost all Whigs and courtiers; but he had either been influenced by the grave objections to it on constitutional grounds, or had thought it convenient to show that he could make himself formidable. He called up Lord Cowper, from whose defence (as reported) it might be inferred that the Chief Justice had made a violent attack upon the King's Ministers, and had even reflected upon the severity exercised towards those engaged in the late rebellion.⁷

But Lord Parker warmly supported the Government, when, after long delays, the Earl of Oxford's impeachment ^{June 24,} at last came to a hearing. Lord Harcourt having ^{1717.} moved, on the dexterous suggestion of Walpole, that evidence should not be received respecting "high crimes and misdemeanors" till the articles charging "high treason" were disposed of, our law Lord answered, "that in all courts of judicature it is the usual and constant method to go through all the evidence before judgment be given upon any part of the accusation: that though the House of Peers be the supreme court of the kingdom, yet it has ever a regard to the rules of equity, and even to the forms observed in the courts below—which rules and forms required that the trial should be conducted as the Commons proposed—and thus only could the conduct of the prisoner be satisfactorily investigated and justice done between him and the country." He concluded with the following unfeeling sentiment—little foreseeing that he himself was one day to stand disgracefully at the same bar as a convicted culprit: "As for the noble Earl appearing at the bar in the

abject condition of a traitor, it is but a piece of formality which does him no manner of hurt, and to which persons of the highest rank have ever submitted to clear their innocence."^z But the opinion had become very general that the prosecution was oppressive, and many of Oxford's former opponents supported the motion which put an end to it.^a

Nothing ingratiated Lord Parker with the King so much as A.D. 1717— the opinion which he himself gave, and in which he 1718. prevailed on a great majority of the Judges to concur, respecting the power of the reigning Sovereign over his grandchildren. There was now such open enmity between his Majesty and the Prince of Wales that Lord Carteret declared prophetically, "This family will quarrel from generation to generation."^b The Prince's numerous children were all in England except Frederick, the eldest, left behind in Hanover; and the King, to annoy his son, asserted the power by his prerogative to direct their education, and prospectively to dispose of them in marriage. The Prince *contra* maintained that, by the law of nature and by the law of the land, this power belonged exclusively to himself as their father and the heir apparent to the Crown. Lord Chancellor Cowper would not take upon himself to decide the question, and wrote a letter to Lord Parker signifying the King's pleasure that all the Judges should meet and give him their opinion, "Whether the education and the care of the persons of his Majesty's grandchildren, now in England, and of Prince Frederick, eldest son of his Royal Highness the Prince of Wales, when his Majesty shall think fit to cause him to come into England, and the ordering the place of their abode, and appointing their governors, governesses, and other instructors, attendants, and servants, and the care and approbation of their marriages, when grown up, do belong of right to his Majesty as King of this realm?" The truth was, that as no King of England had lived to have grandchildren in the male line since the time of Edward III., when the Black Prince was allowed to have the care of his son Richard,—and as no institutional writer had discussed the subject, the Judges had no materials for giving a judicial opinion upon the first branch of the question; and with respect to the second, although the

^z 7 Parl. Hist. 486.

^a Ante, vol. v., p. 312.

^b "There have been four Princes of Wales since the death of Anne, and all the four have gone into bitter opposition."—*Lord Mahon*, i. 314. The scandalous St. Simon thus

accounts for the dislike of the first to the second George: "Jamais le Père n'avoit pu souffrir ee fils, parcequ'il ne le croyait point à lui."—*Mem.* xxviii. 197. But the prevailing opinion now is, that Sophia of Zell was ever a true wife.

reigning Sovereign had exercised a control over the marriages of the royal family, and the contracting of a marriage with any of the blood royal without his consent was considered a contempt of the Crown, such marriages were undoubtedly valid in law, and the only mode of punishing those concerned in them was by a prosecution in the Star Chamber,—so that when this Court was abolished, the alleged prerogative was without any means of vindication or redress. However, Lord Parker, having assembled all the Judges at his chambers in Serjeants' Inn, read the Lord Chancellor's letter to them, and intimated his own opinion strongly to be that the whole of the question was to be answered absolutely in the affirmative. He was able to bring forward nothing in support of the grandfather's right to have the care of his grandchildren, except that "the law of God and law of nature are *rather* with the grandfather." But he showed by various instances, beginning with the match made by Henry III. between his sister Joan, without asking her consent, and Alexander King of Scots, that the Kings of England had assumed to themselves, and had generally been allowed to exercise, the right of disposing in marriage of those who, being of the blood royal, were in the succession to the throne. He prevailed upon nine of the Judges to agree with him; but two, Baron Price, and Baron Eyre, the Prince of Wales's Chancellor, differed—returning for answer, that though the approbation of the marriages of the royal family belonged to the King, there was no instance where a marriage had been treated by the King for any of the royal family without the consent of the father, and that the case of the Prince of Wales was no exception to the general rule by which the father has a right to the custody and education of his children. George I. was exceedingly delighted with having so large a majority of the Judges in his favour, and he ordered their opinions to be recorded in the Books of the Privy Council, as a warrant for the authority which he was resolved to maintain. He attributed this triumph over his son mainly to the exertions of Lord Chief Justice Parker, which may possibly account for the transfer of the Great Seal which so speedily followed.^c

^c 15 St. Tr. 1195. Things remained on this footing till the year 1772, when the Royal Marriage Act passed, 12 Geo. 3, c. 11. Some legislation on the subject was probably

necessary; but the provisions of that Act have produced serious evils, and will require modification.

CHAPTER CXXII.

CONCLUSION OF THE LIFE OF LORD MACCLESFIELD.

EARL COWPER, from whatever cause, having, on the 18th of April, 1718, resigned his office, the Great Seal was, ^{A.D. 1718.} for a short time, put into commission; the Commissioners being Mr. Justice Tracy, Mr. Justice Pratt, and Mr. Baron Montague. The general expectation was that the "good old Whig," Sir Joseph Jekyll, who was Master of the Rolls, with great reputation as an Equity Judge, and enjoying his faculties unimpaired, though well stricken in years, would have been appointed to succeed him,—the then Attorney and Solicitor-General not being very eminent in their profession.^d But on the 12th of May, to the great surprise of Westminster Hall and of the public, it was announced that Lord Parker, from being Lord Chief Justice of England, had become Lord High Chancellor.* Lord Holt, Lord Mansfield, and Lord Ellenborough refused the offer which he accepted, and it would have been well for him if he had adopted the same course, as thereby he would have escaped the temptations and perils which proved his ruin. But I cannot condemn the choice which he made. He felt that he could creditably perform the duties of his new office, and he might think that he was likely to do more in it for his own reputation and for the public advantage than if he had remained a Common Law Judge. He made an excellent bargain for himself and his family—according to which, beyond the 2000*l.* usually granted with the Great Seal for equipment, and 4000*l.* a year salary, and beyond other profits and presents, he actually received the sum of 12,000*l.* in ready money from the King,—and a tellership of the Exchequer was bestowed upon his son. Three days after his appointment he led a grand procession from the Inner Temple to Westminster, and he was installed in the Court of Chancery with the usual solemnities. Afterwards,^f probably

^d Lechmere, the Attorney, accepted a peage, and was soon forgotten. Thompson, the Solicitor, was dismissed for a false charge

of corruption against his colleague.

^e Cr. Off. Min. 140 b.

^f 15th Nov. 1721.

in performance of a promise made to him, he was created Earl of Macclesfield; and it will be convenient that henceforth I should give him his new title, by which, as Chancellor, he is historically known.

Trinity College was now eager to claim the dispenser of church patronage as an *alumnus*, and the following address was voted to him:—

“ My Lord,

“ As the great and eminent virtues and abilities whereby you have been long distinguished, and by which you have filled and adorned so many and so important stations, have been lately called to a further advance, and to display themselves in a yet more exalted sphere, so that we now behold your Lordship invested with supreme dignity, and entering upon the custody and conduct of the most arduous as well as the most illustrious province of the Law; and as we have this peculiar happiness and glory belonging to us, that, together with those great ornaments of the profession, the Lord Chief Justice Cook and the Lord Chancellor Bacon, *your Lordship's name is recorded among us,*^g and that so noble a triumvirate were all members of our Society; we, therefore, the Master and Senior Fellows of Trinity Coll., esteeming it a duty we owe not only to y^r Lordship, but to our Society, not to be silent upon so great an occasion, have appointed two of our Fellows, D^r. Baker and D^r. Rudd, personally to wait upon y^r Lordship in our names and behalf; being with all veneration and respect, may it please y^r Lordship,

“ Y^r Lordship's most devoted

“ Humble Servants,”

&c. &c. &c.^h

Notwithstanding his high reputation, the old Equity practitioners grumbled at his appointment, because he had not been trained to draw bills and answers, and had never regularly practised at their bar. Although occasionally he had been called in to assist them in cases of importance, his regular routine had been to ride the Midland Circuit, and to sit first in the Court of Queen's Bench, and then in the Court of

^g This language seems rather to corroborate the conjecture that he had never resided at College as an undergraduate.

^h One of the deputation was the Rev. Dr. Edward Rudd, and in his MS. Diary is to be found the following curious account of their reception:—“ 1718, May 27. D^r Baker & I were sent by y^e M^r & Sen^{rs} to wait upon my L^d Parker with a Letter & a complem^t from y^e Coll: upon his beg^r prefer^d to be L^d High

Chan: because He was formerly of or Coll: we deliver'd y^e letter on y^e 29 & w^{re} invited to dine with His L^dsp on June 2d. beg^r Whitson-Monday, & bring with us such of or Fellows as we c^d meet with in Town. Accordingly we went ab^t a doz: of us to Kensington, w^{re} we w^{re} entertain'd very nobly & very kindly by His L^dsp till ab^t 7 in y^e Eveng. I return'd to Coll: on y^e 4th.”

Common Pleas, till he was made a Judge. Never having been Attorney or Solicitor-General, he had never, even for a single term, transferred himself to the Court of Chancery. The consequence was, that although he was regarded generally as a "dungeon of law," yet, by those who knew little beyond the technical rules of Chancery pleading, it was thought he never could be made to understand them, and, therefore, that he was quite unfit for his office.

He turned out to be one of the greatest Equity Judges who ever sat in the Court of Chancery; and not only is he entitled to the equivocal compliment that none of his judgments were reversed, but his authority upon all points, whether of a practical or abstruse nature, is now as high as that of Nottingham, Somers, or Hardwicke.

I am sorry I cannot praise him for any correction of abuses in his Court. Well would it have been not only for his fame but for his fortune had he begun with making regulations against the sale of offices, and for securing the money of the suitors. Alas! he was under the dominion of a vice which was an effectual bar to all such improvements—*AVARICE*. This never seduced him to receive a bribe, but drove him as long as he could consider himself protected by existing usages, however objectionable, to regard the accumulation of wealth as the great object of his existence. Hence he not only proposed no Bill in parliament and issued no General Order for remedying the evils which must forcibly have struck him when he first examined the Masters' offices, and saw how the interests of the suitors were sacrificed by the prevailing system; but, for his own benefit, he carried venality in the disposal of offices to a pitch before unknown. When he must have been aware that the South Sea madness had taken possession of the functionaries acting under his control, to the peril of those who were entitled to his protection, he would not interfere,—from the dread of touching his own emoluments,—till, in the midst of his sordid infatuation, he was suddenly precipitated from power, and (what he probably felt as a greater misfortune) he was stripped of a large portion of his ill-gotten gains.

There were loud complaints of his discourtesy to some counsel, and his partiality to others, particularly to Philip Yorke, afterwards Earl of Hardwicke, which gave deep offence to the bar, and hastened his own fall.

In deciding on his tribunal between litigating parties, how-

ever, he displayed in every other respect the high qualities of a consummate magistrate. We are not told, and it would be idle to conjecture, the course of study he pursued for making himself master of Equity, or the method he adopted in thoroughly comprehending and preparing satisfactorily to decide the important cases which came before him. His leading judgments must have been the result of much labour and anxiety applied to each of them, as well as of profound learning and an extraordinary share of logical acuteness. They are chiefly to be found in the first and second volumes of Peere Williams, who is an accurate and skilful reporter, but unfortunately is too succinct in stating the *rationes decidendi*, and does not do justice to the methodical arrangement and nervous language for which Lord Macclesfield was celebrated.

I shall select a few of his decisions which I may hope to make intelligible to non-professional readers. An ancestor of the late Sir Francis Burdett devised his estates "in case he should leave no son at the time of his death" to his cousin, Francis Hopegood, and died leaving his wife pregnant without his knowledge [*privement ensient*]. She gave birth to a son—and the question was, which should have the estates?—the devisee contending that the testator had *left no son at the time of his death*, as it was then doubtful whether any child would be born of the widow and what the sex might be, so that the estates vested in the devisee, and could not be divested by the son's subsequent birth. But Lord Macclesfield, after consulting the Judges of the Court of Common Pleas, held that the infant, Sir Robert Burdett, though not actually born at the death of his father, yet in the eye of the law had existence in his mother's womb [*ventre sa mere*],—as if a pregnant woman takes poison to kill her child, and the child being born alive dies of the poison, she is guilty of murder; an unborn child therefore may take as heir or devisee, and here it could not be imagined that the testator ever intended to disinherit his own son:¹ So the estates remained with the Burdetts.—There being a bequest, however, by the Duke of Devonshire, of a sum of money "to all the natural children of his son by Mrs. Heneage," and the question arising whether natural children born after the will should share, Lord Macclesfield held that even a child of which Mrs. Heneage was pregnant at the time of the will was excluded, for a bastard can only take

¹ *Sir Robert Burdett v. Hopegood*, 1 P. W. 486.

by its name of reputation, which it cannot acquire till after its birth.^k

An act was passed in the reign of Queen Anne,^m “to oblige the Jews to maintain and provide for their Protestant *children*,” whereby it was enacted, that “if any Jewish parent, in order to compel his Protestant *child* to change his or her religion, shall *refuse* to allow such Protestant *child* fitting maintenance suitable to the degree or ability of the parent, and to the age and education of such *child*, it shall be lawful to the Lord Chancellor to make such order for the maintenance of such Protestant *child* as he shall think fit.” A Jew had a daughter, Jessica, who turned Protestant. The rich father left the whole of his great wealth to charity. The daughter having reached the mature age of forty-four years, and being married to a Christian, petitioned for a maintenance under this statute. There were great difficulties in her way, for, supposing her to be still a *child*, it was objected, how could her father be said to have *refused* to allow her a maintenance, when she did not allege that she had ever asked him to do so? *Lord Chancellor*: “I strongly incline to think this case within the act. The petitioner is the Protestant child of a Jewish parent, though the parent be dead. Suppose the child of a Jew turns Protestant, and the Jew by will gives his estate to trustees upon a secret trust that if the child turn Jew the child shall have the estate, and not otherwise: as this would be clearly within the mischief, so every one must wish it to be within the meaning of the act. It is not said that the complaint shall be against the *father*, nor that the order shall be made upon or against the *father*, so that this case fits every word made use of by the legislature. Suppose, a petition being exhibited, the Jew had died pending the suit, having given all away from his Protestant child for having become Protestant, doubtless the order might be made against the *executor*. Then, as to the *refusal* of the parent, it is not to be intended that the Jew must make an actual refusal in words, for by that construction the statute might easily be evaded. If the Jew does by his will dispose of all his estate from his child, this is in law a *refusal*; and, unless some other reason appear, it shall be understood, *because the child was a Protestant*. The obligations of nature plead so strongly on behalf of a child, that when

^k *Melham v. Duke of Devon*, 1 P. W. 529. in *Arnold v. Preston*, 18 Ves. 288.
 This decision was followed by Sir W. Grant, ^m 1 Anne, c. 30.
 M. R., in *Earle v. Wilson*, 17 Ves. 528; and

such a case happens, some great provocation must be supposed to have occasioned it, and, in the absence of any other, the Court will consider the true reason to be this difference in religion.”^a

Lord Macclesfield, reversing the decree of Sir Joseph Jekyll, decided the famous case of *Forth v. Chapman*, holding, that though a devise over of real property on the first devisee “dying without leaving issue” is too remote, the construction being, “if there should be a failure of descendants at any time, however distant,” the same words, when applied to personal property, shall be construed to mean, “if the first taker die leaving no issue at the time of his death,” and therefore the bequest over is good.^o

A general pardon coming out, according to the fashion of that age, on account of some auspicious event in the royal family, with an exception of “all contempts and offences for which any prosecution was then pending, and which had been prosecuted at the charge of any private person,” the question arose, whether gentlemen committed to the Fleet for running away with wards of Chancery were entitled to the benefit of it? Lord Macclesfield liberated them all, saying that their contempt, or offence, ended only in the punishment of the party offending, and not in relieving or redressing the prosecutor,—as the marriages, though irregularly contracted, could not be dissolved, and the wards could not be restored to their former condition.^p

Lord Macclesfield established an important rule in favour of the female sex—that, though the wife’s paraphernalia [jewels and personal ornaments] are subject to the debts of the husband, she shall be entitled to her paraphernalia where those debts are a charge on the real estate of the husband. *Lord Chancellor*: “Paraphernalia are not devisable by the husband from the wife, any more than heir-looms from the heir. Though the creditor may subject a specific legacy to his debt,

^a *Vincent v. Fernandez*, 1 P. W. 524. See other orders made under this statute for the maintenance of the children of Jews, by Lord Macclesfield and Lord King, 1 Sand. Orders, 457, 524.

^o 1 P. W. 664. Lord Kenyon, in *Porter v. Bradley*, doubted the soundness of the rule laid down by Lord Macclesfield (3 T. R. 143); but Lord Eldon, in *Crooke v. De Vandes*, said that Lord Kenyon’s dictum in *Porter v. Bradley* went to shake settled rules to their

very foundation; and Lord Macclesfield’s distinction must be supported, 9 Ves. 203. This distinction will hereafter be rendered immaterial by the “Wills Act,” which enacts that “dying without issue” shall always mean at the death of the first taker, so as to give validity to the devise over; 7 W. 4, and 1 Vic. c. 26, s. 29.

^p *Phipps*, son of Sir Constantine Phipps, v. *Earl of Anglesea*, 1 P. W. 696.

yet the legatee shall, in equity, stand in the place of the bond creditor or mortgagee, and the legacy is relieved. If the legatee shall have this favour in equity, much more shall the wife be privileged with respect to her *paraphernalia*, which are preferred to legacies. Wherever the creditors are sure of being paid, the *paraphernalia* shall be retained by the wife."⁹

In the case of *Mr. Justice Eyre v. the Countess of Shaftesbury*, in which Lord Macclesfield held, that where the guardianship of children is left to several persons, without saying "and the survivor of them," the survivor shall be guardian,—he entered most elaborately into the whole law of guardian and ward, and the jurisdiction of the Chancellor over infants even in the lifetime of their parents, expressing opinions which have materially guided the decisions of the court on this important subject down to our own time.^r

Commercial law in England was still in its infancy, and the contract of insurance was so little understood that a court of law would have allowed a merchant to recover on a policy, although at the time when he effected it he had intelligence, which he concealed from the insurers, that the ship had encountered a storm, and was probably lost. *Lord Chancellor*: "The merchant has not been guilty of any express misrepresentation, but he has not dealt fairly in this case. He ought to have disclosed to the insurers the intelligence he had of the ship being in danger; he feared that she was lost, though he had no certain account of it. The concealment is a fraud." *Decree for the policy to be delivered up, with costs.*^s

Lord Macclesfield laid down doctrine with regard to Ireland that would now raise a rebellion in that country; saying that he would grant a sequestration to be executed there, "as the courts of justice here have a superintendent power over those in Ireland, and a writ of error lies in the Court of King's Bench in England to reverse a judgment of the Court of King's Bench in Ireland."^t

When *Dr. Martin and Lady Arabella Howard, his wife, v. Nutkin*, came before Lord Macclesfield, he must have been in a great

⁹ *Tipping v. Tipping*, 1 P. W. 729; *Puckering v. Johnson*, ib. 730.

^r 2 P. W. 102.

^s *De Costa v. Scandret*, 2 P. W. 169.

^t *Fryer v. Bernard*, 2 P. W. 261. I never could understand how this writ of error could have originated; for if Ireland were a colony, or a conquered country, the appeal would

have been not to the King's Bench in England, but to the King in council. Mollyneux accounts for it by an Irish act of parliament not extant (p. 111): it was abolished by 23 Geo. 3, c. 28. Lord Coke says, that on a judgment given at Calais a writ of error lay returnable into the Court of King's Bench in England. (4 Inst. 281.)

agony, for this was the last day he sat in court, and he well knew the disgrace which was impending over him. Yet he had self-possession to examine the case deliberately, and to dispose of it so as to make it a valuable precedent, which has been frequently quoted and acted upon. The plaintiffs lived at Hammersmith, very near the church, and were much disquieted by the ringing of a peal of bells at five o'clock every morning. They were about to remove to a distance, when it was agreed between them and the parish, at a vestry meeting, that, in consideration of their erecting a new cupola, clock, and bell, the five o'clock peal should not be rung during their lives or the life of the survivor. The new cupola, clock, and bell were erected, and for two years the agreement was observed by the parish; but at the end of that time, there being a revolution in Hammersmith, an order was made by the vestry that a peal should be rung every morning at five o'clock, according to ancient usage, and the churchwardens executed the order, the peal being rendered louder by the present of the plaintiffs. The Lord Chancellor granted an injunction against the ringing of any bells at that hour, on the ground that there was a meritorious consideration executed on the plaintiffs' side; that the churchwardens were a corporation, and might sell the bells or silence them; that the ringing of a peal of bells at five in the morning did not seem to be of any use to others, though of very ill consequence to the Doctor and Lady Arabella; and that the agreement which was beneficial to the parish, was binding on the parishioners and their successors.^u

I ought to mention here, that while Lord Macclesfield was Chancellor the long protracted controversy arose between the celebrated Dr. Bentley and the fellows of his college, and that an application was made on their behalf by Dr. Colbatch for the interposition of a royal visitor to be appointed under the Great Seal. Of this affair we have the following amusing account by Bishop Monk, in his "Life of Bentley," showing that such applications to the "Keeper of the King's conscience," though judicial, were then dealt with rather on the principles of policy than of justice:—

"With the Lord Chancellor, Colbatch had several personal interviews, and, at his desire, laid before him a detailed statement of the College grievances, and heard from him with great delight that it was

intended to advise the King to grant the full visitatorial power to the Bishop of Ely, and that the patent for this purpose would pass the Great Seal. At other times his Lordship intimated his opinion that the Bishop was already authorised to execute those functions. His chaplain, Zachary Pearce, who had daily opportunities of conversing with the Chancellor, encouraged Dr. Colbatch with the same constantly repeated hopes of his taking some decisive step in this business. But Lord Macclesfield was a politician, and an adept in the subtlest arts of political management. It appears to have been the feeling of the Ministry that Bentley, being a professed and active partisan of the Whigs, must not be abandoned in the hour of his necessity: at the same time it was seen that, if an absolute refusal were given to those who only prayed for common justice, the odium of the Master's proceedings would be transferred from himself to the Government. The Lord Chancellor continued for at least three years to amuse Dr. Colbatch with expectations that the prayer of the petitioners was immediately to be complied with. It may appear surprising that a man of sense, who knew the world, should have suffered himself to be so long deceived; but the candour and frankness of the language held by the great man, and the confidence reposed in his designs by Pearce, his chaplain, will account for the credulity of the Doctor and his confederates."*

We must for the present take leave of Lord Macclesfield in the character of a judge, and view him acting avowedly as a statesman. Though a member of the cabinet, and a great personal favourite of the King, I do not think that he ever possessed much political influence. Stanhope and Sunderland seem to have brought forward the "Dissenters' Relief Bill," and the "Peerage Bill," without consulting him. Walpole, entertaining a little jealousy of his personal interest with the King and the Hanoverian ministers, reposed no confidence in him, and when trouble came made no effort to save him. Yet the Chancellor appeared very secure in his place; and being in no danger from ministerial crisis or formidable rival, had it not been for the storm which unexpectedly arose from the abuses of the Court of Chancery, his Chancellorship would probably have been one of the longest, as well as most distinguished, in our annals.

He took his seat on the woolsack at the first meeting of parliament after his appointment, when he had to read the King's speech to the two Houses, his Majesty having as yet made no progress in acquiring the language of his new subjects.⁷ Lord

* Vol. ii. 79, 80.

⁷ I do not find any statement as to the manner in which the ceremony was con-

ducted when the King had to deliver an answer to the address of the House of Lords. It must have appeared rather ridiculous if

Cowper soon went into smart opposition, and Lord Macclesfield is said to have supported the measures of the Government with great vigour; but still the published Parliamentary Debates are so defective, that we know little of his style of eloquence. The London Magazine and the Gentleman's Magazine were shortly after established,^z in which, under feigned names, we have the speeches of the most eminent debaters on both sides by Samuel Johnson and other distinguished men, who began their career by this exercise. Till then we are confined to the meagre notices of speeches to be found in the "Historical Register," "Boyer's Political State of Europe," and "Timberland's History and Proceedings of the House of Lords."

Macclesfield appears to have done himself much credit by defending the "Quakers' Affirmation Bill" against the Bishop of Rochester, who endeavoured to prove that none but Christians should be admitted as witnesses, and that Quakers are not Christians.^a When Atterbury's case came on, he successfully counteracted a scheme, supported by Lord Cowper, that to create a seeming grievance the Bishop should be forbidden, under a standing order of the House of Lords, to make any defence against the Bill of Pains and Penalties in the House of Commons;^b but soon after, I am afraid, he behaved ungenerously and disingenuously to his defeated predecessor. A committee of the House of Lords, appointed to inquire into the "Plot," presented a report insinuating that Lord Cowper was implicated in it, and he, in vindicating himself, had altogether denied its existence. A resolution being now carried, that the Lord Chancellor, in the name of the House, should return thanks to the Committee for their services, Macclesfield pretty plainly repeated the insinuation of Lord Cowper's complicity: said he, "Your application in going through so many papers of affected and studied obscurity, your candour and exactness in examining the persons concerned, and in representing what they said [this was what Lord Cowper had most bitterly complained of^c], the accuracy and judgment of your remarks, *though subject to the cavils of those who are loath to have the truth found out*, must give a sensible pleasure to every Lord who has heard your report read, by enabling him to form a satisfactory judgment concerning this abominable work of darkness which the actors have endeavoured to surround with impenetrable obscurity."

the Chancellor first read the address and then the answer.—See 8 Parl. Hist. 502.

^z In 1731 and 1732.

^a 7 Parl. Hist. 942.

^b 8 Parl. Hist. 210. ^c Ante, vol. v., p. 334.

The extreme enmity now subsisting between these two great men, is very strikingly proved by the advantage taken of the Lord Chancellor's detention at St. James's when he ought to have been present in the House of Lords, and the attempt to fix a stigma upon him for an unintentional irregularity.^d After a diligent search, I really can discover nothing more respecting Macclesfield's proceedings in the House of Lords for the seven years which elapsed between his being appointed Chancellor and his impeachment.

During this period, as often as the King went abroad (which he did several months every year), the Chancellor was appointed a Lord Justice, and was at the head of those who acted in the regency. The Prince had been at first appointed sole guardian of the realm, no precedent being found for associating the heir apparent with others in a commission of regency; but he was now excluded from the appearance as well as the reality of power.

The only political measure in which I find the Chancellor personally mixed up, arose out of these unhappy disputes between the father and the son. The resentment of the King was at last carried so far that, out of spite to his successor, he proposed, under pretence of consulting the good of the nation, that hereafter no one should be allowed to be Sovereign of this country without renouncing any foreign dominions to which he might be entitled—not held in right of the crown of England. The proposal seems to me very fair and salutary, and agreeable to well-established constitutional as well as international law; but we are told that the opinion of Lord Macclesfield being demanded in a conference on the subject, “the answer given by the Chancellor fully put a stop to the measure as inexpedient and impracticable, and liable to be followed by dangerous consequences.”^e Had it been adopted, it would have saved England much perplexity and expense, and some discredit, in the two following reigns. Happily, there is little danger of the recurrence of such a state of things; but for this reason, perhaps, now is the time to pass the law which was projected by the founder of the Hanoverian dynasty in England.

When parliament met in the month of November, 1724, Lord Macclesfield seemed at the height of worldly success,

^d Ante, vol. v., p. 333. 7 Parl. Hist. 960. feeling among law Lords at the present day.
I am glad to think that there is a better ^e 2 Cor. Sir R. W. 13.

with the prospect of a long continuance of his greatness. From the union of genius for legal distinctions and unwearied industry, he had acquired with the public the highest possible reputation as a Judge, and, except by a few acquainted with the mysteries of the Court of Chancery, he was supposed to be immaculate.^f His levees were crowded by laity and clergy. At his newly-acquired country-seat, Shirburn Castle, he exercised a splendid hospitality; and he had been appointed Lord Lieutenant not only of Oxfordshire, in which it stood, but likewise of the adjoining county of Warwick, in which also he had acquired large possessions.

Walpole, now the undisputed Prime Minister, had by his dexterous management in the last session almost annihilated opposition, and, for a time, Whigs, Tories, and Jacobites, without show of resistance, submitted to his rule. The Great Seal, under such a minister, was considered free from all the perils and anxieties which generally surround it. For a time all went well, and another very smooth session was anticipated. The Chancellor might himself have been thought an emblem of the joyous conjuncture which he described when, in the King's name, he pronounced these words—"My Lords and Gentlemen, I am persuaded you share with me in the satisfaction I feel at the prosperous situation of affairs: peace with all powers abroad; at home perfect tranquillity, plenty, and an uninterrupted enjoyment of all civil and religious rights,—are most distinguishing marks of the favour and protection of Divine Providence. And these, with all their happy consequences, will, I doubt not, by the blessing of God upon our joint endeavours, be long continued."^g

Whether Macclesfield had any misgivings or fatal anticipations respecting himself I know not, but his ruin was at hand. In a few days the storm of public indignation arose against him; in a few weeks he was deprived of his office, and in a few months he was a prisoner in the Tower, under sentence to pay a heavy fine by the unanimous judgment of the House

^f No attention is to be paid to the line in Duke Wharton's satire on the lawyers,

"When Parker shall pronounce one right decree,"

as one of the impossibilities on which he says,

"Then shall I cease my charmer to adore,
And think of love and politics no more."

For though he is right with respect to PAGE,

and one or two more, he scatters his arrows at random among political opponents, and there cannot be a doubt that, till the very eve of Parker's disgrace, he was as much respected as any man who had ever sat in the marble chair. The Duke went so far to prove his personal enmity, as actually to sign a protest against the leniency of the sentence pronounced by the Peers on his victim.

^g 8 Parl. Hist. 396.

of Lords,—while the vulgar insulted him with the oft-repeated saying that “Staffordshire had produced the three greatest rogues ever known in England,—*Jack Sheppard, Jonathan Wild, and TOM PARKER!*”

Soon after the bursting of the South Sea Bubble, voices—at first ambiguous—were heard whispering that great frauds had been committed on the suitors in the Court of Chancery, and that their money had been made away with by the Masters to whose custody it had been intrusted till the interminably delayed decree should be pronounced. Rumours became louder and louder, and the Chancellor’s name was proclaimed as having caused or connived at all the abuses which had been discovered. The whole Government was next involved in the obloquy, and the ever-watchful opponents of the Minister were ready to say that such enormities could only be sanctioned under Hanoverian auspices, under Whig rule, and under that section of the Whigs which had now usurped supreme power. Walpole, with his usual shrewdness and decision, immediately appointed a committee of the Privy Council in whom the public would place confidence, to investigate the subject, and to make a report to be laid before parliament. Assisted by three Judges and the Attorney and Solicitor-General, the Privy Councillors selected, after an examination of many witnesses, did make a report which showed that there were serious defalcations in the Masters’ offices, and that there was a grave case of suspicion against the Lord Chancellor. His Lordship thereupon, in the hope of setting himself right with the public, immediately issued a very stringent order, by which every Master was required to send all the trust-monies and securities in his hands to the Bank of England, in a chest under three locks, one to be kept by the Master himself, another by the Six Clerks of the Court of Chancery, and the third by the Governor of the Bank.^h But this was considered rather an acknowledgment of past misconduct; the storm of indignation rose higher against the Lord Chancellor, and loud declarations were made that he could not decently occupy the judgment-seat longer till the charges against himself were investigated. The Ministry becoming afraid of being suspected of a wish to screen a guilty colleague, Lord Macclesfield was compelled to surrender the office of Lord Chancellor. Sir Peter King, Chief Justice of the Court of Common Pleas, was appointed

A.D. 1725.

^h 17th December, 1724. 1 Sanders, 465.

to officiate as Speaker of the House of Lords, and the Great Seal was put into commission. When the Lords Commissioners—Sir Joseph Jekyll, Sir Geoffrey Gilbert, and Sir Robert Raymond—were sworn in before the Council, it was published to the world that the King thus addressed them:—"I have had such experience of your integrity and ability that it is with pleasure I now put the Great Seal into your hands. You are fully informed of the state of the accounts of the Masters in Chancery. I earnestly recommend to you the taking effectual care that entire satisfaction be made to the suitors of the Court, and that they be not exposed to any dangers for the future; and I have such confidence in the faithful discharge of the trust I now repose in you, that I am persuaded you will look narrowly to the behaviour of all the officers under your jurisdiction, and will see that they act with the strictest regard to justice and to the ease of my subjects."ⁱ

Hopes were entertained that this proceeding would tranquillise the public mind, and that it would be left to the Lords Commissioners to grant relief for past wrongs, and to make regulations to guard the property of the suitors for the future. But it was found that the deficit could not be made up without the interference of Parliament, and many were of opinion that exemplary punishment should be inflicted on him who was considered the chief delinquent.

Proceedings were originated in the House of Commons by a petition from the Earl of Oxford and Lord Morpeth, guardians of Elizabeth, Duchess Dowager of Montague, a lunatic, stating that large sums paid to a Master in Chancery on her account had been embezzled, and praying such relief as the House should think fit. A debate arising, it was adjourned in the expectation of obtaining more information before any resolution should be passed. In a few days the following royal message was brought down:—

“GEORGE R.

“His Majesty having reason to apprehend that the suitors of the Court of Chancery were in danger of losing a considerable sum of money from the insufficiency of some of the Masters, thought himself obliged, in justice and compassion to the said suitors, to take the most speedy and proper method the law would allow for inquiring into the state of the Masters’ accounts, and securing their effects for the benefit of the

suitors : and his Majesty having had several Reports laid before him in pursuance of the directions he had given, has ordered the said Reports to be communicated to this House, that this House may have as full and as perfect a view of this important affair as the shortness of the time, and the circumstances and nature of the proceedings, would admit of." ^k

Soon after, Sir George Oxenden,^m having made a long speech upon the enormous abuses which had crept into the Court of Chancery, chiefly occasioned by the magistrate who was at the head of that court and whose duty it consequently was to prevent them, concluded by moving, "That Thomas, Earl of Macclesfield, be impeached of high crimes and misdemeanors." The motion was seconded by Mr. Doddington, who said, "the misconduct of the late Chancellor was of the most dangerous consequence, since most of the estates in England, once in thirty years, pass through the Court of Chancery." Mr. Pulteney and Sir William Wyndham took the opposite side, chiefly on the ground that the Reports laid on the table were no sufficient ground for an impeachment, and that the Commons were bound themselves first to institute an inquiry. But an immediate impeachment was voted by a majority of 273 to 164, and Sir George Oxenden was ordered forthwith to present it at the bar of the House of Lords.

When he had performed this duty, he brought in a bill to indemnify witnesses who should give evidence respecting the sale of offices in the Court of Chancery, and it speedily passed both Houses. Sir Philip Yorke and some of Lord Macclesfield's private friends made a feeble stand for him in the House of Commons, on a motion respecting the framing of the articles of impeachment, but were defeated, being bitterly opposed by Serjeant Pengelly, Sir Clement Wearg, and other Chancery lawyers, who considered that they had been personally ill-used by the late Chancellor.

In the Lords there was a smart debate on the question, whether the trial should take place at the bar of their own House, or in Westminster Hall? and a majority preferring the former, there was a strong protest signed by several Peers, on the ground that all possible publicity and solemnity

^k 8 Parl. Hist. 415.

^m He was said to belong to the Leicester House party; and, certainly, the Prince's friends were eager in the prosecution, from

the recollection that Parker had taken a strong part against the Heir Apparent for the King.

should be given to a proceeding of such national importance. Those who wished to render the prosecution effectual, wisely contrived to make it appear as much as possible a judicial inquiry instead of a theatre for rhetorical display.

The trial excited intense interest, and, although very few could be within hearing, great crowds assembled in Palace Yard daily while it lasted. The charge not being capital, there was no Lord High Steward appointed. Sir Peter King, Lord Chief Justice of the Common Pleas, acted as Speaker of the House of Lords, giving directions to the managers for the Commons and the counsel for the defendant, and he afterwards pronounced sentence. The Peers wore their robes. The defendant was every morning called upon to appear, and had a stool placed for him within the bar.ⁿ

The trial began on the 6th of May, and lasted thirteen days, the House generally sitting from ten in the morning till nine in the evening, with adjournments, during pleasure, for refreshment. The principal managers for the Commons were Sir Clement Wearg, Solicitor-General, Mr. Doddington, Mr. Onslow, and Lord Morpeth. Lord Macclesfield was defended by Serjeant Probyn, Dr. Sayer, and Mr. Strange. He himself took an active part in cross-examining the witnesses, and arguing points of law, and, after his counsel had been fully heard, he addressed the House on the whole of the case.

The twenty-one articles of impeachment, in substance, charged him with selling masterships in Chancery when the office, being vacant, was in his own gift; with receiving large sums of money for agreeing to the sale and transfer of masterships from one Master to another; with receiving a large sum of money for agreeing to a sale and transfer of the office of clerk of the custodies; with conniving at the fraudulent practice of Masters paying for their places out of the suitors' money in their hands; with trying to conceal the delinquencies of an insolvent Master who had absconded; with encouraging the Masters to traffic with trust-money, and with advising them to conceal the frauds they had committed.

The formal "Answer" put in by the defendant disclaimed all corruption, and relied on law and usage. I present to the reader a little specimen of the opening of the managers:—

"Will example plead for him? Surely, my Lords, there are none

ⁿ When referred to during the trial, he was designated "The noble Earl within the bar." Peers on trial for treason or felony are placed outside the bar.

such : or if there were, what would that be but to defend crimes by their own blackness and malignity ? as if a distemper were not to admit of any remedy because it is general and contagious. But supposing, for argument's sake, there have been great persons, his predecessors, who have ventured upon small presents and gifts on such occasions, does it follow, with any colour or pretence of reasoning, those having been confined within the bounds of moderation, that the extortion of exorbitant sums to connive at outrageous oppressions, exceeding almost the fears of the oppressed themselves, should take shelter under the poor plea of precedent ? Whence comes it, that example should have all the beauty of an angel where it should be shunned, and all the deformity of a fiend where it should be followed ? Happy had it been for him who now excites our pity as well as our indignation, happy for the widows and fatherless whom his misconduct has reduced to want, had he copied his renowned predecessors in their wise and upright administration of justice. To what a low ebb would the virtue and reputation of this nation be reduced, if impunity could justify offences, and bribery should be called the fashion of the age ! His Lordship, in his answer to the articles of impeachment, says, 'he did not sell offices ; and that he only received presents from the persons on whom the offices were conferred.' There probably may be a difference between a present and a price ; if there is, it is the latter his Lordship is charged with taking ; a price fixed by his Lordship, insisted upon, haggled for, and unwillingly paid by the purchaser. Unfortunately, the price was greater than could possibly be given by one who was to be contented with the fair profits of the office, as was well known by the recipient, who, to make amends to the purchasers, connived at their paying that extravagant price from the money of the suitors with which they were intrusted ; and indulged them, and encouraged them, and compelled them, to hazard the rest of that money in speculations which turned out to be disastrous. Against apparent extortioners and robbers we guard ourselves with a caution proportionable to the infamy of their characters ; but when the sanctity of the laws and the ensigns of authority, designed to defend and protect us, are made use of to invite us into ruin, how sure and extensive must that ruin be ! My Lords, the Commons have beheld with the deepest concern such corrupt practices in this high Court—such as have deformed the beauty of justice. The first magistrate in the state, who is invested with an extraordinary power to detect and punish fraud, becomes himself its fabricator and its patron. The guardian of orphans has proved their oppressor. The Keeper of the King's conscience prostitutes his own. He who ought to reform abuses and amend the laws spends his days and nights in an ignominious traffic with the best bidder. He who ought almost to be revered as a superior being above human frailty, and only presented to the imagination as dealing out blessings, is actually beheld employing the scales of justice in the business of a usurer."

The evidence was very long, and clearly established that

Lord Macclesfield had sold masterships through his agent, Peter Cottingham; that he had received sums for consenting to the transfer of others; that this mode of disposing of the office of Master led to great abuse; that in several instances the suitors had suffered from the Master becoming insolvent, and that Lord Macclesfield had taken great pains to conceal these abuses and losses from the public.

From the examination of one or two of the principal witnesses I will give a specimen of the manner in which, in days of yore, such negotiations were conducted: Master Bennet had agreed with Master Hiccocks to buy his office from him on obtaining the necessary consent of the Lord Chancellor to the transfer. Being now compelled under the Indemnity Act to disclose all that passed, he said,—

“I applied to Mr. Cottingham and desired him to let me know my Lord Chancellor’s thoughts, whether he approved of me to succeed Mr. Hiccocks? Soon after that he told me he had acquainted my Lord with the message, and my Lord expressed himself with a great deal of respect for my father, and was glad of an opportunity to do me a favour and kindness, and that he had no objection in the world to me—but that ‘there was a present expected, and that he did not doubt but I knew that;’ I answered, ‘I had heard there was, and I was willing to do what was usual;’ I desired to know what would be expected; he said ‘he could name no sum, and I might apply to my brother, a Master, and Master Godfrey who had recommended me, and they would tell me what was proper to offer.’ I returned to Mr. Cottingham and told him ‘I had talked with them about it, and their opinion was 1000*l.* was sufficient for me to offer, but I would not stand for guineas.’ Upon this Mr. Cottingham shook his head, and said, ‘That won’t do, Mr. Bennet, you must be better advised.’ ‘Why,’ said I, ‘won’t that do? I think it is a noble present.’ Says he, ‘a great deal more has been given.’ Says I, ‘I am sure my brother did not give so much, and I desire you to acquaint my Lord with the proposal.’ Says he, ‘I don’t care to go with that proposal; you may find somebody else to go.’ Says I, ‘I don’t know whom to apply to.’ Says he, ‘Mr. Bennet, sure you won’t go to lower the price; I can assure you Mr. Kynaston gave 1500 guineas.’ Says I, ‘only acquaint my Lord with it, and if he insists on more I will consider of it.’ Says he, ‘there is no haggling with my Lord; if you refuse it, I don’t know the consequence; he may resent it so as not to admit you at all.’ Then I began to consider, and was loth to lose the office, and told him ‘I would give 1500*l.*’ He said ‘Mr. Kynaston had given guineas.’ Then I asked ‘whether it must be in gold?’ He said, ‘in what way you will, so it be guineas.’ On the 1st of June he desired me ‘to come immediately, and to come alone and bring nobody with me, for my Lord would swear me in that morning.’ Accordingly I went, and the first question Mr. Cottingham asked me was, ‘if I had

brought the money?' I told him, 'to be sure, I should not come without it.' He asked me 'what it was in?' I told him 'in bank bills, one of 1000*l.* and the other 575*l.*' He took them up and carried them to my Lord: he returned and told me 'my Lord was ready to admit me.' I was carried up stairs, and in his bedchamber was I sworn as Master."

The witness admitted that he neither should nor could have bought the place if he had not been to pay for it with the money of the suitors as he did.

A still more amusing scene is presented to us by the evidence of Master Elde, who was to pay the Lord Chancellor a much larger sum, as the office was vacant by death, and who was imprudent enough to carry a considerable portion of it in specie. In this instance the brokership of Cottingham was at first dispensed with, and the Chancellor in person saw and dealt with the purchaser, who swore as follows:—

"His Lordship said 'he had no manner of objection to me; he had known me a considerable time, and he believed I should make a good officer.' He desired me 'to consider of it, and to come to him again.' I came again in a day or two, and told him '*I had considered* of it, and if his Lordship would admit me I would make him a present of 4000*l.* or 5000*l.*;' I cannot say which of the two, but I believe it was 5000*l.* My Lord said, 'Thee and I,' or 'yon and I (my Lord was pleased to treat me as a friend), must not make bargains.' He said 'if I was desirous to have the office he would treat with me in a different manner than he would with any man living.' I spoke to Mr. Cottingham, meeting him in Westminster Hall, and told him 'I had been at my Lord's, and my Lord was pleased to speak very kindly to me, and I had proposed to give him 5000*l.*' Mr. Cottingham answered, — '*GUINEAS ARE HANDSOMER!!!*' I immediately went to my Lord's, being willing to get into the office as soon as I could. I did carry with me 5000 guineas in gold and bank notes. I had the money in my chambers, but did not know how to convey it;—it was a great burthen and weight, but recollecting I had a basket in my chambers, I put the guineas into the basket, and the notes with them. I went in a chair, and took the basket with me in my chair. When I came to my Lord's house I saw Mr. Cottingham there, and gave him the basket, and desired him to carry it up to my Lord. I saw him go up stairs with the basket, and when he came down he intimated to me that he had delivered it. When I was admitted, my Lord invited me to dinner and some of my friends with me, and he was pleased to treat me and some Members of the House of Commons in a very handsome manner. I was after dinner sworn in before them. Some months after I spoke to my Lord's gentleman, and desired him, if he saw such a basket, that he would give it me back. He did so, *but no money was returned in it.*"

Next, I will give an extract from the evidence of *Master Thurston*.—He had agreed with Cottingham to buy a mastership for 5000 guineas, and, being introduced to the Lord Chancellor, had a promise that he should be admitted in a few days, but a difficulty arose from an inquiry into his character and sufficiency for the office, insomuch that his admission was postponed, and the Lord Chancellor entered into a treaty for disposing of the office to another purchaser,—

“Which,” said he, “gave me an uneasiness and put me upon an expedient that, since I could not have ready access to so great a person as his Lordship, I went to Kensington one morning to wait upon the Countess of Macclesfield, and upon sending up my name and that I desired to speak with her, in a short time I had the honour of seeing her, and acquainted her that I was the person that my Lord had promised the office to, and I desired her to intercede with my Lord that I might be speedily sworn in. Her Ladyship said, ‘She never did meddle in any affairs of a public nature.’ I used several arguments with her, as that ‘the thing was now public and in print, and it would be a great disappointment to me and might affect my character if my Lord did not think fit to admit me,’ and I acquainted her Ladyship that ‘I did not expect or desire to come in without the due present that is always esteemed the perquisite of the Great Seal.’ Her Ladyship was prevailed upon to promise ‘she would write a letter and acquaint my Lord Chancellor with it.’ Before I went away from the room where I had the honour to be with the lady, I did leave upon the table bank notes to the value of 5250*l*.”—*Q*. “How were they directed?”—*A*. “I directed them to the COUNTESS OF MACCLESFIELD.”—*Q*. “How soon after were you admitted?”—*A*. “Within two or three days at farthest I was admitted and sworn in.” The witness then goes on to state that, from the misconduct of his predecessor, Master Borret, which could not have been unknown to the Lord Chancellor, he found the office in a state of the most dreadful confusion, the money of the suitors for which he became responsible having been abstracted, and he says, that if he had been fully aware of the whole truth, “instead of giving 5000 guineas for the appointment, he would have given 5000 guineas to avoid it.” He added, however, “that some months after, and shortly before the complaints against the Lord Chancellor broke out, Lady Macclesfield sent for him, and returned him 3250*l*., saying ‘she did not know he had left so large a present,—that it was too large a present,—that she was afraid my Lord Chancellor would come to the knowledge of it,—that the largest part must be taken back, and that she would appropriate the rest to her own use.’”

Godfrey, another witness, gives a most lamentable account of the state in which he found the office of Master Borret, who seems to have died suddenly:—“We found his papers in great

confusion, lying without any method or order. We collected them as well as we could, and what things we found of value or belonging to the suitors, as goldsmiths' notes, we put them on a file, and that file, together with other little moveables we found belonging to him, as rings and a watch, were all put in a bag, and we put them into a trunk, and locked them up, and they are now at my house." Master Borret had speculated deeply in the South Sea, with the suitors' money in his hands, and, thinking at one time to increase the amount twenty fold for his own benefit, the whole of it was lost. Master Dormer and other Masters had followed his example with the like hopes and the like result.^o When the defalcations were first discovered, it was proved that the Chancellor compelled all the Masters, under a threat of depriving them of the use of the suitors' money, to contribute to make them up; but, from the increasing amount, reparation and concealment became impossible.

The managers having finished their evidence on all the articles, and summed up at great length, the counsel for the defendant thus addressed the House:—

"The greatest respect must be shown for a prosecution by the Commons of Great Britain, but (with all respect be it spoken) they have in this instance mistaken their course, and instead of proceeding legislatively to remedy a defective state of the law, and asking your Lordships to concur with them in prospectively amending a system which is supposed to lead to abuse, they have been misled by public clamour to appeal to this House as a court of justice, and to call for punishment where there has been no offence. The managers have utterly failed in making out the inflamed and exaggerated case which they opened, and we might well contend that the moderate sums which were spontaneously given to the noble Earl within the bar, by the competent and respectable persons who were appointed by him to be Masters in Chancery, were 'presents' only. Yet, assuming that they were the 'price' received upon the sale of offices, he must be acquitted, unless the sale of these offices was forbidden by the common law, or is contrary to an act of parliament. There is no pretence for saying that it is *malum in se*,—that the practice is so much against morality and sound policy that it cannot be endured in any well regulated state. He that has an office in his gift, if he takes care that the duties of it are faithfully performed, may dispose of it as he may of any thing else that is valuable, on such terms as may be agreed upon between himself and the person on whom

^o It is well for the Masters that they are in "Railroad speculations"—as seducing as no longer exposed to such temptations, or it the "South Sea." might have been suspected that they engaged

it is to be bestowed. The receiving of money for it is no act of injustice to the person appointed, for he had no right to it, and his advancement is owing to the favour of him who has the power of nomination. If the office be valuable, so is the right of nomination to it,—which may be considered part of the estate of that person to whom it belongs. Of whatever nature the office may be, the consequence does not follow that its duties will not be adequately performed because a consideration has been paid for it. The Roman Civil Law, the great fountain of justice, which humanised the barbarous hordes of the North, permitted the sale of offices. In France justice is administered with great purity, and her parliaments boast of magistrates equal in learning and integrity to any that have ever graced the bench in Westminster Hall; yet in that country the highest judicial offices may be transmitted to heirs, or may be resigned during life to a purchasing successor. Our own records present many instances of the highest offices in the administration of justice being exposed to sale, and openly, and avowedly, and without censure or scandal, purchased from the Crown. With us the distinction has always been preserved between the sale of justice and the sale of judicial offices; and while the former has been condemned, the latter has been tolerated. In the time of King Stephen, ‘Richard Fitz-Allured fined fifteen marks of silver that he might sit with Ralph Basset, the King’s Justiciar, to hold the King’s Pleas,’ or, as we should say, ‘to be a puisne Judge of the Court of King’s Bench,’—and an entry is made of the receipt of the money as part of the ordinary revenue of the State. So in a subsequent reign there is an enrolment in the public records still extant, showing that the office of Lord Chancellor itself was sold: *Gualterus de Gray dat Domino Regi 5000 marc. pro habendâ Cancellariâ Domini Regis totâ vitâ suâ, et pro habendâ inde chartâ Domini Regis.*^P Lord Coke has censured this transaction; but Walter de Gray enjoyed the office, and the open announcement of the price he paid for it shows that there was no horror excited by the sale of offices in the times when the common law took its origin. The very dictum to be found elsewhere against the sale of the Chancery-ship, proceeds on the ground that, being partly of an ecclesiastical nature, the sale of it might savour of simony,—and being treated as an exception, it proves the rule. But the statute 6 Ed. VI. c. 16, to inflict a penalty upon the sale of certain offices concerning the administration of justice—so much relied upon by the managers—is decisive against them with regard to their argument on the common law; for it provides that ‘this act shall not extend to any contract made before the 1st of March then next,’—and farther that ‘this act shall not extend or be prejudicial to any of the Chief Justices of the King’s courts, commonly called the King’s Bench or Common Pleas, or to any Justices of Assize, but that they, and every of them, may do in every behalf, touching and concerning any office or offices to be given or granted by them, as they or any of them might have done before the making of this act.’

By virtue of this proviso, the offices of Master in the King's Bench, of Prothonotary in the Common Pleas, of Clerk of Assize, are at this day openly and avowedly sold by the ermined sages who now sit upon the woolsacks in your Lordships' house to advise you whether the sale of offices be a misdemeanor by the common law of England. It comes then, my Lords, to the construction to be put upon the enacting clause of that statute. Now this being a penal statute, it is not to be extended by implication, and as it creates a new offence, no punishment can be inflicted for that offence, except of the nature—to the degree—and in the manner which the statute specifies: it contains no general prohibition of the sale of offices—but merely inflicts a particular penalty on those who buy or sell offices which are not excepted from its operation. The contract made between the buyer and seller is declared void; the party selling loses his estate and interest in the office, and the party buying is rendered incapable to hold and enjoy it. There is no maxim of English law better established, that when a statute appoints a penalty for doing a thing which before was innocent, and points out how the penalty is to be imposed, the offence is to be punished in that way and no other.⁹ We deny that this office comes within the purview of the statute, or that the noble Earl has sold it; but at all events, the statute only inflicts upon him the penalty of forfeiting the nomination to it for the future;—and that he has already suffered by the loss of the Great Seal;—so that he is liable to no other punishment, and the present impeachment cannot be supported. But it is painful, and humiliating, and unnecessary, and improper to resort to such technical reasoning, for neither morally nor legally has the noble Earl committed any offence. The best proof that the practice is neither against common law nor statute law is, that it has been invariably, and confessedly, and notoriously followed by all his predecessors—which we do not urge to palliate violation of duty, but to show that no duty has been violated. Many most pure and upright men have sat in the marble chair since the statute passed, and all of them, without any public censure, and without any self-reproach, have received gratuities on disposing of these offices—and with as little hesitation, and as little secrecy, as they have received their fixed fees or their annual salary. Nay more, where Chancellors have been impeached in factious times (as in the instances of Lord Clarendon and Lord Somers), and there was the most eager desire to bring them to shame—among all the frivolous charges preferred against them, no political opponent, no furious zealot, no private enemy ever thought of accusing them of corruption because they had conformed to the usage of selling offices in their court. Should this now be adjudged criminal, what numbers of good and just men now sleeping in their honoured graves are to be exhumed and put upon their trial, and condemned as criminals! Your Lordships are called upon to spread an universal cloud of reproach and infamy over venerable sages of the law, some of them the ancestors of illustrious Peers now present

⁹ Castle's case, Cro. Jac. 644.

—men whose memories have hitherto been considered sacred, and have not only been fondly cherished by their descendants, but have been dear to their country—men who despised riches and hated covetousness, who would have shrunk with abhorrence from every appearance of corruption, and who, without ostentation, were famous in their day for acts of benevolence and charity. Till within a few short months the noble Earl within your bar was equally respected, and every one believed that he too would go down to the tomb regretted and revered. His public services require no panegyric. We might appeal to those gentlemen who are now managers against him, whether they have not often applauded him with warmth, whether they have not loudly commended his zeal and intrepidity in the cause of liberty and our country—his steady adherence to the Protestant succession—his disinterested and patriotic conduct in moments the most trying? Did they not love as well as praise him? Have they not celebrated his noble refusal of the Great Seal itself when the acceptance of it would have been inconsistent with his principles? and when they saw him honourably placed in the high station which he lately adorned, did they not rejoice in his elevation as their own security and happiness? This once was the Earl's character; this once his merit. What has he since done to have his name branded to all posterity as guilty of judicial corruption? He has administered justice between party and party as Chancellor (all allow) in a manner as able and as upright as the most distinguished and most virtuous of his predecessors. He has not introduced a new system with respect to the disposal of offices in his court. Consider the difficulties which beset such attempts at reform—the vested interests which must be affected—the hardships which must be inflicted on individuals and families—the misconstruction to which the reformer is exposed, and the odium which he is sure to incur. But, my Lords, if the noble Earl be thought wanting in energy, if he ought to have been more active in improving our institutions, is not this rather matter for the criticism of the historian or biographer, than to be made the foundation of an indictment before a grand jury, or an impeachment before this august assembly for high crimes and misdemeanors? Then, my Lords, remember how the noble Earl has employed the wealth he has acquired, and consider whether so to employ it he would acquire it by the commission of a crime. It was a cruel application by one of the managers of a well-known maxim, that 'a man may be profuse of his own while he greedily grasps the property of others.' But how has the noble Earl been profuse?—in relieving the needy and the oppressed,—in assisting poor scholars,—in patronising obscure merit wherever he could find it out,—in liberally contributing wherever a benevolent object was to be gained by the joint efforts of the charitable. Are you necessarily to infer that he was 'unsatisfied in getting' because 'in bestowing he was most princely?' Hard indeed is the condition of the Earl, when his very virtues, when his most commendable actions, are turned to his disgrace—are wrested into instruments to achieve his ruin. He who has 'a hand open as day for melting charity' you are required to believe

must necessarily be guilty of corruption and extortion. Such is the reasoning of his accusers, but he has your Lordships for his Judges."

The noble defendant, during the disputes about evidence, retorted on the managers rather contemptuously, and at last drew forth this remonstrance from Onslow: "The managers cannot but observe the indecent behaviour of this Lord, and his unworthy manner of treating us. We do not think the Lord at the bar should be directing the managers as if he sat in his place as Judge. We are here advocates for all the Commons of Great Britain, to demand justice against him." I must acknowledge that the whole trial was conducted by them in a good spirit, and in a very business-like manner—while every now and then the sharp country attorney could be discovered under the disguise of the Earl.

Witnesses were called to make out the usage relied on. However, only three instances of the sale of the office of Master were established—one in Lord Cowper's time, and two in Lord Harcourt's; the largest amount received being 800*l.*, and the money having been paid in every instance out of the private funds of the parties before their admission, without any meddling with the money of the suitors. To account for the larger sums paid to the defendant for Masterships, he proved that other offices in the Court of Chancery, particularly those of the sworn and waiting clerks, had greatly risen in price of late years. He further proved that he had himself contributed 1000*l.* to make up the deficiencies of a Master, and that he had given away large sums in charity.

Before the Commons replied, he begged permission himself to address the House, and several days were given to him to prepare. His speech was a very masterly performance, but was confined to a minute analysis of the evidence, which would now be uninteresting and unintelligible. He went over all the twenty-one articles of the impeachment, and tried to show that they were all unsupported. He thus concluded, perhaps with more dignity and a better chance of a favourable result than in the most laboured peroration:—

"My Lords, having thus gone through all my observations, it may be expected that I should close them by offering something in general: but I think it proper to forbear. I am not conscious myself that it is necessary in this case to apply to the passions, which is a common artifice to assist a weak defence. If I have done any public or private good (of which last some specimen has been laid before your Lordships),

it will, I am confident, have its full weight. I submit my whole life and conduct to your Lordships' judgment; and rely entirely on your justice for my acquittal."

At last, on the 25th of May, ninety-three Peers being present, the Earl being placed at the bar, and the Commons attending, Lord Chief Justice King put this question severally to every Peer, beginning with the junior, "Is Thomas Earl of Macclesfield Guilty of High Crimes and Misdemeanors charged upon him by the impeachment of the House of Commons, or Not guilty?" and the unanimous answer of all was, "Guilty, upon my honour." *Lord Chief Justice King*: "My Lords, your Lordships have unanimously found Thomas Earl of Macclesfield guilty of high crimes and misdemeanors charged upon him by the impeachment of the House of Commons." The defendant was then called upon to appear at the bar to hear the verdict, but the Duke of Devonshire, the Lord President, signified that he was so much indisposed that he was unable to attend. He appeared at the bar the following morning, when the verdict was solemnly intimated to him. He then attempted to make a speech in exculpation of his conduct, but, being interrupted by the managers, he threw himself on the mercy of the House. He was immediately ordered into the custody of the Gentleman Usher of the Black Rod; and the Lords proceeded to consider what sentence should be passed upon him.

A friendly motion was made, that the opinion of the Judges be asked, "whether the sale of an office that hath relation to the administration of justice be an offence against the common law?" but it met with no encouragement, and was negatived without a division. All then agreed that he should pay a heavy fine, to be applied towards the relief of the suitors who had suffered from the insolvency of the Masters in Chancery, and the sum was fixed at 30,000*l*.

The grand question was, whether he should not likewise be disqualified to hold any place or employment in the state or commonwealth, upon which there was a long and animated debate: one side insisting that the loss of his office of Lord Chancellor, the heavy costs of his defence, the anxiety he had suffered, and the disgrace cast upon him, together with the proposed fine, would be punishment enough, considering the example set him by his predecessors; while the other contended, with vehemence, that, according to invariable precedent and clear reason, a person who, upon an impeachment

by the Commons, had been convicted of corruption in a high judicial office, should, for the protection of the present generation, and as a warning to posterity, be effectually prevented from filling the seat of judgment which he had dishonoured; and they pointed out many circumstances to show that this was an aggravated case, which would be most inadequately punished by a mere pecuniary fine. On a division, the numbers were equal, 42 to 42,—so, according to the rule of the House of Lords—*præsumitur pro negante*—the motion was lost. Then violent protests were drawn up and numerous signed against this decision. Still the sentence was not to be pronounced till judgment was prayed by the Commons.

The managers immediately received the unanimous thanks of their House by Speaker Compton, who said to them—“You have maintained the charge of the Commons with a strength of reason, and beauty of expression, which would have gained you the highest applause in the most flourishing Grecian commonwealths :

— ‘Nec dignius unquam
Majestas meminit sese Romana locutam.’

You have stopped the cries of orphans, and dried up the tears of the widow; even those who must ever be insensible of the benefits they receive—idiots and lunatics (and such only can be insensible of them)—will be the partakers of the fruits of your labours.” He went on more particularly to thank them for having shown that the power of impeachment vested in the Commons might be practically used for the good of the people, and that “the sword of vengeance, which, when drawn by party-rage, when directed by the malice of faction, or wielded by unskilful hands, has too often wounded that constitution it was intended to protect, had, by their able management, turned its edge to its proper object, and had struck down a great public offender.”

There was a party in the Commons, however, disposed to a mild course. They said that enough had already been done for the public by exposing the long-established abuses of the Court of Chancery, and that the Earl of Macclesfield ought not to be made a scape-goat. They therefore resisted the motion that the Speaker be ordered to go to the bar of the House of Lords and demand judgment; but upon a division this motion was carried by a majority of 136 to 65.

Accordingly, on the 27th of May, Speaker Compton, at-

tended by many members of the House of Commons, presented himself at the bar of the House of Lords to demand judgment. The Lord Chief Justice King thereupon directing the Gentleman Usher of the Black Rod to produce his prisoner, the Earl of Macclesfield was marched in, and, after low obeisances made, knelt until the Lord Chief Justice told him he might rise.[†] The Speaker of the House of Commons then, having recited the impeachment and the proceedings, thus concluded:—"I do, therefore, in the name of the knights, citizens, and burgesses in parliament assembled, demand judgment of your Lordships against Thomas Earl of Macclesfield, for the said high crimes and misdemeanors." *Lord C. J. King*: "Mr. Speaker, the Lords are now ready to give the judgment you demand. Thomas Earl of Macclesfield, the Lords having unanimously found you guilty of high crimes and misdemeanors charged on you by the impeachment of the Commons, do now, according to law, proceed to judgment against you, which I am ordered to pronounce. Their Lordships' judgment is, and this high Court doth award, that you, Thomas Earl of Macclesfield, be fined in the sum of 30,000*l.* unto our Sovereign Lord the King, and that you be imprisoned in the Tower of London, and there kept in safe custody until you shall pay the said fine." The Earl of Macclesfield was immediately carried off by the Gentleman Usher of the Black Rod, and delivered into the custody of the Constable of the Tower of London. Here he was confined in the room which had been last occupied by his opponent the Earl of Oxford. Three days after, the King (it is said, *with a sigh*) ordered his name to be erased from the list of Privy Councillors.

There has been a disposition in recent times to consider that Lord Macclesfield was wrongfully condemned. "The unanimity of his Judges," says Lord Mahon, "might seem decisive as to his guilt; yet it may perhaps be doubted whether they did not unjustly heap the faults of the system on one man; whether Parker had not rather in fact failed to check gradual and growing abuses, than introduced them by his authority, or encouraged them by his example."^{*} I must say, that although it is impossible not to pity a man of such high qualities when so disgraced,—and although, with good

[†] The Commons' Journals most studiously record, that the Serjeant at Arms attending the House of Commons stood at the bar on Mr. Speaker's right hand, with the mace on his shoulder; and that the Earl of Mac-

clesfield, being placed at some distance on his left hand, was ordered "to kneel in the presence of the Commons."

^{*} Vol. ii. 106.

luck, notwithstanding all he had done, he might have escaped exposure and preserved an untarnished fame,—yet, in my opinion, his conviction was lawful, and his punishment was mild. There can be no doubt that the sale of all offices touching the administration of justice (with a strange exception in favour of Common Law Judges) was forbidden by the statute of Edward VI., and every Chancellor who afterwards sold a Mastership in Chancery must have been aware that he was thereby violating that statute. It is a fallacy to say that he was fully justified by the example of his predecessors. Lord Cowper had abolished “New Years’ Gifts” from the officers of the court as well as from the bar, and had been followed in the same course by Lord Harcourt,—both Chancellors showing a desire to conform to the improving spirit of the age. In Lord Macclesfield’s time, from the speculations caused by the South Sea mania, the abuses in the Masters’ offices had become more flagrant. But, instead of trying to redress them, he increased their enormity by raising the price which the Masters were to pay for their places, and rendering it still more necessary that, for their own indemnity, they should traffic with the trust-money in their hands. Whoever takes the trouble of perusing the whole of the evidence will see that he was rapacious in his bargains, and that, with the view of bolstering up a system which was so profitable to him, he resorted to very arbitrary means to keep the public in ignorance of its consequences. His contemporaries could form a more correct opinion of his conduct than we can, and we should be slow to accuse them of harshness.

There is no pretence for saying that he fell a sacrifice to party resentment. It so happened that, at the time of his impeachment, party had actually disappeared in both Houses of Parliament. The two law lords, Lord Harcourt and Lord Lechmere, were present, and concurred in the verdict. High Churchmen must, no doubt, have rejoiced to see disgrace fall upon him who had gained distinction as the prosecutor of Sacheverell: but many zealous Whigs actively, though sorrowfully, joined in the prosecution. The Prince’s friends were exasperated against him, but the King’s friends joined in the sentence. Walpole certainly did gain great credit by allowing the prosecution fair play; but he neither originated nor unduly encouraged it. Macclesfield had been a useful and submissive ally of the existing Government, and there was no rival whom they desired to elevate in his place. Of all the impeachments

recorded in our annals, I find no one marked by more honesty of purpose, more practical ability in the manner in which it was conducted, or more benefit to the public in its result.

The mob were most highly delighted—and would have been still more pleased if, in his procession to the Tower, he had been attended by an axe with its edge turned towards him. In his way thither his ears must have been saluted with ballads which were sung in the streets, comparing him to Jack Sheppard, Jonathan Wild, and other famous freebooters, and giving him the preference over all in infamy, as, instead of rich travellers and stout wayfaring men, he robbed widows and orphans who were put under his care.[†]

He remained a prisoner six weeks, while he made arrangements for the payment of his fine. The money was at last raised, and, in pursuance of an address from the House of Commons to the Crown, was paid into the Court of Chancery to be applied towards making good the losses of the suitors from the misconduct and insolvency of the Masters.

The King being told that it was chiefly for fidelity to himself, in taking part with him against the Prince, that the Chancellor had been prosecuted, had signified to him by Sir Robert Walpole his intention to repay him the amount of the fine out of the privy purse as fast as he could spare the money, accompanying the message with gracious expressions of his sympathy and continued favour. One instalment of 1000*l.* was thus actually paid to him soon after, and the following year he received an intimation that he might receive 2000*l.* more from the royal bounty whenever he chose to apply for it. Not

[†] The best apology I have met with for Lord Macclesfield is by Oldmixon—which, lest I should be supposed to have treated a great man harshly, I, in fairness, subjoin:—“There had been for some time a murmuring against the insufficiency of the Masters in Chancery to answer the great sums lodged in their hands by the suitors in that court; and it was suspected, that the large sums they paid for admission into their places made their way more easy than it ought to have been, and very much lessened the inquiry into their qualifications for them. 'Tis true, this abuse had been long growing up to this enormity, and there was hardly any commodity in a market bought and sold more freely and openly than a Master in Chancery's place. The suitors' money, with which they paid no interest, brought them in great in-

terest from the funds; and the profits of the place being consequently doubled and trebled at least to what they were before, there was such an opportunity to enrich themselves by the advantage they made of the money they had in their hands, 'tis no wonder the Lords Keepers and Lords Chancellors doubled and trebled the price they were to pay for admittance, which had risen from 1000*l.* to 3000*l.* in my remembrance; who, being intimate with several of them, have heard this matter frequently discoursed of before there was any whisper of imputing it as a crime to the Lord Chancellor. But from a complaint in general, it came to a charge in particulars; and the Earl finding it was impracticable for him to prevent it, or keep the Great Seal under it, he resigned his high office.”—Vol. iii. 758.

wishing to appear too eager to avail himself of such generosity, he had abstained from making the application till the sad news arrived of the death of George I. in Germany. Lord Parker, his son, then hurrying to Sir Robert Walpole to clutch the money, received for answer, "that his late Majesty and his Minister had a running account which had not been settled, and, as there was no saying on which side the balance was, it would be too great a risk to pay the 2000*l.* at present." Some shrewdly conjectured, that Sir Robert expected to ingratiate himself with the new King by thus treating the man who had rendered himself so obnoxious to his Majesty when Prince of Wales. However that may be, not another farthing from the funds of the late King could be extorted towards the payment of the fine.

The very day after Lord Macclesfield's commitment to the Tower, he wrote the following letter to Lord Chief Justice King, who had presided as Speaker of the House of Lords during his trial, and was now designated as his successor:—

"My Lord,

"Will y^r Ldp have y^e goodnesse to forgive me if, to y^e trouble I have already given, I adde this more in favour of Mr. Thomas Parker of New Inne, who served me as Deputy Purse-bearer severall y^r^s. He is a very sober, honest, and sensible man, and who I am sure will serve y^r Ldp very diligently and faithfully if you have occasion to employ him in any of y^e offices belonging to y^e Great Seal. If these are all provided for, give me leave to recommend him to be one of y^e Comm^{rs} of Bankrupts. He was in one of y^e lists, and behaved himself very well, but when I made him Deputy Purse-bearer I put an^r in y^e list of Comm^{rs}, by w^{ch} means his name stands not now amongst those Comm^{rs}. There is another Thomas Parker of y^e Temple, whom y^e Lords Comm^{rs}. have been pleased to continue in, and I beg y^r Ldp still to allow a place amongst them. I ask pardon for this presumption, and I heartily wish y^r Ldp all happinesse and satisfaction in an office w^{ch} my want of discretion has made so fatal to me, but w^{ch} I am sure, by y^r Ldps great prudence and caution, will, in y^r hands, be an honour to yourself and a blessing to y^e King and his people, and I wish it may long continue so happily placed.

"I am with the greatest respect,

"My Lord,

"Y^r Ldps most humble and most obed^t Serv^t,

"MACCLESFIELD." "

^u From the MSS. of the Earl of Lovelace. the Tower;" but it is endorsed by Sir Peter King, "28th May, 1725." The letter is without date, to avoid any reference to the writer's "doleful prison in

A letter written under such circumstances, to intercede for two dependants, and probably poor relations, places him in a very amiable point of view; and as he had not committed any black crime for which he could be expected to feel deep remorse, he may be forgiven if he imputes his fall to "want of discretion," and intimates that, along with the qualities for the office which he himself possessed, "prudence and caution" only were required to insure a glorious career to his successor.

I have no further means of judging of the manner in which the fallen Chancellor bore his reverse of fortune, or how he spent his time in the Tower. He could have had none of the sympathy felt for political martyrs which had often made a commitment to its cells a triumph rather than a disgrace, and few visitors, besides his near relatives and dependants, could have come to relieve his thoughts from sad retrospects and anticipations.

When restored to liberty, he had not the courage to try to recover his position as a public man or in private society. Although he had still a vigorous constitution of body, and his faculties were unimpaired, he could not face political opponents or friends under whose unanimous verdict he had dropped on his knees to receive sentence as a fraudulent criminal at the bar of that House in which he had long presided with dignity and splendour. He considered the last division on his case, although the motion was lost by an equality of votes, as tantamount to sentence of civil death. He never resumed his seat in parliament, or appeared in public, or took any interest in party struggles.

As soon as his private affairs were settled in London, he hurried to bury himself in obscurity in the country. He selected as his retreat a small house near Derby, which had belonged to him when he carried on business as an attorney in that town. Here he entirely shut himself up from society, neither mixing with his former intimates in the lower or middling ranks of life, nor with the aristocracy—to which, in point of rank, he now belonged.* Some years afterwards he

* Although the above account of the Chancellor's retreat seems to rest on authentic evidence, I have recently received a statement from the present Earl of Macclesfield, that he resided sometimes at Shirburn Castle, and there exercised great hospitality; in proof of which I am furnished with the following extracts from his CELLAR BOOK:—

"June 20th 1725.		Bottles.
Sent to the Tower	French Claret from Lord Ch. B. Hale's Hhd. N ^o 1	12
	Red Port	10
		May

made occasional visits to his son, who had a house in London, in Soho Square; but on these occasions he still shunned all intercourse with the world. His old age, I fear, was very cheerless. "Obedience," and "troops of friends," which he had enjoyed, he could look to have no longer.

Unfortunately he was unable to imitate the conduct of his predecessor, Bacon, who, under similar circumstances, devoted himself to science, and the extension of his literary fame. Macclesfield, when educating himself, had acquired an adequate knowledge of the Latin classics, and had read the most popular English authors; but he had no high value for literature, and he had no taste whatever for philosophy. He now probably regretted that he ever left the profession of an attorney, in which, if he had been contented to continue, he might have lived and died respected, though obscure. But the mind wonderfully adapts itself to circumstances, and in the saddest condition solace is found. As he had hastened to be rich, a large fortune remained to him after the payment of his fine, and his latter days may have been rendered tolerable by the pleasures of avarice.

At the commencement of his seclusion he took interest in superintending the education of his son, afterwards so famed for scientific acquirements; and, for his sake, he maintained in his house a mathematician of great eminence, but little

		Bottles,
May 25 th 1726.	Latour	6
	Port	11
June 8 th 1726, the family went to Shirburn.	Ale	15
	Cyder	15
Nov ^r 1726, came to town from Shirburn, being Tuesday.		
<hr/>		
Janry 1 st 1727.	French Claret	13½
	Red Port	4
	White Port	1
	Champagne	1
	Burgundy	1
The family went to Shirburn July 20 th .	Shirburn Ale	14½
My Lord Mac ^d was in town twice.	Cyder	3
<hr/>		
Janry 1 st 1728.	French Claret	3
	Red Lisbon	10
	Stafford Ale	1
	Shirburn Ale	7
	Cyder	2

N.B.—These extracts are taken, first, when at Shirburn, and, secondly, on leaving Shirburn for London."—*Note to 2nd Edition.*

wealth, the father of Sir William Jones, the celebrated lawyer, orator, poet, classical scholar, and orientalist.

In this state of listless existence, Lord Macclesfield languished nearly seven years. At last, on the 28th day of April, 1732, he was relieved from his sad ^{A.D. 1732.} reflections on the sale of masterships, and from the wretchedness of non-official life. While at his son's house in Soho Square he had a severe access of strangury—a complaint from which he had before often suffered, but which was now so violent and painful, that he was immediately impressed with the conviction that it would prove mortal. His mind being weakened to superstition, he foretold that “as his mother had died of that disease on the eighth day, he should do the same.” On the morning of the eighth day he declared that he felt himself “drowning inwardly, and dying from the feet upwards.” He is said to have received in a very exemplary manner the consolations of religion, and to have taken leave of his family and household with the same calm cheerfulness as if he had been setting out upon a journey with the prospect of a speedy re-union with those he loved. A little before midnight, being informed that the physician was gone, he said faintly, “and I am going also, but I will close my eyelids myself.” He did so, and breathed no more. Thus, in the sixty-sixth year of his age, he piously closed a career long eminently prosperous—at last deeply disastrous. Who can tell whether he would have made so good an end if cut off without having experienced any reverse?

— “to add greater honours to his age
Than man could give him, he died fearing God.” †

† In the Diary of his son-in-law, Sir William Heathcote, who bears testimony to the resignation and piety he displayed on his death-bed, it is said, “He bore his great change of fortune and station with an uncommon firmness of mind; and, upon his retreat from public business, was so well satisfied with private life, that he both said and showed that he had never enjoyed true happiness till then.”

There now lies before me, in the handwriting of Lord Chancellor Macclesfield, a collection of Prayers prepared by him for his private devotions,—giving striking proof of a Christian frame of mind. I copy an extract from the last of these, which seems to have been written shortly before his fatal illness:—

“Also I thank thee for any sanctified chastisement and affliction. O my God, as long as I live will I magnify thee. [Probably alluding to his trial and sentence.]

“Thou hast granted thy loving kindness in the day time, and in the night season will I make my prayer unto the God of my life. And now, O Lord my God, as the day is vanished and gone, so doth my life vanish and wear away. The end of the day is arrived, the end of my life is at hand; how near, thou alone knowest. Remembering this, O Lord! I beseech thee that the end of my life may be Christian and acceptable to thee, without sin, without shame, and, if it please thee, without grievous pain; gathering me together with thine elect, when thou wilt and as thou wilt.”

He had constructed a family vault in the church of Shirburn in Oxfordshire, and there he lies interred without monument or epitaph.

The subject of this memoir is a striking instance of the scope afforded by our constitution to talent and energy. He was not suddenly elevated by the caprice of a despot from a servile condition to rule the state. The possibility of such a promotion shows an arbitrary form of government, and a barbarous state of society. The power of rising to distinction in a free country ought to be by the possession of useful qualities, and the performance of public services. The government that employs and rewards the meritorious aspirant, ought merely to ratify the opinion of his fellow-citizens, and to carry into effect the wishes of an enlightened community. Parker got on in the world first by diligence in his father's little office at Leeke, and rendering services to the wealthy manufacturer who translated him to Derby;—then by showing himself superior in intelligence and activity to the other attorneys of that place;—then by being the greatest winner of verdicts of all the barristers on the Midland Circuit;—then by proving the most formidable opponent which Westminster Hall could supply to oppressive prosecutions of the press by the Attorney-General;—then by becoming in the House of Commons a most efficient member of the political party to which he attached himself;—then by gaining the chief glory in a great parliamentary prosecution, having for his competitors the most eminent lawyers and statesmen of the day;—then by being acknowledged equal as a Judge to those who had filled with the loudest applause the most important magistracies;—then by taking a leading part in the Upper House of Parliament when he was elevated to the peerage;—and finally by making it appear for the interest of the Sovereign on the throne to place him in the highest civil office which a subject could hold—at a time when he had established such a reputation with all ranks, that his promotion caused general joy.

He achieved greatness; but for solid glory he wanted a contempt of riches, a love of literature, and a desire of improving the institutions of his country. He could occasionally part with money for charitable purposes, but, beyond the laudable desire of providing decently for his family, he certainly displayed an inordinate desire to accumulate wealth, and this was the remote cause of his downfall.

While Somers, and Harcourt, and Cowper were familiar with the greatest contemporary poets, and are immortalised in their verses, Macclesfield preferred the conversation of judges and serjeants, and his name is to be found in doggrel ballads recording his disgrace. He had a noble opportunity of serving the state and enhancing his own fame by law reforms which were loudly demanded; but in neither House of Parliament did he ever introduce any measure to supply a defect or to correct an abuse in the administration of justice, and for his personal advantage he aggravated crying evils, which in his time had brought such obloquy on the Court of Chancery that suitors were said to be "inveigled and delayed there that they might be plundered."

As a politician he deserves unqualified praise, for he was the steady, zealous, and consistent friend of civil and religious liberty. I am afraid he intrigued with the Hanoverian party against Lord Cowper; but when he had gained his object, and was placed on the woolsack, notwithstanding the grants of money and honours for which he struggled, I know not that he said or did anything at variance with his former principles or professions.—On one occasion he appears in favourable contrast with his predecessor, for he warmly supported the Government bill for placing churchmen and dissenters on an equal footing with respect to civil rights; while Lord Cowper defended the Test and Corporation Acts, and was the cause of their being continued on the statute book for a century.

He despised authorship, and not only never contributed a paper to the "Tatler" or "Spectator," but never even wrote a political pamphlet in an age when almost every one engaged in party strife sought to influence public opinion by pamphleteering—daily newspapers not being yet established, and the publication of parliamentary debates being not only forbidden but prevented. As far as we know, he did not even keep a Diary, like Lord Cowper and Lord King. His autobiography would have been one of the most curious ever given to the world, both in his rise and in his fall.

One publication was imputed to him while he held the Great Seal—but not on sufficient grounds—"A Memorial relating to the Universities;" the author of which sets up for a great reformer of academical education—with a view less to scholarship, than to cure the Heads of Houses and Fellows of the Jacobitism by which they were almost all supposed to be

then tainted. According to his plan, they were to be appointed by the great officers of state and some bishops, and were to be enticed into the world by a liberal dispensation from their residence in college. He likewise recommended, after the model of the Scotch Universities, professorships of logic, moral philosophy, experimental philosophy, and chemistry, which all the students should be compelled to attend. Thus were those seats of learning to be made more useful to the nation, and the men who frequented them were to become better affected to their King and country.

Although Lord Macclesfield had no relish for literary society, and was never admitted of the Kit-Cat, looking with far more admiration on nisi prius leaders and equity draughtsmen than on the wits at Button's, yet, to comply with the fashion of the age, he rather affected the reputation of being a patron of literature. We have seen that, at the request of Lord Cowper, he retained Hughes in his employment as one of his secretaries, and he showed him further kindness—for which he was thus on his birth-day saluted by the poet:—

“Not fair July, tho' plenty clothe his fields,
Tho' golden suns make all his mornings smile,
Can boast of aught that such a triumph yields
As that he gave a Parker to our isle.

“Hail, happy month! secure of lasting fame!
Doubly distinguish'd thro' the circling year!
In Rome a hero gave thee first thy name,
A patriot's hirth makes thee to Britain dear.”

The very learned Zachary Pearce, when wholly unknown beyond the walls of his college, dedicated to Lord Macclesfield, when Chief Justice of the King's Bench, an edition of “Cicero de Oratore,” displaying much learning and ability, and by his recommendation rose successively from a Fellow of Trinity to be Chaplain to the Lord Chancellor, Rector of St. Martin's in the Fields, Chaplain to his Majesty, and Bishop of Rochester. Indeed, Lord Macclesfield's distribution of church patronage is represented as always disinterested and judicious.

He is placed in a very amiable point of view by the following letter written by him, after his fall, to his successor, Lord Chancellor King, in favour of his old schoolfellow, Tom Withers:—

“My Lord,

“I have received a letter from one Thomas Withers, of Newport, in

Shropshire, to desire your Lordship to appoint him master of the English school in that town, in the room of Thomas Sambrook, lately deceased. At his request I formerly obtained the place of my Lord Chancellor Cowper for this Thomas Sambrook, who was his nephew; but he himself is now fallen into misfortunes, and begs the place for himself. And indeed he deserves much better. He was my schoolfellow, and in the same form with me, in the Latin school, and was a very good scholar, and went quite through the school; but his father not being able to send him to the university, nor to get the assistance of friends for that purpose, took him to his own trade, which was that of a shoemaker, wherein he succeeded very well, and had the general esteem of the neighbouring gentlemen, and was a great favourite of the late Lord Bradford, who, if living, would have saved your Lordship this trouble. Just before I was made Chancellor I lay at Newport, and sending for the Master who had been usher when I was at the school, he told me of Tom Withers my old schoolfellow, who was then in good circumstances, and gave me an extraordinary good character of him in all respects. I sent for him, and found he retained pretty well his Greek and Latin, though he made no show in conversation of either. He has since his misfortunes officiated sometimes for his nephew, whose health did not permit him to attend the school; and has ample certificates of his very good behaviour, which he (imagining me to be in London) tells me he will order one to wait upon me with, and I will order to be laid before your Lordship if you care to be troubled with them. I beg pardon for taking up so much of your time, but I think the case so compassionate, and him so much the best man that can possibly be proposed for this place, that I could not forbear laying before your Lordship some of these particulars, as the opportunity I had of knowing so much of the person.

“I am with great respect,

“My Lord,

“Your Lordship’s most faithful

“and obedient Servant,

“MACCLESFIELD.”^z

I have not been able to ascertain whether the application succeeded. It would have been pleasant to have known that Tom Withers reached the dignity of Head Master of Newport school, and that the ex-Chancellor visiting him there, they both for a time forgot all past misfortunes, looking at their

^z Lord Lovelace’s MSS. The original, in Lord Macclesfield’s handwriting, now lies before me. In spite of this letter, a certain class of Lord Macclesfield’s admirers, who think that he is disgraced by the imputation of

having practised as an attorney much more than by being found guilty upon the charge of having corruptly sold judicial offices, deny that he was ever at Newport school.

names cut out on the old desks, and talking over their battles and boyish adventures.

I know hardly anything more of Lord Macclesfield in private life. It is said that he was warm in his friendships, and generally accessible and affable. We read a good deal of his faults of temper; his manners appear to have been rough, both in society and on the bench; and I suspect that in his highest elevation he occasionally forced the bystanders to recollect his origin and his want of early education.

He married Janet, daughter and co-heir of Charles Carrier of Wirkworth, in the county of Derby, Esq., and by her had issue, a son George, who survived him, and a daughter Elizabeth, married to Sir William Heathcote. The second Earl of Macclesfield was a celebrated mathematician, and became President of the Royal Society. He it was that, in the year 1751, so ably assisted in carrying through the bill for the reformation of the Calendar,^a which made the Parkers for some time very unpopular, although it is now one of their greatest boasts.^b The present respectable representative of the family is Thomas, the fifth Earl of Macclesfield.

^a "Lord Macclesfield, who had the greatest share in forming the bill, and who is one of the greatest mathematicians and astronomers in Europe, spoke afterwards with infinite knowledge and all the clearness that so intricate a matter could admit of: but as his words, his periods, and his utterance were not near so good as mine, the preference was most unanimously, though most unjustly,

given to me."—*Lord Chesterfield's Letters*, CCXLVII.

^b The Chancellor's grandson, some time after, standing a contested election for the county of Oxford, the mob insultingly called out to him—"Give us back, you rascal, those eleven days which your father stole from us."

CHAPTER CXXIII.

LIFE OF LORD CHANCELLOR KING FROM HIS BIRTH TILL HIS APPOINTMENT AS LORD CHIEF JUSTICE OF THE COURT OF COMMON PLEAS.

WE now come to a Chancellor, not of the highest genius, but of most respectable talents, and, what is of more consequence, of unblemished virtue. Neither the wantonness of scandal, nor the virulence of faction, could ever invent anything to the discredit of his morals or of his principles, and he descended to the tomb one of the most consistent and spotless politicians who have ever appeared in England.

The subject of this memoir was the son of a grocer and salter at Exeter. His father, though carrying on a wholesale and retail trade, is said to have been of a genteel family, long settled at Glastonbury, in Somersetshire, and he was certainly of good substance and highly respectable character. In religion he was a Presbyterian dissenter, and he was inclined to the tenets of the Puritans. He had married a sister of John Locke, the philosopher. Peter King, the only fruit of this union, was born in the year 1669, but, not being baptized by a clergyman of the Established Church, the day of his birth is not ascertained by the parish register.

The sensible and worthy tradesman intended that his son should "increase his store" by likewise dealing in figs and hams, and, having given him a school education suitable to this mode of life, placed him while still a lad behind the counter. For some years the future Chancellor continued to serve customers in the shop, or to go on errands about the city of Exeter. But, from nature, or more probably from some unknown accidental circumstances, he cherished a most enthusiastic love of learning, which disadvantages and difficulties only served to inflame. Having exhausted his father's little library, consisting chiefly of a few books in divinity, for which he ever after retained a great relish, he spent all his pocket-money and perquisites in buying treatises on the profane sciences. He even contrived to initiate himself and to make considerable proficiency in the learned languages;

and this application to study was so secret, that, in the language of one of his biographers, "he was an excellent scholar before any one suspected it." But he was detected by his uncle Locke, who after a long separation paid a visit to his parents, and who, astounded at the progress he had made by self-tuition, foresaw that it would be vain to try to force him to submit much longer to the drudgery of a shop or warehouse, and anticipated his fitness to succeed in a learned profession.

Instead of going to a public school or university in England, where his past occupations would have been known and foolishly made a reproach to him, by the kind and judicious advice of his uncle he was sent to the University of Leyden, rarely frequented by Englishmen, but which, for its excellent professors and for its cheapness, continued the resort of Scottish youths down to the time of James Boswell, the biographer of Johnson. Here young King continued some years, and addicted himself to the studies of the place with an ardour and perseverance of which there are few examples. Besides perfecting himself in classical lore, he ran round the whole circle of the sciences as there taught; but theology was still his favourite pursuit, and under a Calvinistic professor of Church history he thoroughly established himself in the belief that, in the New Testament, and in the earliest ages of Christianity, the words *Επισκοπος* and *Πρεσβυτερος* are used indiscriminately, and that those to whom the terms were applied formed one and the same grade in the Church. He was very orthodox in concurring in all the *doctrine* of the Church of England, and did not consider it sinful that there should be a separate order of bishops; but he preferred the Genevese model of church government, founded on Presbyterian parity, and, strongly denying the necessity for episcopal ordination, he maintained that the sacraments from the hands of a presbyter ordained by presbyters were equally efficacious as if administered by one who could prove his ecclesiastical pedigree through a succession of bishops from the Apostles. He, therefore, warmly supported the plan which had been promised by Charles II. in his Declaration from Breda,—which Clarendon for a time pretended to sanction, and which there had been a renewed attempt to carry at the Revolution,—for a revision of the Articles and Liturgy of the Church, whereby Presbyterians as well as Episcopalians might be comprehended within her pale. With this view he wrote, and on his return

to this country published, a most learned and profound treatise on the subject, entitled "An Enquiry into the Constitution and Discipline of the Primitive Church." This work made a great sensation, passed through several editions, and called forth many learned and able answers, particularly one by a nonjuring clergyman of the name of Selater, which is said (I believe without authority) to have made a convert even of King himself.

I know not that he ever thought seriously of going into holy orders. If he did, he must soon have perceived that, to be recognised by the Church of England, he must submit to episcopal ordination; for his treatise did not a bit advance the scheme for a comprehension, and, on the contrary, there was a strong inclination by bills against "occasional conformity," and against "schism," to draw a broader and more offensive distinction between churchmen and dissenters.

Locke could not instil into his nephew his own love for medicine. Of the learned professions, law alone remained, and to this King had no aversion, having with much satisfaction attended at Leyden a course of lectures on the Pandects. Accordingly, with the full approbation of his uncle, within a year after his return to England he was entered as a student at the Middle Temple.^c

"Moots," and "readings," and "exercises," at the Inns of Court, had now fallen into decay; and the existing practice of pupillage under special pleaders, conveyancers, and equity draughtsmen having hardly begun, I know not by what appliances a practical knowledge of the law was obtained, beyond reading in chambers, and note-taking in the courts at Westminster. Of King's habits during this period of his life, I have been able to obtain no authentic account; but, from the result, his devotion to juridical study must have been intense and unremitted. He was never supposed to have become quite familiar with Equity practice; but, before he had put on his gown, he was allowed to be a consummate master of the Common Law, having studied it scientifically and historically, and knowing thoroughly its foundations and its principles, as well as the procedure by which it was administered. His study of the English Constitution, and of

^c " Octobris 23^o, 1694^o.—Mr. Petrus King filius et heres apparens Jeronimi King de Civitat-Exon-gen-Admissus est in Societatem Medij Templi Spealiter et obligatur una cum Et dat ꝑ fine } 04 . 00 . 00'
—*Books of Middle Temple.*

political science, on which at the same time he bestowed much attention, was conducted under the advice of his uncle, who had become tenderly attached to him, and regarded him as a son.

After keeping Terms for seven years, he was called to the bar in Trinity Term, 1698.^d A few days after, he received the following letter, containing good wishes and good advice from his kinsman :—

“ Oates, 27th June, —98.

“ Dear Cousin, °

“ Your company here had been ten times welcomer than any the best excuses you could send. But you may now pretend to be a man of business, and there can be nothing said to you. I wish you good success in it, and doubt not but you have the advice of those who are better skilled than I in the matter. But yet I cannot forbear saying this much to you, that when you first open your mouth at the bar, it should be in some easy plain matter that you are perfectly master of.”

Our young barrister sent to Oates an account of having successfully made his maiden motion, and of having the prospect of a little business. Still he was cautioned against presumption :—

“ Oates, July 3, —98.

“ Dear Cousin,

“ I am glad that you are so well entered at the bar ; it is my advice to you to go on quietly, and to speak only in things that you are perfectly master of, till you have got a confidence and habit of talking at the bar. I have many reasons for it, which I shall discover to you when I see you.”

King chose the Western Circuit, and there his own merits were seconded powerfully by the Dissenters, and the laudable Devonian disposition to push forward a young countryman well qualified to succeed at the bar. His success was rapid ;

^d “ Ad Parliamentu-tentu-Junij 3^o, 1698^o. —Mr. Amory H., Ffloyne J., Gardiner G^e., Pyne W., Nelson H., Thomson W., Rutter E., Partridge H., Brockett J. Jun^r., Salkeld W., Hurdis H., Edwards H. Jun., are called to the Degree of the Utter barr ; Weldon W., and Nutley R., ex gratia, King P., upon the recommendation of y^e Lord Chelfe Justice Trehy, and Clarke J., upon the recommendation of Mr. Baron Lechmere, are also called to the same Degree.”—*Books of Middle Temple*. On the 31st of May, 1698, King had

been admitted to a set of chambers in Elm Court.

^e From this appellation some have contended that they could not have been so nearly related as I have supposed ; but, in the English language, “cousin” means “any one collaterally related more remotely than a brother or sister,” and it is often applied to a *nephew*. Thus :

“Tybalt, my cousin ! O my brother's child !
Unhappy fight ! Alas ! the blood is spilled
Of my dear cousin.”—*Shakes.*

he was soon eagerly retained in causes of all sorts, particularly in *quo warrantoes* respecting borough elections, which, till the Reform Bill, were the great source of profit in the West;—and the attorneys contended among themselves which of them had the chief credit of having brought him into business.

He was ere long ripe for the next step in the progress of a successful lawyer—being introduced into the House of Commons. The Whigs, whose principles he approved of, were at this time very low. The Tory reaction had been so strong as to compel King William to dismiss Lord Somers, and to transfer the Great Seal to Sir Nathan Wright. According to a very common professional course followed before and since—so often as to be free from lasting disgrace—the ambitious young lawyer should have *ratted*,—asserting that his old friends had changed their principles, and were now going such lengths as he could not consistently support;—but through good report and evil report he steadily adhered to the cause of civil and religious liberty. It happened in his instance that honesty led to prosperity, and he was applauded; but if he had failed, he would have been laughed at, and he would have seen successful renegades enjoying much more of general consideration than himself.

A dissolution of parliament taking place in the end of the year 1700, he found that he should have little chance in attempting to represent any large constituency, the popular cry being “The Church is in danger! Down with the Dissenters!” But having been recommended by his uncle to the Whig leaders, he was elected for the snug borough of Bere-alstone, which he represented in six parliaments, and which returned Whig lawyers for a great many years.

The Tories gained an overwhelming majority at this general election, and they threatened not only to impeach Lord Somers and the late Ministers, but to A.D. 1701. repeal the Toleration Act, and to revive all the most obnoxious laws against the Dissenters. The session was to begin in February, only a short time before the spring circuit. Locke, anxious that his nephew should do his duty in parliament, even at some considerable professional sacrifice, thus addressed him:—

“Jan. 27, 1701.

“Dear Cousin,

“I am as positive as I can be in any thing that you should not

think of going the next circuit. I do not in the mean time forget your calling; but what this one omission may be of loss to you, may be made up otherwise. I am sure there was never so critical a time when every honest member of parliament ought to watch his trust, and that you will see before the end of the next vacation. I therefore expect in your next a positive promise to stay in town. I tell you, you will not, you shall not repent it."

The young member seems to have sent a becoming answer; but his virtuous resolution was strengthened by another exhortation from the same quarter:—

“Jan. 31, 1701.

“Dear Cousin,

“Your staying in town the next vacation I look upon as resolved; and the reasons I find for it in your own letters, now that I have time to read them a little more deliberately, I think sufficient to determine you should, though I say nothing at all. Every time I think of it I am more and more confirmed in the opinion that it is absolutely necessary in all respects, whether I consider the public or your own private concerns, neither of which are indifferent to me. It is my private thought that the parliament will scarce sit even so much as to choose a Speaker before the end of the Term; but whenever he is chosen, it is of no small consequence which side carries it, if there be two nominated or at least in view; as it is ten to one there will be, especially in a parliament chosen with so much struggle. Having given all the help possibly you can in this, which is usually a leading point, showing the strength of the parties, my next advice to you is not to speak at all in the House for some time, whatever fair opportunity you may seem to have. But though you keep your mouth shut, I doubt not but you will have your eyes open to see the temper and observe the motions of the House, and diligently to remark the skill of management, and carefully watch the first and secret beginning of things, and their tendencies, and endeavour, if there be danger in them, to crush them in the egg. You will say, what can you do who are not to speak? It is true I would not have you speak to the House, but you may communicate your light or apprehensions to some honest speaker who may make use of it, for there have always been very able members who never speak, who yet, by their penetration and foresight, have this way done as much service as any within those walls; and hereby you will more recommend yourself when people shall observe so much modesty joined with your parts and judgment, than if you should seem forward though you spoke well.”^f

^f The simplicity of the philosopher somewhat resembles that of the Emperor Alexander of Russia, who, being in England in 1814, said to a great Whig Lord that “he had admired the OPPOSITION as a valuable

part of the English Constitution, but he thought it would be better still if the members of Opposition were required to give their advice to Ministers in private instead of censuring them in parliament.”

King's patriotic resolve was farther fortified by the following letter:—

"Oates, 7th Feb. —01.

"Dear Cousin,

"I am glad to find by yours of January 30, that you are resolved to stay. Your own resolution, in case of *unforeseen accidents*, will always be in your own power. Or if you will make me the compliment that you will not go without my leave, you may be sure that, on any unforeseen pressing occasion that may happen, you will not only have my leave, but my persuasion to go. But as things are, I think it your interest to stay."

The honourable and learned member for Berealstone accordingly gave up the spring circuit, which lawyers know must have been a considerable effort of patriotism, as he thereby not only sacrificed present profit, but hazarded his professional position. His stay in town was of little use with respect to the choice of a Speaker, for Harley, the Tory candidate, was elected in preference to Onslow the Whig, by a majority of 249 to 125.

What hints King communicated to the Whig leaders we know not, but he seems literally to have followed his ^{A.D. 1701—}uncle's advice, and never to have opened his mouth ^{1702.} during the whole session, although there were such tempting subjects brought forward as the settlement of the Crown upon the House of Hanover, under the impracticable condition, maliciously introduced by the favourers of the exiled family, that no one holding any office under the Crown should sit in the House of Commons;—the impeachment of Somers and his late colleagues;—and the quarrel between the two Houses, which led to an acquittal.

He still took great delight in theological reading, and he now published "The History of the Apostles' Creed, with Critical Observations on its several Articles." Coming out anonymously, it was ascribed to several eminent divines, and the world was astonished to learn that it was the production of a layman. So profound, accurate, and orthodox is the work, that it is still recommended by bishops to candidates for holy orders.

On the sudden revolution in public opinion which was produced by Louis XIV.'s recognition of the Pretender, and his threatened invasion, parliament being again dissolved, King was reinstated in the House of Commons by the Lord of Berealstone, and the Whigs now had a majority.

King still for some time remained silent in the House, but he was diligent in his attendance; and, there being no *Times* or *Morning Chronicle* in existence, he almost daily sent an account of the proceedings to Oates for the use of his kinsman, who still took a very lively interest in public affairs. The reports he furnished are not so full or interesting as might have been expected. I copy a specimen of them:—

“17th Feb. 1702.

“This day was expected to be the greatest day of this parliament, the business thereof being to consider of the rights and privileges of the House of Commons. Mr. Finch moved first, and he proposed the first question, which was assented to without any division, as were likewise two others, which were—

“1. That to assert that the House of Commons was not the representative of all the people of England, was subversive of the constitution of the House of Commons.

“2. The same as to asserting that the House of Commons had not power to imprison others besides their own members.

“3. The same as to libels on the House of Commons.

“A 4th question proposed was, that reflecting on the House of Commons, and praying a dissolution of the parliament, were tending to sedition, &c. That was opposed with courage and heat, so that the gentlemen who were for it moved to leave out the latter words about praying the dissolution of the parliament; upon which a motion was made to leave the chair, and therefore the Speaker took the chair and adjourned; by which means all the business of the committee is fallen to the ground, and is as if it never were—which is very great mortification to some people, though not to

“Your most affectionate

“Cousin and Serv^t,

“P. KING.”[§]

On another occasion, describing the debate on the first day
Nov. 9, of the session, after giving a sketch of the Queen's
1703. speech, he says—

“Sir E. S—r was only for a general address of thanks, and not to thank particularly till the House had first considered the particular matters of the speech. But it was carried with a swing to thank her Majesty particularly for all those things mentioned in her speech, and to assure her that we will stand by, support, and maintain all her alliances already made or to be made.”^h

[§] This debate is never numbered or referred to in the “Parliamentary History.” See vol. vi. 151.

^h This is a fuller account of the debate

At last King made his maiden speech, which seems to have been successful; but we remain ignorant of the subject of it, and we should not have known that he had spoken but for the following letter from his cautious kinsman:—

“Feb. 29th, 1702.

“Dear Cousin,

“I am very glad the ice is broke, and that it has succeeded so well; but now you have showed the House that you can speak, I advise you to let them see you can hold your peace, and let nothing but some point of law, which you are perfectly clear in, or the utmost necessity, call you up again.”

King, pleased with his *début*, and considering how the fame of it might raise him into a *nisi prius* leader in the West, was about to join the circuit when he received the following admonition from his uncle:—

“March 3, 1702.

“Dear Cousin,

“I imagine by what you say of the circuit, that you have not duly considered the state in which we are now placed. Pray reflect upon it well, and then tell me whether you can think of being a week together absent from your trust in parliament, till you see the main point settled, and the kingdom in a posture of defence against the ruin that threatens it. The reason why I pressed you to stay in town was, to give the world a testimony how much you preferred the public to your private interest, and how true you were to any trust you undertook; this is no small character, nor of small advantage to a man coming into the world. Besides, I thought it no good husbandry for a man to get a few fees on circuit, and lose Westminster Hall. For I assure you Westminster Hall is at stake, and I wonder how any one of the House can sleep till he sees England in a better state of defence, and how he can talk of any thing else till that is done.”

At this time all seemed prosperous with the Whigs, and the appointment of a new ministry was every day expected, King's friends thinking that he had fair pretensions to the office of Solicitor-General: but his hopes and those of his party seemed blasted for ever by the death of William III., and the triumphant accession of the Tories to power under Queen Anne.

King continued in parliament, but almost abjured politics, and devoted himself to his profession—steadily advancing to the top of it.

In the following year he earnestly attempted to prevail on

his kinsman to revisit the metropolis, thinking that a sight of his old friends would revive him, and received the following answer :—

“ April 30th, 1703.

“ In your last you seemed desirous of my coming to town ; I have many reasons to desire to be there, but I doubt whether ever I shall see it again. Take not this for a splenetic thought ; I thank God I have no melancholy on that account. But I cannot but feel what I feel ; my shortness of breath is so far from being relieved by the renewing season of the year as it used to be, that it sensibly encreases upon me. I have several things to talk to you of, and some of present concernment to yourself, and I know not whether this may not be my last time of seeing you. I shall not die the sooner for having cast up my reckoning, and judging as impartially of my state as I can. I hope I shall not live one jot the less cheerfully the time that I am here, nor neglect any of the offices of life whilst I have it ; for whether it be a month or a year, or seven years longer, the longest any one out of kindness or compliment can propose to me is so near nothing when considered in respect of eternity, that if the sight of death can put an end to the comforts of life, it is always near enough, especially to one of my age, to have no satisfaction in living.”

King's visits were now more frequent to his uncle, at whatever sacrifice ; and he had the unspeakable satisfaction of prolonging the old man's days by his kindness, and rendering them more comfortable.

We must now take a glance at our hero playing the part of a lover. Having reached his thirty-fourth year, he either felt the tender passion, or he prudentially resolved to form a respectable matrimonial connection. The object of his choice was Anne, the daughter of Richard Seyes, Esquire, of Boverton in Glamorganshire, deceased. The young lady, beautiful and accomplished, possessed a very slender fortune, but she had great expectations from a maiden aunt who had brought her up. King, upon this occasion, consulted Locke as a father, and appears to have received from him some very prudent counsel, as we may conjecture from the following reply :—

“ 13th June, 1703.

“ I thank you for your last letter, and the several kind hints in it. I believe the aunt will not come under any legal obligation for futurity, but she promiseth well. As to the young lady, she hath wit and sense, and will, I believe, be very easy in all those things you mention.”

The courtship proceeded ; but, from a difficulty, about

settlements, or some other cause not explained to us, it was not brought to a happy conclusion till the long vacation in the following year. Meanwhile, Locke, thinking that his last hour was at hand, wrote the following letter to his nephew:—

“ June 1st, 1704.

“ I remember it is the end of a term, a busy time with you, and you intend to be here speedily, which is better than writing at a distance. Pray be sure to order your matters so as to spend all the next week with me; as far as I can impartially guess, it will be the last week I am ever like to have with you; for, if I mistake not, I have very little time left in the world. This comfortable, and to me usually restorative, season of the year, has no effect upon me for the better: on the contrary, all appearances concur to warn me that the dissolution of this cottage is not far off. Refuse not, therefore, to help me to pass some of the last hours of my life as easily as may be, in the conversation of one who is not only the nearest, but the dearest to me, of any man in the world. I have a great many things to talk with you, which I can talk to nobody else about. I therefore desire you again deny not this to my affection. I know nothing at such a time so desirable and so useful as the conversation of a friend one loves and relies on.”

King, as may be supposed, instantly posted down to Oates, and did every thing to soothe the sufferer which could be done by a pious son for a revered parent. His attentions proved successful, and, warm weather following, Locke had a wonderful revival, and was freer from pain than he had been for years past.

King's affair of the heart now took an auspicious turn, and it was agreed that after the summer circuit he should be united to the object of his affections. This news gave high delight to the philosopher, and his conduct on the occasion places him in the most amiable point of view, forcing us to love him as much as to admire and to reverence him. Though conscious that when the severe season returned he could not long encounter his maladies, he took an unabated interest in the pursuits of his friends, and he was devotedly anxious to contribute to their happiness. He could not move from home, but he insisted on an immediate visit from the new-married pair,—and on their wedding day thus wrote the author of the *Essay on the Human Understanding*, the *Analysis of the Principles of Free Government*, the *Apostle of Toleration*, the first intelligent Advocate of useful Education, the Founder of Free Trade in England:—

“Dear Cousin,

“Oates, 16th Sept. —04.

“I am just rose from dinner, where the bride and bridegroom’s health was heartily drank, again and again, with wishes that this day may be the beginning of a very happy life to them both. We hope we have hit the time right; if not, it is your fault who have misled us.

“I desire you to bring me down twenty guineas. The wooden standish, and the Turkish travels of the Exeter man, I know you will not forget. But there are other things of more importance on this occasion, which you ought not to omit, viz. :—

“4 dried neats’ tongues.

“12 Partridges that are fresh, and will bear the carriage, and will keep a day after they are here.

“4 Pheasants. The same I said of the partridges I say of the pheasants.

“4 Turkey poults ready larded, if they be not out of season.

“4 Fresh Aburn Rabbits, if they are to be got.

“Plovers, or woodcocks, or snipes, or whatever else is good to be got at the poulterer’s, except ordinary tame fowls.

“12 Chichester male lobsters, if they can be got alive—if not, 6 dead ones, that are sweet.

“2 large Crabs that are fresh.

“Crawfish and Prawns, if they are to be got.

“A double harrel of the best Colchester oysters.

“I have writ to John Gray to offer you his service. He was bred up in my old Lord Shaftesbury’s kitchen, and was my Lady Dowager’s cook. I got him to be messenger to the Council of Trade and Plantations, and have often employed him when I have had occasion in matters of this nature, when I have found him diligent and useful.

“I desire you also to lay out between 20 and 30 shillings in dried sweet-meats of several kinds, such as some woman skilful in those matters shall choose as fit and fashionable (excepting orange and lemon peel candied, of which we are provided). Let them be good of the kind, and do not be sparing in the cost, but rather exceed 30 shillings.

“These things you must take care to bring down with you, that I may, on this short warning, have something to entertain your friends, and may not be out of countenance while they are here. If there be any thing that you can find your wife loves, be sure that provision be made of that, and plentifully, whether I have mentioned it or no.

“Pray let there be a pound of Pistachios, and some China oranges, if there be any come in.”

In his affectionate zeal that the feast might pass off auspiciously, on the following day he again addressed the bridegroom :—

“Dear Cousin,

“Oates, 17th Sept. —04.

“Though I writ to you yesterday, yet understanding by yours of the 10th, that the business is complete, at which I rejoice, I cannot forbear

to write to you to-day to wish you and my cousin, your wife, joy, to whom, pray give my hearty service. I expected no more in your letter than you writ. It was enough for a man on his wedding day; and therefore I hope, though you say nothing, that you have prepared my present of a toilet furniture for my cousin, your wife, and will give it her from me before you come out of town; else I shall complain to her of you when I see her." [He then proceeds with a great many minute directions as to the provisions—the choosing of them, the packing of them—a statement that they would be eight at table, and a hope that John Gray would be able to make a bill of fare, concluding with these kind words,] "I shall be glad to bid you and my cousin, your wife, joy myself, and am

" Your most affectionate Cousin, and

" humble Servant,

" JOHN LOCKE."

John Gray performed his part to admiration, showing that he had served under a great master in the *savoir vivre*. The philosopher himself could taste little beyond a crust of bread and a cup of water, but he was the most cheerful of the party, and felt true happiness in making others happy.

The wedding-party had scarcely left him, when, the cold weather returning, his asthma and his other complaints were worse than they had ever been, and he knew that certainly his hour was come. But in the consciousness of a well-spent life, and far more in the firm faith of the great truths of the Gospel, his serenity was unclouded. He had before executed his will, leaving King the bulk of his property; and now he wrote to him the following letter, more fully to explain his wishes, and to bid him a last farewell:—

" Oates, 4th Oct. 1704.

"Tha; you will faithfully execute all that you find in my will, I cannot doubt, my dear cousin. Nor can I less depend upon your following my directions, and complying with my desires in things not fit to be put into so solemn and public a writing.

" You will find amongst my papers several subjects proposed to my thoughts, which are very little more than extempore views laid down in sudden and imperfect draughts, which, though intended to be revised, and farther looked into afterwards, yet, by the intervention of business, or preferable inquiries, happened to be thrust aside, and so lay neglected, and sometimes quite forgotten. Some of them, indeed, did engage my thoughts at such a time of leisure, and in such a temper of mind, that I laid them not wholly by upon the first interruption, but took them in hand again as occasion served, and went on in pursuance of my first design till I had satisfied myself in the inquiry I at first proposed. Of

this kind is, 1. my discourse, 'Of seeing all things in God.' 2. My discourse, 'Of Miracles.' 3. My 'Conduct of the Understanding.' 4. Papers inscribed 'Physica.' 5. My 'Commentaries upon the Epistle of St. Paul.'" [After directions respecting their publication, the management of his affairs, and the payment of his legacies, he concludes, in a tone of great tenderness:]—"Remember it is my earnest request to you to take care of the youngest son of Sir Francis and Lady Masham, in all his concerns, as if he were your brother. He has never failed to pay me all the respect, and do me all the good offices he was capable of performing, with all manner of cheerfulness and delight, so that I cannot acknowledge it too much. I must therefore desire you, and leave it as a charge upon you, to help me to do it when I am gone. Take care to make him a good, an honest, and an upright man. I have left my directions with him, to follow your advice, and I know he will do it, for he never refused to do what I told him was fit. If he had been my own son he could not have been more careful to please and observe me.

"I wish you all manner of prosperity in this world, and the everlasting happiness of the world to come. That I loved you, I think you are convinced. God send us a happy meeting in the resurrection of the just! Adieu!

"JOHN LOCKE."

King, on the receipt of this letter, left his bride in the West of England, and arrived at Oates in time to see how a Christian should die. Having been present when the last marks of respect were paid to the remains of his illustrious kinsman, he got possession, under his will, of his property and his MSS., and he most scrupulously fulfilled all his bequests and all his wishes, feeling himself, and transmitting to his posterity, the most profound veneration for the memory of the deceased.¹

¹ On this occasion he wrote the following letter to his cousin, Mr. Peter Stratton, of Bristol, son of his aunt, Elizabeth Locke, the philosopher's other sister:

"London, November 4, 1704.

"Cousin,

"This is principally to acquaint you that Mr. Locke died last Saturday. By his will he has made me executor, and given several legacies, to the value of above 4500*l.* Amongst other legacies he hath given you 50*l.*, and to your sister Hassell 5*l.*, both which I am willing and ready to pay. He hath not made any disposition of his lands by his will, but hath suffered them to descend according to the course of the law to his heirs, who are you and me; so that one

half of his lands do now belong to me, and the other half to you. He frequently told me in his lifetime that he would let his lands go in this manner, and, believing that money would be more for your purpose than land, desired me to purchase of you your half. I have no occasion for it; but, seeing he intimated such a thing to me, I will, if you please, purchase your half, and give you the utmost and full value for it. My humble service to my cousin your good wife, to my aunt, to our friends at Sutton, and all our relations.

"I am, Sir,

"Your most affectionate Cousin

"and humble Servant,

"P. KING,"

There

Indeed, this relationship is, and I believe is felt to be, a greater honour to them than if the Chancellor had been the son of a Duke, or a Knight of the Garter. The late Lord King, with true piety and talent, wrote an admirable Life of the Philosopher, and the name of "LOCKE" has become a patronymic in the family.

But we must now turn to the member for Berealstone, in the House of Commons. He attended diligently in his place during the short session which followed the accession of Queen Anne. There is no doubt that now and henceforth he took an active part in debate, but we know nothing of what he said or the particular occasions when he spoke. He has had worse luck in this respect than any other leader on either side, except Bolingbroke. Although he sat in parliament the whole of the present reign, and, after the promotion of Lord Cowper to the Great Seal in 1705, was almost looked upon as the leader of the Whigs in the Lower House, his name is not once mentioned in the "Parliamentary History," and we trace his career in the House of Commons only by casual notices in contemporary writers. As the Administration became more and more Whiggish under Godolphin and Marlborough, his opposition to it was no doubt gradually softened, although he must have continued to fight many hard battles against the ultra-Tory bills which, for several years, were regularly carried in the Commons and thrown out in the Lords.

When the great case of "privilege" arose out of the Aylesbury election, he took the rational course, by contending that the action against the returning officer for maliciously refusing the vote of an elector was maintainable. In the "STATE TRIALS" there is preserved some account of his speech on this occasion:—*Mr. King*. "I am called up by the strange assertion of the honourable gentleman who has just sat down, that the

There is extant another original letter of Lord King, dated 23rd February, 1694, which I hope may satisfy those who say that he and the philosopher could not be "uncle and nephew" because they called each other "cousin," for this letter to William Stratton, the husband of Locke's sister, begins, "Honoured Uncle;" and thus concludes—"Do me the favour to present my service to all my friends with you, and in particular to my aunt. In anything wherein I can serve you I shall be always ready, and still endeavour

to approve myself to be

"Your affectionate Nephew and Servant,
"PETER KING."

The above letters of 3rd Jan. 1698, 27th Jan. 1701, 31st Jan. 1702, 29th Feb. 1702, 30th April 1703, 1st Jan. 1704, have been before in print. All the others I have selected from an immense mass of correspondence between him and Peter King, which is not so interesting as might have been expected, as it generally turns on matters of private business.

right of electing is only a service, and not a liberty or privilege. I desire that the act 20 Car. II. c. 9, may be read. [Members, *No, no.*] It is an act to enable the inhabitants of the county palatine of Durham to send members to parliament; and it recites, that they had not hitherto enjoyed that 'liberty and privilege.' I may surely call that a 'liberty and privilege' which is so called by the legislature; and if it be a 'liberty and privilege,' surely, for the wrongful violation of it, there ought to be a remedy. Gentlemen say, 'this is a new action, never heard of before.' True! this particular action is new; probably because the right to elect was never before so shamefully violated; but actions of the same nature, and grounded on the same principles, are as old as the common law of England. 'Et ubi eadem est ratio, idem jus.' Was it ever heard, till the very late instance, that an action lay against an officer for denying a poll to one who stood candidate for the office of bridgemaster? But the injured party was found entitled to damages. No action was ever brought, till 16 Jac. I., by a reversioner against tenant for life for refusing to let him enter to view waste; but the law always was, that the reversioner had that right. It stands upon the general maxim of law, 'if you do me a wrong, I must have a remedy.' It is said by a worthy gentleman, that in real actions there are no damages; but in real actions, if you do not recover damages, you recover the land itself. [Members, *The question! the question!*] I find gentlemen are very uneasy. I will trouble you no further. [Members, *Go on, go on.*] I agree the determining the right of election belongs to the House of Commons. This action does not relate to any disputed right of election, but is brought by a man who has the unquestioned privilege of voting against an officer for maliciously refusing his vote." ^k I presume that the interruption came from some Tory squires, who did not at all understand the subject, but were impatient to vote as they were ordered, and to get off to the "October Club," where they might drink "Church and Queen," with, perhaps, a bumper to JAMES III.,—the toast of "the King over the water" not yet being invented. The derided Peter, though so discourteously treated in this controversy, did not flinch, but continued resolutely to resist the tyrannical majority, who went on imprisoning plaintiffs and counsel, passing absurd resolutions against the Lords, and playing all manner of fantastic tricks, till they were sent adrift by a dissolution.

^k 14 St. Tr. 770.

Although it did not suit party arrangements that King should be promoted to be a law officer of the Crown, he was now at the head of the bar for reputation and business, being not only the acknowledged leader of the Western Circuit, but retained in all the great causes which came before the common law courts at Westminster. His first judicial appointment was as Recorder of Glastonbury, where ^{July 27,} ^{1708.} it is said that his forefathers had been settled; but if this pleased his feelings, it brought him no emolument and little éclat. He was introduced to the honours of the profession by the City of London, which has in several ages corrected the injustice of the government to eminent lawyers. On the death of Sir Salathiel Lovel he was elected Recorder of that great Corporation. Soon after, on the presentation of an address of congratulation from the City on Marlborough's bloody victory at Malplaquet, he was knighted by Queen Anne, although she looked upon him personally with no favour, by reason of his early connection with the Dissenters, and his present preference of the Low Church party.

At the meeting of the new parliament in 1708 there was a strong inclination to propose Sir Peter King as ^{A.D. 1708—} ^{1710.} Speaker, but another section of the Whigs were resolved to have a country gentleman in the chair, and the whole party united in the election of Sir Richard Onslow, that they might keep out the Tory candidate.

When the trial of Sacheverell came on, Sir Peter, in respect of his ecclesiastical lore, was selected to support the second article of the foolish impeachment,—which charged the Doctor with having attacked the Toleration Act, by asserting “that he is a false brother with relation to God, religion, and the Church, who defends toleration and liberty of conscience; that Queen Elizabeth was deluded by Archbishop Grindal, a false son of the Church, and a perfidious prelate, to the toleration of the Genevese discipline; and that it is the duty of true Christian pastors to thunder out anathemas against all who do not approve of the discipline as well as the doctrines of the Church of England.” Sir Peter's speech at the bar of the House of Lords was very long and elaborate, but cannot now be perused with much pleasure. He gives a history of the Reformation in England, with a list of the statutes to enforce conformity to the Church, and in ease of Protestant dissenters. He very ably defends Archbishop Grindal, and refutes the doctrine that the toleration of Protestant dissenters is antichristian; but

he utterly fails in giving a satisfactory answer to the Doctor's plea, that "no words spoken of an archbishop 120 years since deceased will, in construction of law, amount to a high crime and misdemeanor," or in showing that the preaching of intolerance and bigotry from the pulpit was a fit subject of prosecution by the House of Commons. Says Sir Peter, in his peroration, "for the Doctor to come and say that 'though the Dissenters are tolerated by act of parliament, and though they are exempted by law from penalties, yet, be the law of the land what it may, let the ecclesiastical pastors do their duty, let them fulminate their excommunications, and thunder out their anathemas, and let the civil magistrate, the earthly powers, dare to reverse them if they can,' I submit this to your Lordships, whether this is not directly infringing the Queen's supremacy as well as weakening and censuring the toleration—which is what he is charged with in this article."^m On a subsequent day he replied to the defence of the Doctor and his counsel on the second article, and turned, rather ingeniously, against them their argument that the Toleration Act could not alter the sin of schism. "Here is the force of the Doctor's argument: 'The Dissenters were schismatics before the Act of Toleration; as they were schismatics before, so they are schismatics still; it is the duty of all superior pastors to thunder out their anathemas against schismatics; when they thunder out these anathemas, they are ratified in heaven; whatever is ratified in heaven no power on earth can reverse; therefore, though the Dissenters be exempted from human penalties by the Toleration Act, and are thereby preserved in the free exercise of their religion and consciences, yet, notwithstanding that, let the superior pastors do their duty and thunder out their anathemas against them, and let any power on earth reverse those anathemas.' Have we not here an open defiance of the authority of parliament, and a direct incitement to a violation of the law of the land?"

Sir Peter was supposed to acquit himself very creditably, but was rather thought to be too forbearing in dealing with the High Church party, and did not please the Government by any means so much as Parker, who furiously assailed the Doctor and his adherents, covering them with odium and ridicule, and was therefore made Chief Justice of the Court of Queen's Bench, on the vacancy now occurring by the lamented death of Holt.ⁿ

^m 15 St. Tr. 134—151.

ⁿ Ante, p. 11.

Mr. Recorder King continued to practise at the bar, till the conclusion of this reign, with undiminished reputation; but there is only one reported trial in which I find any account of his pleading, which was in the famous prosecution of "Wicked Will Whiston," for heresy. This lover of eccentricity and paradox, when condemned before the Convocation and the Vice-Chancellor's Court at Cambridge, was without counsel; but when his case came, by appeal, before the DELEGATES, he was ably defended (without a fee) by our great theological lawyer, who showed that his notions of the Trinity were not Arian, but were founded on the Apostolical constitutions, and that, at any rate, the sentence against him was irregular, and ought to be reversed. Some bishops and doctors of the civil law, who were in the commission, were nevertheless strongly inclined to affirm the sentence, but no common law judge would join them, and King boldly threatening them with a *præmunire*, they concurred in the acquittal.^o This prosecution, instituted by the High Church party, and meant as a set-off to Sacheverell's, was equally foolish and equally abortive. Bishop Burnet, who had tried to stifle it, said on the occasion, with excellent good sense, "I

A.D. 1712.

^o 15 St. Tr. 703—716; Som. Hist. Anne, 426; Tindal, ix. 91; 15 St. Tr. Although King met with unbounded gratitude at the time, afterwards, because he would not adopt the fantastical notions which, as an advocate, he had attempted to palliate, Whiston attacked, maligned, and, I believe, grossly misrepresented him. "Upon my application to him," says Will (probably in favour of a friend as wrong-headed as himself), "I found so prodigious a change in him, such strange coldness in matters that concerned religion, and such an earnest inclination to money and power, that I gave up my hopes quickly. Nay, indeed, I soon perceived that he disposed of his preferments almost wholly at the request of such great men as could best support him in his high station, without regard to Christianity; and I soon cast off all my former acquaintance with him. Now, if such a person as the Lord King, who began with so much sacred learning and zeal for Christianity, was so soon thoroughly perverted by the love of power and money at Court, what good Christians will not be horribly affrighted at the desperate hazard they must run if they venture into the temptations of a Court hereafter; *Exeat aula qui*

vult esse pius." "When I was one day with the Lord Chief Justice King, one brought up among the dissenters at Exeter under a most religious, Christian, and learned education, we fell into a dispute about signing articles which we did not believe, for preferment; which he openly justified, and pleaded for it that 'we must not lose our usefulness for scruples.' Strange doctrine in the mouth of one bred among dissenters, whose whole dissent from the legally established church was built on scruples! I replied, that 'I was sorry to hear his Lordship say so; and desired to know whether in their Courts they allowed of such prevarication or not?' He answered, 'they did not allow of it;' which produced this rejoinder from me, 'Suppose God Almighty should be as just in the next world as my Lord Chief Justice is in this, where are we then?' To which he made no answer. And to which the late Queen Caroline added, when I told her the story, 'Mr. Whiston, no answer was to be made to it.'" Archbishop Wake, Archbishop Potter, and Lord King, Whiston sets down as "three excellent men utterly ruined by their preferment at Court."—*Whiston's Memoirs*, i. 35, 227, 314, 365.

have ever thought that the true interest of the Christian religion was best consulted where nice disputing about mysteries was laid aside and forgotten."

About the same time Dr. Fleetwood, a Whig bishop, but so warmly attached to the Church as to be a favourite of Queen Anne, having published a volume of Sermons, with a Preface, in which he lamented that "God, for our sins, permitted the spirit of discord to go forth and sorely to trouble the camp, the city, and the country, and to spoil for a time the beautiful and pleasing prospect which the nation had enjoyed,"—this was construed into an insult on the government,—and, to annoy a low churchman, a complaint was made in the House of Commons against the author. He was denounced as an enemy to religion and good government, and some very violent Tories, trying to outdo the folly of their antagonists, proposed that he should be impeached. Sir Peter King warmly took up his defence, and contended that the Bishop, whether right or wrong, had not exceeded the limits of fair discussion. The Commons waived the impeachment, but, by a majority of 119 to 54, "resolved this Preface to be malicious and factious, highly reflecting on the present administration of public affairs under her Majesty, and tending to create discord and sedition amongst her subjects;" and condemned it to be burnt by the hands of the common hangman.^p

I cannot find any other occasion on which Sir Peter King distinguished himself, except the debate on the 8th and 9th articles of the treaty of commerce concluded at Utrecht, providing "that no higher duties should be imposed on the importation of goods from France than were payable for the like goods brought from any other country in Europe." I am sorry to say that he joined General Stanhope and several other eminent Whigs in opposing this measure of free trade, on the ground that our rising manufactures of linen, silk, and paper would be ruined by French competition; and as it was defeated by the clamours they excited for "protection to native industry," the favourable opportunity for establishing a reciprocally advantageous commercial intercourse with France was for ever lost. But I think my brother barrister may well be forgiven for his bad political economy in the very be-

^p Tindal's Cont., xix. 537. Bishop Fleetwood, in a letter to Bishop Burnet, giving an account of this affair, pays a compliment

to the defence set up for him by Sir Peter King and other gentlemen of the long robe.

ginning of the eighteenth century, when we find an enlightened nobleman, in the middle of the nineteenth, still condemning this treaty, observing, with undoubting confidence in the soundness of the old *mercantile system*, "it has been calculated, on apparently good grounds, that, had the project passed, the annual balance against, or less to, Great Britain would have been not less than 1,400,000*l.*;" and quoting, with applause, the saying of a bishop profoundly ignorant of such subjects, that the treaty would have been disgraceful "if even we had been as often beat by the French as they had been beat by us."⁴

It has been alleged against Sir Peter King, that during the domination of the Tories in the latter part of Queen Anne's reign he showed an inclination to go over to them, and that he used some harsh expressions against Walpole when that distinguished Whig was most infamously expelled the House of Commons and sent to the Tower for alleged corruption in his office of Secretary at War: whereas Sir Peter most steadily adhered to his party and his principles through good report and evil report, and what he said of Walpole was that "he *deserved as much to be hanged* as he deserved the punishment inflicted upon him, expulsion and imprisonment."⁵ He was a most zealous friend to the succession of the House of Hanover, and took an active part in supporting the Regency Bill, and counteracting the machinations of the Jacobites. After Parker's elevation to the bench, he was by far the most eminent Whig lawyer in the House of Commons, and upon a change of government his promotion was considered certain—as he was so much esteemed by Lord Somers and Lord Cowper, who, in such an event, would regulate legal appointments. But the prospect still continued very gloomy till the death of the Queen, which suddenly reversed the respective positions of the rival factions.

At the head of the grand procession of the lord mayor, aldermen, and citizens of London, to meet King George A.D. 1714.
when he first entered the limits of their jurisdiction

⁴ Lord Mahon, i. 49. On the first division on the subject, Ministers had a majority of 252 to 130; but the bill to carry these articles of the treaty into effect was thrown out by a majority of 194 to 185. Had it reached the House of Lords, I am afraid it would have had no chance there, where the Whig party was still so powerful. "Free trade"

is a subject on which Whigs and Tories have changed principles; but the former have ever steadily favoured free political institutions and liberty of conscience, and the latter high prerogative and civil disqualifications to protect the Church.

⁵ Coxe's Life of Sir R. Walpole, i. 66; Tindal.

in Southwark, walked Mr. Recorder Sir Peter King, who delivered a loyal and eloquent address (which must have appeared gibberish to the royal ear), hailing the happy arrival of a great Protestant Prince, who was to secure to us our religion and liberties, and, putting an end to all discord, was to make commerce, literature, and the arts for ever flourish among us. As Madame von Schulenburg and the Baroness Keilmanssegge did not make their appearance for a few weeks, and the other Hanoverians who afterwards declared that they had come "for all our *goods*"^a were still kept in the back ground, not yet beginning the sale of offices or honours,—all at first went smoothly. Lord Cowper, having the Great Seal restored to him, was required to submit to his Majesty a *projet* for the settlement of Westminster Hall, the unlimited power being still exercised of removing Judges on a demise of the Crown. Part of the recommendation was that Lord Trevor, a good lawyer and a man of fair character, but a violent Tory, who had been one of Anne's batch of twelve Peers, should be replaced, as Lord Chief Justice of the Common Pleas, by Sir Peter King. His Majesty, who hardly knew the difference between the office of Lord Chief Justice of the Common Pleas and Lord Mayor of London, of course graciously assented.^b

CHAPTER CXXIV.

CONTINUATION OF THE LIFE OF LORD KING TILL HE WAS MADE LORD CHANCELLOR.

WHEN this change on the bench of the Court of Common Pleas had been publicly announced, and before it had formally taken place, the Chief-Justice-elect received the following magnanimous epistle from his falling predecessor :

"Sir,

"Bromham, Oct. 12, 1714.

"I am informed it is his Majesty's pleasure to remove me from my office of Ch. Justice of the Co. Pleas, and to confer the same upon you

^a "And chattels, too," was the reply.

^b Ante, vol. v. p. 294.

—which I heartily wish you joy of, and am glad to see it placed in a person so worthy and much more capable to discharge the duty of it than myself. I am desired by an old servant, who hath served me very faithfully when I was Attor. Gen^l. and Ch. Justice, as Clerk of the fines, to recommend him to you; and I desire the favour of you that you will be pleased to employ him as your Clerk in that employment, or as Cryer, if you are not engaged. I am confident you will find him a very good servant. His name is Bryan Whealon. In doing which you will very much oblige

“Your most faithful Friend and Servant,

“TREVOR.”

When the appointment had taken place, thus was he congratulated by Majendie, a distinguished refugee Huguenot minister, to whom he had shown great kindness:—

A.D. 1715.

“d’Exeter, le 9^e de Mai 1715.

“Mylord,

“C’est avec un plaisir inexprimable que je mets ce noble titre au frontispice de cette lettre, et que je vous félicite de tout mon cœur, de ce qu’avez vous avoir élevé à la dignité de Premier Juge dans un des premiers Barreaux de ce Roïaume, sa Majesté vous a approché de son auguste persone et vous a admis au nombre de ses Conseillers, digne comme vous l’êtes d’y occuper le premier rang, auquel je ne désespère pas de vous voir un jour arriver; digne, dis-je, nonseule^t par votre vaste savoir, par votre pénétration, et par les qualités extraordinaires de votre esprit; mais encore par votre probité, par votre piété, et par la droiture de votre cœur.

“Ah! certes c’est à présent que nous avons sujet d’espérer la réformation des mœurs, et l’avance^t de l’intérêt Protestant dans la Grande Bretagne, puisque nous avons dans le Conseil des personnes d’une piété si éminente, et qui ont si fort à cœur les intérêts de la gloire de Dieu, et du salut des âmes. Bénit soit Dieu qui a élevé, comē sur une haute montagne, un si éclatant flambeau, afin que sa belle lumière resplendit encore d’avantage, et fût salutaire à un plus grand nombre de personnes. Mais je ne remarque pas que suivant les mouvemens de joie et d’admiration dont mon âme se sent ravie, je pourrois, Mylord, vous ennuyer par mes lignes peu correctes, choquer votre modestie et vous faire perdre des moments qui vous sont chers, et que vous donnez à des affaires tout autre^t importantes.”

Sir Peter King enjoyed the dignity of Lord Chief Justice of the Common Pleas for a period of eleven years, and he is universally allowed unqualified praise as a Common Law Judge. To great learning in his profession and strict impartiality, he added considerable quickness of perception, immense industry

and inexhaustible patience in listening to the drowsy serjeants who practised before him. His judgments, as handed down to us in the Reports, are marked by precision of definition, subtlety of distinction, breadth of principle, lucidness of arrangement, and felicity of illustration—his copious authorities being brought forward to fortify, not to overlay, his reasoning."

Criminal business being excluded from the Common Pleas, and the cases there, during his time, turning chiefly upon the law of real property, his decisions in his own court could not be made interesting or intelligible to the general reader. But he was occasionally called upon to act judicially in other tribunals,—to which we may follow him with some chance of useful instruction.

After the suppression of the rebellion of 1715, Lord Chief Justice King presided at the trial of the rebels, who, being commoners, were brought before a jury. His report of the convictions to the Secretary of State is curious, and I give a few extracts from it, showing his humane desire to save those who, from mistaken loyalty, had forfeited their lives to the law:—

"*James Home*, alias *Hume*, was found guilty of levying war in the county of Lancaster. The evidence against him was plain and clear, that he came with the rebels from Scotland, and marched with them to Lancaster and Preston: and it was not much gainsay'd by his counsel, but their principal defence for him was that his understanding was so low and weak as made him incapable of committing high treason, and several witnesses were produced for that purpose. The jury believed him to be a weak man, but not so weak as to excuse him from the commission of high treason. It did appear from his behaviour at the trial, and from the evidence given, that he is a very weak foolish man, of a very low understanding, and my humble opinion is that he is a proper object for his Majesty's grace and favour. He hath not yet received sentence. Whether his Majesty will be pleased to extend his favour by a *nolle prosequi* before sentence, or by a pardon after sentence, I humbly submit."

¶ There was a laboured eulogy upon him in the forty-ninth number of the *True Briton*, said to be from the pen of Duke Wharton. The writer, after pointing out the peril to which he was exposed in being compared with his predecessor Trevor, and with Cowper oow Lord Chancellor, says, "Yet, under all these difficulties, which would have overwhelmed another, with the eyes of all the kingdom upon him, bath this truly great man

acquitted himself in his high office to the universal satisfaction of both parties, contrary to the expectations of the one, and even beyond the hopes of the other. And if he had not been a prodigy of learning and wisdom, it would hardly have been possible for him to surmount so many disadvantages, and to appear in the same illustrious light as my Lord Trevor."

“ *George Gibson* was tried on an indictment for levying war in the county of Northumberland. He was a tenant and servant of the late Lord Derwentwater—went with the Northumberland rebels to Kelso, and there joined the Scotch rebels—from thence came to Jedburgh—from thence came to his own house in Northumberland—from thence returned to the rebels in Scotland and came along with them to Preston, where he was taken with the rest. The jury without going from the bar found him guilty. He hath since sent me a petition to his Majesty, which is enclosed, alleging that he endeavoured several times to escape, and a certificate of his good behaviour, signed by several of his neighbours. It did not appear on his trial that he had used any acts of violence to his Majesty’s subjects, but some instances were proved of his humanity to them. *John Windraham* was tried for high treason in levying war at Kelso, in the county of Tiviotdale. There were three witnesses produced against him, whereof one was rather a witness for him, and of the other two one proved him to be, together with several rebels, in a public coffee-house at Kelso, and the other proved that he was quartered at the minister’s house in Kelso, where the witness and two other rebels were also quartered; that he saw him dismount his horse at the minister’s house—had sword, pistols, and jack boots—dined with him twice or thrice there—that he was not under any restraint, and that he saw him several times afterwards among the rebel horse. *George Home*, of Wedderburn, was tried for levying war at Perth, in the county of Cumberland. The evidence against him was, that he was seen amongst the rebels, at a place called Armfeth Bridge, where the rebels staying to refresh themselves, most of the gentlemen alighted off their horses and gave them to their servants to lead whilst they stood all together in a close eating and drinking—among which number was the prisoner, who came from thence with the rebels, and a little beyond the bridge was seen in company with them on horseback.” [The report having then detailed similar evidence against *George Home*, of Whitfield, goes on to say,] “The defence of these three prisoners was that they were brought into the rebels by force, and continued under force till the surrender of Preston. Upon the whole, the several juries, after consideration, found them all guilty; but inasmuch as the evidence was contradictory and doubtful, and one of the King’s witnesses proved part of the prisoner’s defence, I humbly submit whether these three persons may not be proper objects for his Majesty’s mercy with respect to their lives.”* x

Among the convicts was a Jacobite parson, who had not only attended the rebels as their chaplain, but had very earnestly exhorted them to march into England, for the purpose of dethroning the usurper George. Deep horror was excited among the clergy by the prospect of a priest, apostolically ordained, suffering the ignominious and cruel sentence pro-

* MS. Report, dated 13th Jan. 1716.

nounced upon traitors—especially as the great bulk of rectors and curates fully participated his sentiments. A representation upon the subject was made to the bishops, who, although all professing to be well inclined to the Protestant succession, had among them hankerers after the exiled family, and were all sincerely animated, not only by the *esprit de corps*, but by genuine feelings of mercy. Accordingly Wake, the Archbishop of Canterbury, wrote the following letter to Lord Chief Justice King,—which would perhaps be a little censured for the levity of its tone, as not quite suitable to the solemnity of the occasion, if it did not proceed from the pen of the Primate of all England:—

“ July 5, 1716.

“ My Lord,

“ I am desired by all my brethren, the bishops in town, who were to wait upon the King this morning, to recommend to your Lordship the case of an unfortunate brother of ours, Mr. Paul, who, they tell me, was arraigned and convicted before your Lordship.

“ That he deserves to be hanged we all agree; and if all others be hanged who deserve it as well as he, we have nothing to say. But if others of the laity be spared, who are under the same circumstances, we hope this poor man shall not be made an example—merely for his office sake, and because he is a clergyman.

“ We are told that a great deal depends upon the report which the Judges make of those whom they try. We hope your Lordship will be so good as to report his case as favourably as you justly can, and whatever you shall please further to do for him, as he is an unworthy brother of the order, we shall all thankfully acknowledge to you. I am,

“ My Lord, your Lordship's

“ very affectionate Friend and Servant,

“ W. CANT.”

In the year 1719, Lord Chief Justice King presided during
A. D. 1719. a trial at the Old Bailey, which shows the extreme severity to which, from the multiplied plots to bring in the Pretender, the Government thought it necessary to proceed against the Jacobites. An act had passed in the reign of Queen Anne, to make it high treason maliciously and advisedly to assert that the Pretender had a right to the throne; but it had been treated as a dead letter—till now that John Matthews, a printer, nineteen years of age, was indicted upon it for printing a pamphlet, entitled “*Ex ore tuo te judico, vox populi, vox Dei,*” in which the writer somewhat jocularly contended that all parties should now acknowledge the Pre-

tender, for the Tories believed, as a principle of religion, in the "divine right of Kings," and the Whig maxim of "*Vox populi vox Dei*" led to the same result, as the vast majority of the population of this country were now for King James. The poor printer contended that this could not be considered a *malicious* or *advised* asserting of the title of the Pretender, as he had only been acting in his trade, and the composition itself was merely thoughtless; but the Lord Chief Justice, according to the strict rigour of the law, laid down to the jury that "the fact implied *malice*, and that doing a thing *advisedly* is doing it with a consciousness of what is done;"—so there was a verdict of "guilty." The prisoner's counsel then moved in arrest of judgment that the indictment charged no crime, for being in Latin it used the word "*impressit*" to predicate the *printing* of the book, whereas "*imprimere*," in the just meaning of the Latin tongue, has no such meaning, *printing* not being known among the Romans; and at all events the practice should have been followed which was proper where any doubt existed as to the meaning of a Latin word in law proceedings, and that the indictment should have run "*IMPRESSIT, anglice printed.*" But the Chief Justice ruled that "*imprimere*" had acquired the meaning of "to print," as we may know from the "*imprimatur*" on books the printing of which was permitted. The frightful sentence was accordingly passed, and, I am shocked to say, was carried into full execution at Tyburn.⁷ This appears to me the hardest case of treason which is to be found after the Revolution. The young man might properly have been imprisoned for some months for assisting in the publication of a libel; but it was a confounding of the real distinctions of crimes, to hang, embowel, behead, and quarter him as a traitor. From Sir Peter King's known humanity, I think we may safely infer that this execution took place against his recommendation.

Upon all occasions when we have sufficient means of examining his conduct, we uniformly find him exerting ^{A.D. 1719—} himself to mitigate the misfortunes, and to soothe the ^{1720.} sufferings, of others. About this time, a complaint being made to him of some severities towards prisoners confined in the Fleet under Common Pleas process, and the warden having urged in answer the insecurity of the prison, whereby he incurred great responsibility from the danger of the prisoners escaping, the Chief Justice replied,—“Then you may raise

your walls higher, but there shall be no prison within a prison where I bear rule."

Lord Chief Justice King went as Judge of Assize twice a year, and he broke through the old custom for a Judge to continue to "ride the same circuit," for he visited all the English circuits in their turn, or, as it has been since technically called in Westminster Hall, "he ran the gauntlet." When about to start on the Norfolk Circuit in the summer of 1720 he received the following curious letter to excuse the non-attendance of the Vice-chancellor and Heads of Houses at Cambridge, on account of the controversy then raging between them and Bentley, the celebrated Master of Trinity, who, by ancient usage, had to lodge the Judges during the assizes in his college:—

"My Lord,

"I would have waited on your Lordship, but for the terrible apprehensions I am under, that my poor wife, who is lately brought to bed, will shortly breathe her last. Under this anxiety, I am forc'd, by letters from Cambridge, to bear in mind the affairs of that University. Thither your Lordship is quickly going, and believe me, my Lord, none upon earth are more ready to pay you due respect and honour than we are. But, my Lord, the Master of Trinity has taken a resolution, and put it in practice, to make the Vice-Ch' and Heads wait in the open Court among the mob, or at least to be taken into a common room among the footmen, when they come to pay their duty to you. Till he shall come to a better mind (which in this and all other respects I wish he may), I beg leave to depend on your Lordship's and Mr. Justice Blencoe's goodness, that you will favourably interpret this behaviour of the University, and accept your usual present from the hands of the Bedell; if the Heads are not allow'd the constant customary convenience in waiting upon you. Pardon this trouble, my Lord, and the confusion I am in.

"I am, with the greatest respect,

"Your Lordship's most obedient, humble Serv^t,

"T. GOOCH.^z

"Great Russell Street, July 28, 1720."

^z *Lord Lovelace's MSS.*—Gooch, the Master of Caius, had been Vice-Chancellor in 1718, and had pronounced the famous sentence whereby Bentley was deprived of his degrees—till it was reversed by an appeal to the courts of law. The Judges being afterwards at Trinity Lodge, one of them took occasion to observe, "Dr. Bentley, you have not yet thanked us for what we have done for you." *Bentley*: "What am I to thank you for?

Is it for only doing me justice after a long protracted law-suit? Had you, indeed, restored me at once to my rights, I might have expressed my obligations; but such have been your delays, that if I had not been an economist in my earlier years, I must have been ruined by the pursuit of justice."—*Life of Bentley*, by Monk, Bishop of Gloucester and Bristol, vol. ii. 211.

A very noted case, though not of a political nature, came before Lord Chief Justice King two years after, at Bury St. Edmunds, in which, although substantial A.D. 1722. justice was done and the decision has been since recognised, I must confess it seems to me that the law was rather strained. Arundel Coke, Esq., a gentleman of fortune in the county of Suffolk, and John Woodburne, his servant, were capitally indicted on the "Coventry Act" for slitting the nose of Edward Crispe, Esq., Coke's brother-in-law, "with intent to maim and disfigure him." It appeared in evidence that Mrs. Coke was entitled to a large estate on the death of her brother, Mr. Crispe; that Mr. Coke, to get possession of this estate, resolved to murder Mr. Crispe; that with this view he inveigled Mr. Crispe at midnight into a churchyard; that there Woodburne, by Mr. Coke's orders, assaulted Mr. Crispe with a bill-hook, and gave him several wounds, which were believed to be mortal; that he was left for dead in the churchyard; that he was nevertheless carried by some countrymen passing by to Mr. Coke's house, which was close by; that he recovered,—and that one of the wounds he received was a cut across the nose.

The prisoners being called upon for their defence, Coke boldly contended that this case did not come within the Coventry Act, 22 and 23 Car. II., which enacts that "if any person of malice aforethought, and by lying-in-wait, shall unlawfully slit the nose, &c., *with intent to maim or disfigure*, he shall be guilty of felony without benefit of clergy." Now the act, as was well known from its history, and as was apparent from its terms, was meant to apply to the outrage of maiming or disfiguring a man whom there was no intention to deprive of life, but who was afterwards to gratify the malice of an enemy by carrying about with him, and exhibiting in society, the mark of disgrace set upon his person. The attempt to put a fellow-creature to death might morally be a higher crime, but, not being the crime described in the statute, it remained as at common law, only an aggravated misdemeanor, to be punished by fine and imprisonment. The legislature might be hereafter called upon to make such an attempt a capital offence, but a court of justice could not properly extend to it a statute passed entirely *alio intuitu*. Now here there clearly was no wish that Mr. Crispe should live ridiculous with a mutilated visage; the intention was not to disfigure, but to murder him for his estate; the wound which merely cut the nose was intended, like others inflicted on different parts of

his body, to be mortal, and both the accused persons when they left him in the churchyard believed that their real object had been fully accomplished.

However, Lord Chief Justice King ruled that if the prisoners maliciously inflicted a wound which amounted to a slitting of the nose, and which disfigured the prosecutor, the case was within the act, although the real object was to murder, not to disfigure; saying, "There are cases in which an unlawful or felonious intent to do one act may be carried over to another act done in prosecution thereof, and such other act will be felony, because done in prosecution of an unlawful or felonious intent. As if a man shoots at wild fowl wherein no one hath any property, and by such shooting happens unawares to kill a man; this homicide is not felony, but only a misadventure or chance-medley, because it was an accident in the doing of a lawful act: but if this man had shot at a tame fowl wherein another had property, but not with intention to steal it, and by such shooting had accidentally killed a man, he would then have been guilty of manslaughter, because done in prosecution of an unlawful act, viz. committing a trespass upon another's property; but if he had had an intention of stealing this tame fowl, then such accidental killing of a man would have been murder, because done in prosecution of a felonious intent, viz. an intent to steal. Here, although the ultimate intention was to murder, there might be an intermediate intention to disfigure, and one might take effect while the other did not. An intention to kill does not exclude an intention to disfigure. The instrument made use of in this attempt was a bill or hedging hook, which, in its own nature, is proper for 'cutting, maiming, and disfiguring.' The means made use of to effect the murder must be considered, and the jury will say whether every blow and cut, and the consequences thereof, were not intended—as well as the end for which it is alleged those blows and cuts were given." The prisoners were convicted and executed; but the case may be regarded as a pendant to that before Lord Chief Justice Sir James Mansfield, where a man who gave a horse a draught for the purpose of fraudulently winning a wager on a race, was hanged for killing the horse "out of malice to the owner," whose name he did not know.^a

^a In the spring of 1720 Lord Chief Justice King went the Northern Circuit with Mr. Justice Dormer; and there lies before me a very curious account of their joint expenses.

In all its minute details it would be very interesting to circuitteering lawyers, but I can only venture to give a short abstract of it:—

I shall only mention one other opinion of Sir Peter King while Chief Justice of the Common Pleas, which, though most honestly and conscientiously given, greatly pleased George I., and probably smoothed his way to the woolsack. This was on the dispute between the reigning Sovereign and his son, respecting the marriage and education of the royal grandchildren. "The question is," said he, "whether such marriage can be without the consent of the Crown? and I think it cannot. As to marriage in fact in the royal family, nobody can instance any to be made these 500 years without the Crown's consent. Where the Crown has not been consulted, such a marriage has been considered a crime. The case of Lord Brandon, in Henry VIII.'s time, and the case of Lady

	£. s. d.
The expences of the journey to York	9 16 7
_____ at York	43 14 0
_____ from York to Lancaster	6 6 1
[At Lancaster I copy at length as a specimen:]	
	£. s. d.
Corporation presented a quarter of beef, a mutton, a veal, and 2 dozen of wine	0 10 0
Mr. Lawson, a present of apples	0 1 0
The butcher's bill	0 8 10
The house bill	18 7 7
The vintner's bill	1 12 0
The cook's bill	1 13 1
The cook's wages	8 0 0
The cook's horsekeeping and shoeing	0 7 10
Gave to the servants	2 0 0
Gave to the Sheriff's coachman	0 10 0
Gave to the Sheriff's butler	0 2 6
Gave to the poor	0 5 0
Gave to the sexton	0 1 0
	33 18 10
Journey back	13 9 0
Disbursed in all	107 4 6
Received for entries, &c., at York	31 13 4
_____ for entries and recoveries at Lancaster	11 6 8
_____ by 9 fines at York	3 0 0
_____ by 34 fines at Lancaster	22 13 4
Received in all	68 13 4
Disbursed more than received	38 11 2
Each Judge's share	19 5 7

There is endorsed a receipt of this sum from "The R^t Honble the Lord Chief Justice King."

Arabella Stuart, are strong precedents. If this had not been a crime, the Countess of Shrewsbury would not have been liable to any punishment. The House of Commons' address in 1673 respecting the marriage of the King's nieces was ridiculous if he had no power over it. The instances of marriage apply equally to education. But it is objected, 'this invades the right of the father.' Not at all so; nor is this against the law of God in any sense; for duty to parents is still subject to the public good. Every body knows that King William appointed the tutor of the Duke of Gloucester, son of Princess Anne, and that the House of Commons addressed the King to remove him. Why should the King remove him if he had no power over him? So that I am clear the King has this prerogative."^b

Although Sir Peter King, while Chief Justice of the Common Pleas, escaped the imputation of being a political Judge, it is a curious fact that all this time he was, in a quiet way, one of the greatest boroughmongers in England. By reason of his high reputation in the West, his native country, many proprietors of boroughs there, from patriotic or from jobbing views, gave him the disposal of their seats in the House of Commons. I have perused an immense mass of electioneering correspondence, in which he bears the principal part, and which is very illustrative of the manners of the times, but which could only now be interesting to the families whose names occur in it. Among his correspondents was the greatest statesman of the eighteenth century, who kept the House of Hanover on the throne, and, by his pacific policy, added more to the real strength of his country than if he had gained battles and taken cities. Sir Robert Walpole's letters to Sir Peter King are curious, as they strikingly display the earnestness, energy, cleverness, and tact with which he brought all his negotiations, whether about a borough or a kingdom, to a successful issue. I will give one instance as a specimen. The borough of Berealstone—as close as Old Sarum—belonged to the Drakes; and Sir Francis Drake, the then head of the family, gave the management of it to Sir Peter, who had put in, as one of its members, old Horace Walpole. It happened that before Sir Robert had established his ascendancy, and while he was carrying on a struggle for power with Sunderland and Stanhope, Horace was to vacate his seat by the acceptance of a sinecure office, to which he was entitled under some reversionary grant; and a rumour had reached the Walpoles that Sir

^b 15 St. Tr. 1222.

Peter had gone over to their rivals, and was about to return another member for Berealstone. Sir Robert at first contented himself with writing the following letter to Sir Peter, which he was in hopes might have been sufficient :—

“ We have received such accounts of Mr. Blathwait’s desperate state of health, that we have reason to apprehend my brother ^{August 17,} Horace’s seat in parliament, to whom the reversion of Mr. ^{1717.} Blathwait’s place is granted, may be immediately vacant. As ’tis to you alone we owe the recommendation to Sir Francis Drake, you will not wonder that I make this early application to beg your friendship again, to have my brother re-elected. I have wrote to Sir Francis Drake, by this night’s post, upon this subject, and I must entreat you to second my request, which, I am sensible, will be of the greatest weight and service to my brother ; and, therefore, you may be assured we shall be both always ready to acknowledge so great an obligation in the best manner we are able.”

But no satisfactory answer was received, and the rumour gained ground that a dependant of Lord Sunderland was to be returned. Thereupon Sir Robert penned the following irresistibly persuasive epistle, applying himself, with most inimitable dexterity, to all the motives which, upon such an occasion, could influence the mind of the man he was addressing :

“ I hope you will forgive me if I write to you upon this occasion with some freedom and a little importunity. I am not at all insensible what applications will be made to you, and how acceptable it will be to some to give us this disappointment ; but I flatter myself that I do not stand in that light with you, being not conscious that I have done anything that should make it a pleasure to you to put such a slight upon me. Experience teaches every body how little of the regard that he meets with from the multitude is to be ascribed to himself, and how much is owing to his power only ; but as I never could look upon you in that view, I cannot persuade myself but friendship, old acquaintance, and a long knowledge of me in my public capacity, was my chief recommendation to you : It is not to be supposed but that Sir Francis Drake and yourself may have other friends that deserve as well or better of you than we can pretend to, and that you may have an equal inclination to serve ; which, were this a common case, and upon the election of a new parliament, I must admit, would be a reasonable answer ; but you will consider that a refusal now is an absolute exclusion of my brother, and should you oblige any body else, it must be done at our expense ; and I verily believe you will meet no solicitations that will not be more out of a desire to offer an indignity to me, than to oblige any body else. I will not tire your patience with more arguments. You know the world too well not to be sensible how grievous, to speak

plainly, this disappointment must be to me at this juncture, to have my enemies gain this triumph over me. The satisfaction or advantage they can have by it, unless in crossing my expectations, can be no ways equal to the dissatisfaction and concern that, I very freely confess, it would give me. To others, your answer is plain and ready—upon pre-engage-ments and present possession. To me, I know but one—that you think me no longer worth obliging. After I have expressed myself thus plainly and earnestly to you, I can add nothing but to tell you, that as I am sure this depends upon you alone, to you alone I will ever own the obligation, which you may plainly see I do really think as great as you can possibly confer upon me; and if, after this, I should ever be wanting to show you a just sense of it, I should be worthy of the last reproach. I must beg one thing more, that you will give me a direct reply, which, if it is to be in favour of my brother, will be an answer to all other solicitations. I am, very much, your most faithful humble servant,

“ R. WALPOLE.”

It is possible that such a service, at such a pinch, was remembered by Walpole, become sole ruler of the King and kingdom, when, upon the impeachment of Lord Macclesfield, the Great Seal was suddenly to be disposed of. But I must do Sir Peter King the justice to say, that in all the electioneering affairs in which he was engaged he seems to have acted with honour and disinterestedness. He makes no corrupt bargain for others, and he had no ambitious views for himself. His great object was to support the Whig party and the Revolution settlement.

CHAPTER CXXV.

CONTINUATION OF THE LIFE OF LORD KING TILL THE DEATH OF
GEORGE I.

ON what strange chances and vicissitudes does official promotion depend! When Sir Peter King had been ten A.D. 1725. years Chief Justice of the Common Pleas, he and his friends thought of his terminating his honourable, but comparatively obscure, career in this office, leaving a name only to be found in musty black-letter law Reports, or in chronological tables of the twelve Judges. But a madness seized the

nation, during the South Sea Bubble, unknown before or since, till the coming up of railways: the Masters in Chancery caught the infection, and, losing large sums of suitors' money intrusted to them, became defaulters, and attracted public notice to the manner in which they were appointed, and to the abuses in their department of the Court. Suddenly a storm of indignation arose against the Lord Chancellor, who had only been a little more rapacious than most of his predecessors; he who, a few weeks before, had been in the plenitude of power and popularity, was driven to resign; there being no one who could conveniently be at that moment appointed to succeed him, the Great Seal was put into commission; the Chief Justice of the Common Pleas having more leisure than the Chiefs of the other Courts in Westminster Hall, Sir Peter King was appointed Speaker of the House of Lords: there he conducted himself with such dignity and propriety during an impeachment, that he was made Lord Chancellor and a Peer; so he became a character in English history, and is regarded as the founder of a distinguished family in the nobility of England.

Sir Joseph Jekyll, and his brother Commissioners, being appointed on the 7th of January, 1725,—in obedience to the royal admonition,^c applied themselves diligently to business, but found the concerns of the suitors in a state of deplorable confusion from the deficiencies of the Masters, and were greatly perplexed and divided in opinion with respect to the remedies which ought to be applied. Sitting daily during Hilary and Easter Terms, and in the intervening vacation, their time was almost wholly occupied with motions respecting the abstraction, the replacing, and the securing of trust money.

Meanwhile the trial of the Earl of Macclesfield proceeded. When parliament assembled after the Christmas recess, Sir Peter King took his place on the woolsack as Speaker of the House of Lords, leaving his puisnies to do the ordinary business of the Court of Common Pleas, and questions of difficulty being reserved for his advice. On the 13th of February a message from the Commons was announced; and, Sir Peter King having put on his hat, Sir George Oxenden, attended by many members, “in the name of all the Commons of England, impeached Thomas Earl of Macclesfield of high crimes and misdemeanors, declaring that the House of Commons would, in

^c Ante, p. 33.

due time, exhibit particular articles against him, and make good the same."

Sir Peter, not being a peer, of course had no deliberative voice; but, during the trial, as the organ of the House of Peers, he regulated the procedure without any special vote, intimating to the managers and to the counsel for the defendant when they were to speak, and to adduce their evidence. After the verdict of *Guilty*, he ordered the Black Rod to produce his prisoner at the bar; and the Speaker of the House of Commons having demanded judgment, he, in good taste, abstaining from making any comment, dryly, but solemnly and impressively, pronounced the sentence which the House had agreed upon.^d

The Lords Commissioners were still going on very indifferently, and, complaints becoming loud against their inefficiency, Walpole felt that, to secure the popularity which he had justly acquired by sacrificing the late Chancellor to the public indignation, another enjoying the public confidence should be appointed. Sir Philip Yorke, the Attorney-General, who had made such a brilliant start, was not much turned of thirty; and a head of the law, and keeper of the King's conscience, so youthful, would have been the subject of gibes instead of reverence. Sir Clement Wearg, the Solicitor, had distinguished himself much in supporting the bill for the banishment of Atterbury, and as manager of the House of Commons in conducting the impeachment of Macclesfield; but, though considerably senior in age, and in standing at the bar, he was considered of inferior ability, and there were strong objections to putting him over the head of the Attorney-General.^e The Serjeants and King's Counsel offered no better choice. Sir Joseph Jekyll, the Master of the Rolls, had rather lost reputation by acting as a Commissioner of the Great Seal. A selection was to be made therefore of a Common Law Judge, and none could have a higher character than Chief Justice King, whose conduct during the impeachment both parties had concurred in praising.

Accordingly he was fixed upon, and it was agreed that he should at once be declared Lord Chancellor without being Lord Keeper; that he should simultaneously be raised to the Peerage (likewise an unusual rapidity of honour), and that he should receive a salary of 6000*l.* a year payable out of the

^d 16 St. Tr. 801, 938, 1080, 1258, 1265, 1330; ante, p. 47.

^e Life of Sir Clement Wearg, by Duke, 1843.

Post-office, and 1200*l.* a year payable out of the Hanaper-office, in consideration of the sale of offices in the Court of Chancery being adjudged to be illegal.

I have now the advantage of a diary which Lord Chancellor King, on his new appointment, began to keep in short hand, without any view to authorship. From this I shall occasionally make extracts, and at other times I shall refer to it as the authority for my narrative. Thus he commences :—

“1725.—*Tuesday, June 1.* Monday, the 31st May, being the last day of the sitting of Parliament, I was introduced into the House of Lords as Lord King, Baron of Ockham, in the county of Surrey. My introducers were Lord Delaware and Lord Onslow. Baron’s robes lent me by Lord Hertford. And this day at noon I went to St. James’s, and being called into the King’s closet, he delivered the Seals to me as Lord Chancellor: and soon after I went to the council-chamber, carrying the Seals before him. The first thing that was done was to swear me Lord Chancellor, after which I took my place as such. The King then declared that he was going beyond sea, and had appointed a regency, whose names were then declared.^f

“2*d.*—In the morning I received the visits of several Lords and others of my friends, and at noon went to wait on the Prince and Princess, and kissed their hands. This day I surrendered my place of Chief Justice of the Common Pleas.

“3*d.*—About ten o’clock I waited on the King to have two bills signed, the one for Eyre to be Chief Justice of the Common Pleas, the other for Gilbert to be Chief Baron, and as soon as I left him he went on his voyage to Hanover. And inasmuch as several of the nobility were to wait on him to Greenwich, so that they could not attend me, according to custom, to Westminster Hall, I did from thence take an occasion to go privately to Westminster Hall, which I did this day, being a day of motions. I here took again the oath of a Chancellor, which the Clerk of the Crown read, and the Master of the Rolls held the book.”

The new Chancellor probably abstained from all parade in his installation, out of delicacy to the melancholy condition of his predecessor, who was now a prisoner in the Tower of London. Had he chosen to have the usual procession to Westminster Hall, I doubt not that, notwithstanding the King’s absence, it would have been one of the most splendid

^f “1st June, 1725. His Majesty having received the Great Seal of Great Britain from the Lords Commissioners this day, and having been pleased to deliver it the same day to the right Honble. Peter Lord King, with the title of Lord Chancellor of Great Britain, his Lordship on Thursday, the 3d of the same month, came privately from his

house in Norfolk street to the Chancery Court in West’ Hall, and did then in the Court of Chancery take the oaths appointed to be taken by the 1st of William & Mary, and the oath of Lord Chancellor, the Master of the Rolls holding the book, and the Clerk of the Crown read the said oaths.”—*Roll*, 1714—1727.

seen for many years, as his promotion was universally approved of, and there was a general expectation that he would turn out to be one of the greatest Chancellors that had ever sat upon the woolsack. He himself did not labour under any serious misgivings, having long been such a complete master of his work on the common law bench.

However, there was soon considerable disappointment experienced by the public, as well as anxiety by himself. He succeeded a Judge who not only had a fine legal understanding, but to whom the doctrine and practice of the Court had become "familiar as his garter." Lord King had not only never practised in the Court of Chancery, but, there seeming no possibility of his leaving the Common Pleas during his life, he had been contented with well understanding "pleading in actions real and personal;" and he had neither read Chancery Reports nor paid the slightest attention to Chancery proceedings. He now saw daily pleading before him Yorke, Talbot, Wearg, and other counsel regularly trained in the court,—and he found himself in the painful and humiliating situation of knowing much less of the subject than the advocates on whose arguments he was to decide. He was even in a more perilous predicament than a man at once taken from the bar and placed in a judicial situation for which he is not quite prepared; for, by presiding ten years over the phlegmatic serjeants, he expected always to be treated with extreme deference, and he was apt to show impatience and peevishness if an ill-considered opinion thrown out by him was roughly handled. He was much frightened by the approach of "a Seal;" and he had little sleep the night before the dreaded day when he was to be assailed by all manner of motions, of which he had no previous notice. He could pretty well manage the regular hearing of a cause—when the bill and answer were opened very tediously, as was then the custom,—the evidence was all read at full length,—counsel were heard on both sides,—and time could be taken to consider the decree. He could even dispose of pleas and demurrers with tolerable composure, as a little patience and discreet reserve to conceal ignorance might lead to a shrewd and tolerably safe guess at the right conclusion. But when there came motions for injunctions and for sequestrations, and for the appointment of receivers and for the payment of money into court and out of court, and for divers other things about which the little he had read in his youth had long faded from his memory, and which he was obliged to

decide off-hand,—he sadly repented that for “the thorns of Chancery” he had ever exchanged “the cushion of the Common Pleas.”

Although his perception was not so quick as it had been, and all his faculties were beginning to be a little rigid,—as soon as he discovered his deficiencies he nobly struggled to supply them. Disregarding amusement and recreation, and regardless of health and even of life itself, he boldly began and he steadily pursued a course of reading to qualify himself for the discharge of his duties as an Equity Judge. There were then hardly any published Chancery Reports; there were no systematic treatises on Equity pleading or practice; and there was little for the Equity student in print beyond the heads “Subpœna” and “Chancery,” in the general ABRIDGMENTS. But Lord King, besides confidentially conversing with some practitioners in his court, borrowed MS. treatises respecting Chancery, and MS. reports of the decisions of former Chancellors which were in private circulation. By a diligent perusal of these he made himself a very pretty Equity lawyer, and he had a tolerable notion of the newest fashions which his predecessor had introduced. Still he never could remove the impression which he had made at the commencement of his Chancellorship. It is said that there were more appeals from the Court in his time than during any equal period, either before or since, and that there were more of his decrees reversed than there have ever been of any other Chancellor. But the fate of appeals depends greatly on the general reputation of the Judge appealed from, and the temper of the Judge or Judges appealed to. Lord King was not, like Lord Hardwicke, the only law Lord, so as to make an appeal from the Court of Chancery to the House of Lords “*ab eodem ad eundem*,” and Lords Lechmere and Trevor were not sorry to have an opportunity of civilly pointing out his mistakes.

Reading Lord King’s Equity judgments, as they appear in Peere Williams,[§] I believe they will be generally esteemed sound, and they are to be praised for the same clearness

§ The cases heard before Lord Chancellor King from 1726 to 1730 are also published by a reporter of inferior merit, named Moseley, whose volume has generally been vilipended. However, in Mr. Hargrave’s copy of it in the British Museum is to be found the following notice:—“Lord Mansfield, in 5 Burr. 2629, says, ‘this book should not be quoted;’ and

in *Myddleton v. Lord Kenyon*, Lord Chancellor Loughborough observed to Mr. Fonblanque, upon his citing a case from it, ‘that he had not heard it cited.’ But I took the liberty of saying that ‘I had often heard it cited, and that I had found very good matter in it.’”

and precision which distinguished him as a Common Law Judge.

No very important case came before him in the Court of Chancery, and he cannot be said to have added very materially to our Equitable code, but a few of his decisions may be found generally interesting.—He settled the rule that a will of lands in England, though made abroad, must be signed by three witnesses, according to the English Statute of Frauds, as a will of lands is to be governed by the *lex loci rei sitæ*, and a will of personalty by the *lex domicilii*.^h Where by a marriage settlement the wife is entitled to pin-money, he decided that if the husband and wife live together, and he maintains her, she is not entitled to claim the arrears of her pin-money.ⁱ

A man having seduced a modest girl, and had a child by her, entered into an executory agreement to pay 2000*l.* to be laid out in purchasing an annuity for the mother and child. When a bill was filed for a specific performance of this agreement after the child's death, objection was made that, this being matter of *turpitude*, Equity ought not to interfere.—*Lord Chancellor King*: “If a man does mislead an innocent woman, it is both reason and justice that he should make her reparation: but this case is stronger in respect of the innocent child whom the father has occasioned to be brought into the world in this shameful manner, and for whom in justice he ought to provide; and though the child be now dead, yet the case is to be taken as it was when the agreement to provide for them was signed, and then the child was living.”^k

Lord Chancellor King established the very salutary rule, that although, by the law of England, all personal property bequeathed to a wife belongs to her husband, Equity will not aid in compelling payment of the legacy without seeing a settlement of the property made for the wife's benefit.^m What seemed a more doubtful rule laid down by him has been since adhered to, that *lis pendens* shall be tantamount to actual notice; so that a purchaser for valuable consideration may lose the property for which he has paid, having bought it from a person who had a legal right to sell,—if a suit of which he was ignorant had been commenced to establish an equitable interest in it.ⁿ

^h *Coppin v. Coppin*, 2 P. W. 293.

ⁱ *Thomas v. Burnet*, 2 P. W. 341.

^k *Marchioness of Annandale v. Harris*, 2 P. W. 434. This decree was affirmed on appeal

by the House of Lords, 1 Brown's P. C. 250.

^m *Brown v. Elton*, 3 P. W. 202.

ⁿ *Sorrell v. Carpenter*, 2 P. W. 482.

A curious case came before him, showing that towards the middle of the last century the custom of marrying infants of tender years, which had formerly been very common, still prevailed in England. One of several guardians to an heiress took her from a boarding school when she was only nine years old, and married her to his own son, who had no estate. The Lord Chancellor, on motion, ordered this guardian to bring into court the infant whom he had married to his son, and that he, the son, and the infant should attend. All attending, the counsel for the application pleaded, "that this guardian having, in so perfidious a manner, broken his trust, and married his ward to his own son, who was worth nothing, the Court of Chancery, the guardian of all infants with the superintendency and cognizance of all trusts, ought to commit him, and not suffer the girl, now but nine years old, to continue to cohabit with her husband, who ought not to be indulged with opportunities of inveigling her, and preventing her from disagreeing to the marriage when she should come to the age of twelve years, which it would be for her interest to do."—*Lord Chancellor*: "The infant girl never having been under the care of the Court, nor committed by the Court to the care of this guardian, I do not think he can be considered guilty of a contempt of Court; but then it is a very ill thing in him to marry this child to his own son, and he is punishable by an information. I will, therefore, have him bound over with sureties to appear to answer an information to be filed against him by the Attorney-General. As for the child, let her be handed over by this knavish guardian to the other guardian named in her father's will, who, it is to be hoped, will take proper care of her and do what is for her advantage in advising her to confirm or to renounce the marriage."

I will only mention one other case, which occurred soon after, and illustrates the manners of the age. Sir John Chaplyn, a young baronet, nineteen years of age, of great estate in Lincolnshire, was drawn in by a "bumbailiff" in Clare Market to marry his daughter, a girl of sixteen, and to make a will bequeathing all his personal estate to her. In two months he died, leaving three sisters, who were his heirs at law, if there were no issue by this marriage. The widow pretending to be pregnant, the sisters petitioned for a writ "*de ventre inspiciendo*," and that "residing at her late husband's house in Lincolnshire, this might be as her castle wherein she

° *Goodall v. Harris*, 2 P. W. 561.

should be inclosed,^p and continue until the time of her delivery, and that some woman might be always resident with her both before and at the birth.^q Her counsel argued “that she was guilty of no crime in marrying Sir John, who was of sufficient age to choose a wife for himself, and who might think beauty and virtue a sufficient portion, especially when his fortune had put him above the want of money; that, as it had not appeared any fraud or collusion was intended, it was very unreasonable to suspect she would be guilty of imposing a false child on the family; that it would be a hardship on a lady of such tender years to send a jury of matrons to inspect her; that, she being now with child, the inspection might be of dangerous consequence and occasion a miscarriage, a thing possibly wished for by the other side; that the ‘castle’ in Lincolnshire was an old house in the fens, much out of repair; and that, she having no relations or friends in that country, it would be cruel to imprison her there.” *Lord Chancellor*: “I take this writ ‘*de ventre inspiciendo*’ to be of common right—for the security of the next heir, to guard against fraudulent or supposititious births. But as it may be a hardship to oblige the lady to live in Lincolnshire far from her relations and friends, and since the marriage appears to have been in March last, consequently no probability of her being brought to bed before Christmas, and as her father consents she shall be in town before Michaelmas, and reside in St. James’s parish in Middlesex, let the writ ‘*de ventre inspiciendo*’ issue at Michaelmas, directed to the Sheriff of Middlesex. In the mean time, the present heirs may send two women at reasonable times to see whether she is with child, they giving reasonable notice before-hand, so that this may be attended with as little inconvenience as possible to Lady Chaplyn. There is no occasion to execute the writ with all the strictness of the common law, provided people of skill from time to time have access to her, and may be present at the birth.”^q

I shall afterwards have occasion to consider the beneficial changes which Lord King introduced in the Masters’ offices in the administration of the funds of the suitors, and other

^p At common law, a jury of matrons must be impannelled, and if they find the widow with child, she is to be shut up in a castle, where the sheriff of the county keeps her in safety till she is delivered.

^q *Ex parte Atscough*, 2 P. W. 391. This writ continues to be granted not only to the heir, but to a devisee, either for life in tail or in fee. 1 Cox, 297; 4 Brown, C. C. 90.

departments,—which place him high in the rank of law reformers. But we must now survey him in the exercise of his political functions.

Immediately after his appointment the King had gone to Hanover, leaving him and other great officers of state A.D. 1725— “Lords Justices.” They had their first meeting as 1726. soon as news was received of the King’s arrival in Holland; there was afterwards a formal assembly of the whole body once a fortnight, and a committee (of which Walpole was chief) met from time to time as occasion required. The first question they had to deliberate upon was the propriety of granting a pardon to Lord George Murray, who had been attainted when only eighteen years of age, and had petitioned for mercy. The Chancellor would only say that there was nothing in law to obstruct a pardon, but refused to give any farther opinion,—on the ground that he was not sufficiently acquainted with the facts. The Duke of Argyle was strongly for rigour, “because this man’s treason was attended with perfidy in deserting the King’s troops and running away to the rebels; and if he were pardoned, others would immediately make the same application.” Walpole, however, took the merciful side, and, carrying a majority with him, a letter was ordered to advise the King to pardon him.*

Much consultation took place respecting the granting of commissions of the peace for Scotland, then in a very distracted state on account of the Malt Tax. The Earl of Islay “was called in, and gave an account of having made up lists for all the counties,—which had taken three months in preparing, and which he vouched were made up with great exactness and attention to the gentlemen to be appointed.” “On this,” says the Diary, “I told the Regency that though in England the Great Seal would be a little more consulted in matters of this nature, yet, considering the urgency of affairs, if their Excellencies would order me to pass those commissions of the peace as now settled, I would do it. Thereupon they ordered me to pass them.”*

Then comes an exceedingly curious entry.—“June 24. Sir Robert Walpole went with me to Ockham, and lodged there the night. He entered into a free discourse with me about foreign affairs.” [After a copious account of the disputes with Spain, &c., no longer interesting, he adds:—] “Another negotiation had lately been on foot in relation to the two young

* June 5.

* July 1st.

Princes, Frederick⁴ and William.⁴ The Prince⁵ and his wife⁷ were for excluding Prince Frederick from the throne of England, but that, after the King and Prince, he should be Elector of Hanover, and Prince William King of Great Britain; but that the King said it was unjust to do it without Prince Frederick's consent, who was now of age to judge for himself; and so this matter now stood. But that Sir Robert Walpole had told the King that if he did not in his lifetime bring over Prince Frederick, he would never set his foot on English ground, so that he did not know whether the King, when he returned from Hanover, would not bring that Prince with him." This is a curious proof of the early dislike of George II. and Queen Caroline to their eldest son, Frederick, Prince of Wales. Lord King must have looked forward with some dismay to the dissensions in the royal family, which had proved so perilous to his predecessors. But he contrived to retain the favour of the reigning Sovereign, without giving fresh offence to the heir apparent; and although Prince Frederick for some unaccountable reason was not brought over from Germany during the present reign, George I., while alive, thwarted the plan for disinheriting his grandson, and on the accession of George II. the national cry was so strong against continuing to rear as an alien him who was to fill the throne of England, that within two years it was found necessary to send for him. He had his revenge by perpetually disturbing the government of his father, till the joyful exclamation was uttered—"Fritz is dead!"

During the King's absence in Germany, the Chancellor was at the head of the Regency.² The Lords Justices, besides carrying on routine business at home, were occupied with intricate foreign negotiations (now happily uninteresting), with a view to the aggrandisement of his Majesty's hereditary dominions by the addition of some little patches of territory; but some of the Chancellor's entries in the Diary are worth copying, as showing how business was transacted between his Majesty and his representatives:—

⁴ Afterwards Fritz, Prince of Wales.

⁵ Afterwards Duke of Cumberland, the hero of Culloden.

⁶ The then Prince of Wales, afterwards George II.

⁷ Afterwards Queen Caroline.

² I do not believe that he ever enjoyed much political power, but in foreign countries he was regarded as a very important person-

age. I have now in my hand a letter to him from a Frenchman of the name of Neville, giving him some important information—thua addressed:—

"HIS EXCELLENCE MILOR PITER KING
HIG CANCELLOR OF GREAT BRITTAGNE &
ONE OF MILORS OF REGENCE
LONDON."

“*July 26.*—Received by Lord Townshend from the King a warrant to pass a commission under the Great Seal to Lord Townshend to treat and contract with such princes and states as the King should direct, which I accordingly passed under the Great Seal.” “*29.*—The Duke of Newcastle was with me to explain the meaning of the commission to Lord Townshend, which was that the Emperor and King of Spain living now in strict amity, there was a necessity to enter into a league with other powers to preserve the peace of Europe; that France and the King of Sardinia were ready, and it was hoped that the Protestant Princes of the Empire and Holland would likewise come into it.” “*Sept. 7.*—Tuesday night, a messenger came to me (at Ockham) from Mr. Delafaye with ten instruments from Hanover, with the King’s warrant countersigned by Lord Townshend to fix the Great Seal to them. I returned back word by the messenger that I was coming to town, and would there do what was necessary.” “*8.*—Wednesday at night I came to town. The Duke of Somerset came to me, and I asked him, when he was in the Regency and the King abroad, as had happened in King William’s time, and the King made a treaty abroad, whether this were communicated to the Regency or Council here? or whether, upon the King’s warrant from beyond the sea, the Great Seal was affixed to them here? He said it was always the custom, on the King’s warrant, for the Chancellor to affix the Great Seal. The next day Mr. Delafaye told me this was always the custom, and that it would be absurd to lay them before the Regency, because the King had agreed and signed them already. I therefore put the Seal to them.”

Looking to Wolsey’s impeachment, and other sources of constitutional information, respecting the exercise of the royal authority, the result seems to be, that the Great Seal can only be used within the realm, but that it may lawfully be applied on the warrant of the Sovereign signed beyond the seas; and that the Regent, Guardian of the Realm, or Lords Justices, are bound to obey any directions they may receive from the Sovereign, either before his departure or during his absence abroad, but that in all matters respecting which they are left without instructions their act is equally valid and potent as if done by the Sovereign in person. It is probable that in after times there will be no deputation of the royal authority, unless to open or prorogue parliament, or to give the royal assent to bills.

I will conclude this head with an entry after the King’s return, which proves that the Chancellor, who used to be of yore the sole foreign secretary, still imagined that, as he was to affix the Great Seal to treaties, he was to exercise a superintendence over foreign affairs:

“*Thursday, March 10, 1726.*—At the desire of Lord Townshend I

was this evening at the Duke of Devonshire's, with the Dukes of Argyle and Newcastle, and Sir Robert Walpole." [He then gives a long account of a written declaration signed by the Landgrave of Hesse, promising to supply 8000 foot and 4000 horse for the defence of Hanover.] "Lord Townshend saying, that 'this was not properly a treaty, but only a declaration by the Landgrave on what terms he would furnish the King with so many soldiers, and that there was nothing more to do than for the King to show his approbation by a ratification under the Great Seal,' I thought that 'the form of this instrument made no alteration in the substance, and that this was really nothing else than a treaty, and that there was no instance wherever the Great Seal made a treaty by itself, or ratified a treaty, which was not first agreed to by some minister or commissioner.' And thereupon it was agreed that inquiry should be made in the Secretary's office whether there had been any thing of this nature before; and on inquiry the next day it being found that there was none such, it was agreed that Diemar and Lord Townshend should both mutually sign the agreement by way of treaty, and that after such signing the ratification should pass according to the usual forms. And I having hinted to Lord Townshend *that when I was to be concerned in the conclusion of an affair it was but reasonable I should know the beginning and the progress*, he did send me the copy of this matter drawn up in the form of a treaty between him and Diemar."

Lord King took his place as Chancellor in the House of Lords on the 20th of January, 1726, and then read the royal speech, the King not even repeating the effort he made when he first came to the throne, to say, in English, that "I have ordered my Lord Chancellor to declare the causes of calling this parliament." The custom was now introduced of the two Houses echoing the words of the speech, and on this occasion the address was carried unanimously. Opposition was almost annihilated, and Sir Robert—graced with the order of the Bath, which he revived to increase his patronage, and with the order of the Garter, the importance of which he enhanced by deigning to accept it—was now in the zenith of his power, although not of his glory, for as yet he had not encountered in mortal strife Pulteney, Carteret, or Pitt. There was not a division in the House of Lords during the session, the entire repose of which was only occasionally interrupted by that luckless wight Lord Lechmere, who, struggling in vain for office and fame, occasionally made motions from habitual restlessness, but met with so little support that the Lord Chancellor had no trouble beyond putting the question, and declaring that the "Non-contents" had it.

The following session was equally tranquil, and at the close

of it the Lord Chancellor read George I.'s last speech to parliament, thanking them for the zeal and harmony with which they had despatched the public business. May 15,
1727.

His Majesty, having appointed Lords Justices, immediately set off for the Continent, and never again touched British ground, dying, on the 10th of June, on his way to Osnaburgh, and being interred, with his ancestors, in Hanover.

During his reign of thirteen years, the public attention was so completely devoted to the struggle for the throne between the old and new dynasties, that no regard was paid to legal reform. Lord Somers's "Statute of Jeofails" continued the most recent attempt to correct the abuses of Westminster Hall.

The penal code had been rendered more severe by the Riot Act, and by several fiscal regulations encroaching on the liberty of action which had formerly prevailed in England. Even the impeachment of Lord Macclesfield had produced little beyond salutary exposure, no measures being yet taken effectually to prevent the recurrence of similar evils. But Lord Chancellor King was not forgetful of his duty to struggle for the improvement of our institutions; and, amidst the difficulties which surrounded him, he afterwards accomplished in this department as much as could reasonably be expected from him, and more than was attempted by his successors during the rest of the eighteenth century.

CHAPTER CXXVI.

CONCLUSION OF THE LIFE OF LORD CHANCELLOR KING.

THE Lord Chancellor's own Diary will best introduce his proceedings in the new reign:—

"*Wednesday, June 14, 1727.*—About five in the evening I had a letter from Sir R. Walpole, informing me that the King was dead, and desiring me to meet him immediately at the Duke of Devonshire's." I

* The original of this letter, in the handwriting of Sir R. Walpole, lies before me:—
(Copy.)

"My Lord, "Wedn. 5 o'clock.

"The melancholy news is just come of the

King's death. Pray hasten away to my Lord President's, where I wait your coming.

"Yours, &c.

"R. WALPOLE."

went there immediately, and found that Sir R. Walpole, on receipt of the news from Lord Townshend, had instantly gone to Richmond and acquainted the Prince with it, and that thereupon the Prince had resolved to be in town as fast as he could that evening. In the mean time we prepared, by the Attorney and Solicitor General, the draft for proclaiming the King, and settled the other things necessary to be done. The King, in the mean time, came to town, and sent us word that he was ready whenever we were ready to wait on him. Accordingly, we who were at the Duke of Devonshire's, except the Duke himself, who had the gout, went to Leicester House, and there being joined by several others of the nobility, we sent in to the King to desire an audience: and although the Archbishop was present, yet I made a short speech to the King, according to agreement, setting out the great sorrow we were under by the unexpected death of the late King, and that nothing could relieve or mitigate it but the certain prospect of happiness under his future administration: and that being now become our liege Lord, we desired leave to withdraw into the council-chamber to draw up a form of proclamation for proclaiming him, and to sign it as usual; which being granted, we retired into the council-chamber, and there the form, which we had before agreed upon, was produced, engrossed, and thereon all the Lords of the Council then present first signed it. Then the doors were opened, and the Peers in the outer room were desired to walk in and sign it, which they did; then it was delivered to the gentlemen in the outer room to sign as many as they pleased. And after it had been some time out the Lords of the Council sent for the parchment, which being returned, secret intimation was given to the King that the Council were ready to receive him. Whereon he immediately came in, and, seating himself in the royal chair, he there read the declaration, that was printed at the desire of the Lords of the Council: it had been prepared at the Duke of Devonshire's by Sir R. Walpole and the Speaker. After that, orders were given for the proclaiming of the King the next morning at ten o'clock, and several other orders of course were made, which are to be seen in the council-book, particularly one for proroguing the Parliament, being now, by reason of the King's demise, immediately to meet. *Thursday, 15th.*—A little after ten I came to Leicester House, and the heralds and all being ready, about eleven the Archbishop of Canterbury, myself, and other Lords, went into the yard before Leicester House, and there the heralds proclaimed the King, we being there on foot uncovered. As soon as that was done, we went into our respective coaches, and in the street before Leicester House the King was again proclaimed. From thence we went and proclaimed him at Charing-Cross, Temple-Bar, the corner of Wood Street, and the Royal Exchange. After that I came home, and about four o'clock got to the House of Lords, where the Parliament met, and all the Lords present taking the oaths, I then informed the House that I had a commission from the King to prorogue the Parliament to the twenty-seventh instant, which was the day it stood prorogued to in the late King's time. And thereon the Lords Commissioners seated them-

selves as usual in such cases, and on message by the Usher of the Black Rod, the Speaker and Commons coming to the bar, the commission was read, and I declared the Parliament prorogued to the twenty-seventh instant. From hence I went to Leicester House, a Council being appointed this evening, and there several other orders were made, which had been omitted the evening before, and particularly the same proclamation which had been issued out upon the death of Queen Anne on the foundation of the act *Sexto Annæ* for continuing persons in their offices, and requiring them to take the oaths according to the said act. *Friday, 16th.*—A Council in the evening, wherein I delivered up the Seals to the King, who re-delivered them to me as Chancellor, and thereon I was sworn Chancellor in Council. *Saturday, 17th.*—I was sworn Chancellor in the Chancery Court in Westminster Hall, and this day I swore all the Judges *de novo*, and the King's Council, and some of the Welsh Judges pursuant to the act of parliament *Sexto Annæ*. *Sunday, 18th.*—Received the sacrament at Ockham to qualify myself. *Tuesday, 20th.*—Took the oaths in the King's Bench; went to Kensington and presented the Judges, both English and Welsh, Masters in Chancery, and the King's Council, who all kissed the King's and Queen's hands. *Saturday, 24th.*—At a Cabinet Council at Lord Townshend's office the King's speech settled. There then arose a question whether the King was to take the test on his first coming to parliament next Tuesday, and the Lords desired me to look into that matter, and I promised them to do it by Monday morning, and lay what I could find before them for their determination. *Monday, 26th.*—At Lord Townshend's in the morning, where were present Harcourt, Trevor, Walpole, Newcastle, the Speaker, Townshend, Godolphin, and myself, and I stated the matter to them." [After discussing the matter at great length, he adds:] "On these reasons the Lords all present agreed that there was no need for the King now to take the test; but he might do it at his coronation if that intervene before a new parliament should be chosen."

Lord King might consider himself in luck to retain the Great Seal under him whose pretensions to educate his children and to consent to their marriage he had treated so unceremoniously; but George II. would not avenge the injuries of the Prince of Wales, and he now became reconciled to doctrines which would add to his power over his own son, whom he so much detested. He therefore received the Chancellor very graciously, saying, "Your Lordship has always shown yourself, and no doubt will continue to show yourself, a zealous servant of the Crown, and a warm friend to the Protestant succession." His Majesty, however, made an attempt to usurp patronage, which, we learn from the Chancellor's Journal, was manfully and successfully resisted:—

"The King, when he came to the throne, had formed a system both

of men and things, and to make alterations in several offices, as to their power, and particularly as to mine. About July 8th he told me that he expected to nominate to all benefices and prebendaries that the Chancellor usually nominated to. I told him, with great submission, that this was a right belonging to the office, annexed to it by act of parliament and immemorial usage, and I hoped he would not put things out of their ancient course. He told me my Lord Cowper told him, that in the latter part of his Chancellorship, in the Queen's time, he laid before the Queen a list of all persons whom he recommended to benefices, that she might be satisfied they were good Churchmen.^b I did not give up this point, but directly desired him to consider it; and afterwards, at another time, he told me that I should go on as usual. *Sunday, July 16th.*—I then saw him again: he seemed now very pleasant, and I gave him a list of all the Judges, both in England and Wales, King's Serjeants, and Council, and other subordinate officers in the law, in his invariable nomination, and told him, that as to those which were not Judges in England, they were many of them parliament men, and some now stood again. So he ordered me to make out *fiats* for such of them as were like to be parliament men."

The system which his Majesty then proposed for the appointment of magistrates is very amusing:—"He also told me, now that he had heard that I had acted prudently in his father's time as to the commission of the peace, that his pleasure was, that I should put into the commission of the peace all gentlemen of rank and quality in the several counties, *unless they were in direct opposition to his Government*; but still keep a *majority* of those who were known to be most firmly in his interest, and he would have me declare the former part as his sentiment."

Lord King's Journal gives an interesting statement of the manner in which it was then conceived that Walpole had established his ascendancy, which had been for some time endangered by the King's old partiality for Sir Spencer Compton, now Speaker of the House of Commons:—

"On the King's coming to the throne, he ordered Sir R. Walpole and Sir S. Compton to confer together about his affairs, and let him know what they thought fit to be done for his service from time to time. Sir R. Walpole seemed so sensible that he should be laid aside, that he was very irresolute what to do, whether to retire into the

^b Extract from Lord Cowper's Diary.—*"November 13th, 1705.* I had the Queen's leave to bestow my livings of 40l. and under without consulting her."*"June 25th, 1706.* At Cabinet. Before it begun I had discourse with the Archbishop about disposing of the livings in my gift, and my having promised

the Queen to present, as she directed, in all the valuable ones; he said he feared it would be under a worse management than under the late Keeper's servants, by the importunity of the women and other hangers-on at court, and promised to endeavour to get that matter into a proper method."

House of Lords and give up all business, or whether to continue. But the King and the Speaker persuading him to continue, he went on and undertook what the King expected from him, as to the Civil List and the Queen's jointure, which he forwarded in parliament. During which time by his constant application to the King by himself in the mornings, when the Speaker, by reason of the sitting of the House of Commons, was absent, he so worked upon the King, that he not only established himself in favour with him, but prevented the cashiering of many others, who otherwise would have been put out. The Speaker for some time came constantly to the King every afternoon, and had secret conferences with him; but in about three weeks' time he saw his credit diminish, and so left off the constancy of his attendance. The Tories and others, who expected great changes and alterations, finding these things not to answer their expectations, began to retire about the end of the short session of parliament that was held for settling the Civil List."

It has since appeared, however, that the Lord Chancellor was not altogether in the secret as to the manner in which the Premiership was then settled. Walpole, receiving Lord Townshend's despatch announcing the death of the late King, hastened to the palace of Richmond, where he was admitted to the bedroom of the Prince, who had retired for his *siesta*. Kneeling down, and kissing his hand, the anxious minister inquired "whom his Majesty would be pleased to appoint to draw up the necessary declaration to the Privy Council?" being sanguine in the hope that the choice would fall upon himself. "COMPTON," answered the King, shortly; and Walpole withdrew in the deepest disappointment. This "best of Speakers," however, was so little acquainted with real business, that he confessed his incapacity to perform the task imposed upon him, and begged Walpole to draw up the declaration for him. Sir Robert willingly complied, and wrote the declaration, which Compton carried to the King. For a few days a change of administration was confidently expected; but the weakness of the favourite was so apparent, that Walpole said confidently to his friend, Sir William Younge, "I shall certainly go out; but let me advise you not to go into violent opposition, as we must soon come in again." He continued uninterruptedly in his office by the discernment of Queen Caroline, who fully appreciated his talents,—and by a well-timed offer to obtain from parliament a jointure for her Majesty of 100,000*l.* a year—whereas 60,000*l.* was the highest sum which had been proposed by Compton.^o

Walpole afterwards owned to the Chancellor his obligations to the Queen, and that with all her influence he had great difficulties to encounter:—

“*Nov. 24th.*—At this time Sir Robert took occasion to tell me of the great credit he had with the King, and that it was principally by the means of the Queen, who was the most able woman to govern in the world: however, he wished now he had left off when the King came to the throne, for he looked upon himself to be in the worst situation of any man in England: that he was now struck at by a great number of people. All those who had hopes on the King’s coming to the throne, seeing themselves disappointed, looked upon him as the cause. All the discontented Whigs, and Carteret, Roxburgh, Berkeley, Bolingbroke, the Speaker Compton, and Pulteney, were entered into a formal confederacy against him; and if he could once retire, he never would meddle by way of opposition, but would comply with the Government in every thing.”

The Lord Chancellor stood well with Walpole, who consulted him confidentially on all legal and constitutional questions which arose. I observe by the Journal, that Sir Robert as seldom as possible called meetings of the whole Cabinet—and he never had what we should call “Cabinet dinners,”—but his favourite mode of preparing business was to invite two or three more particularly connected with the department to which the subject belonged, or whose opinion he particularly regarded, to dine with him,—and after the most unrestrained conversation with them, he settled what was fit to be done. Thus he would invite the two Tory law lords, Lord Harcourt and Lord Trevor, to meet the Chancellor, that he might consider with them respecting the reforms of the Court of Chancery.^d

I do not think that the Chancellor ever was consulted by Sir Robert out of his own immediate department, or that he had any influence in the general measures of the Government. Indeed, the same thing might be said of Sir Robert’s other colleagues during the whole course of his administration. If Lord King, like Lord Townshend, had made a struggle to share power with the Premier, he very speedily would have been obliged, like Lord Townshend, to retire.

When parliament first met for the despatch of business in the new reign, the Chancellor was relieved from the task of reading

^d “*Aug. 11th.*—At Sir Robert Walpole’s; sider what was fit to be done with Lord
dined there with Lord Harcourt and Lord Macclesfield’s 30,000*l.*”
Trevor. The end of our dining was to con-

the royal speech, George II. having learned to speak English, although with a strong foreign accent;° and the Lord Chancellor had no other duty to perform than to present the speech to his Majesty in the fashion now adopted, instead of receiving the speech from his Majesty according to the fashion of the reign of George I. The Opposition was still so feeble, that in the House of Lords the Chancellor's place was a sinecure. His name does not once appear in the printed debates; but this does not prove much, as they are so defective and scanty.

The orders against publishing the proceedings of parliament were enforced by both Houses with greater rigour than ever. Upon a complaint against one Raikes, a printer at Gloucester, that he had printed speeches purporting to have been delivered in the House of Commons, there was an unanimous resolution "that it is an indignity to, and a breach of the privileges of, this House for any person to presume to give, in written or printed newspapers, any account or minutes of the debates or other proceedings of this House, or of any committee thereof; and that upon discovery of the authors, printers, or publishers, this House will proceed against the offenders with the utmost severity." The House of Lords enforced their order with equal rigour, and—by their superior power of fining and imprisoning for a fixed term, notwithstanding a prorogation—more effectually; insomuch that the magazines hardly ventured to give even a touch of their orations under feigned names, as delivered in Athens, Rome, or Lilliput.^f Upon consulting other sources of information, however, I think there is reason to believe that Lord Chancellor King spoke very rarely, except in bringing forward the bills for reforming the Masters' offices, and for the improvement of the administration of the law, which I shall notice

° It is said he never could pronounce P or G. Hence two of his noted sayings, "I hate all Boets and Bainters,"—and "I do love old Brentford; it reminds me so much of Yarmany."

^f There is nothing in our constitutional history which surprises me so much as the long continuance of this restriction; for, besides that the publication of parliamentary debates is favourable to liberty, it is highly flattering to the vanity of the members, and now pleases them so much, that when the reporters' gallery is shut, all speaking is suspended. I suspect that, originally, when printing was introduced, and parliamentary

proceedings excited curiosity, the Government was afraid that popular haranguing would be encouraged by the publicity of the debates, and that every successive Administration, even after the Revolution, thought they had an interest in making parliamentary proceedings as secret as possible, forgetting that from the circulation of their own speeches they might acquire popularity and strength. —At last the officer of the House of Commons who was to enforce the standing order was committed to prison; and now, in one session, there are more reports than during the first sixty years of the last century.

hereafter. Judging from his diary, which is almost entirely filled with the deliberations of the Cabinet on pending negotiations, he seems to have taken a lively interest in foreign affairs, but, when they came to be publicly discussed, he very prudently remained silent; nor did he speak upon the "Pension Bill," the "Mutiny Bill," or on the "Civil List Bill," almost the only other subjects which seem to have caused much excitement in the House of Lords, while he remained Chancellor. This was a most remarkably tranquil period in the history of parliament. Walpole's Excise scheme excited a storm in the Commons, but it never reached the Upper House.

Although there must have been still going forward at Court a number of intrigues in which the Chancellor was concerned, his Diary unfortunately takes no notice of these, and, abounding with discussions on continental politics, contains very few personal anecdotes of himself or his contemporaries;—but I will give one other extract from it, which may cause regret that he did not write oftener in the same strain, availing himself of the private communications of the Premier:—

"*Monday, 2nd September, 1729, went to town.*—The next day saw the Queen at Court: from thence went to Sir R. Walpole's in his chariot, and dined with him and his lady only. He told me, that since the last time I saw him, they had received the draught of articles for a definitive peace concerted between our Plenipotentiaries and the Cardinal and the *garde des sceaux*; that they were so plain and good, that they did not think it worth the while to send for me to come to town to see and agree to them, or to give any farther instruction; that they were as good as we could desire, he was afraid too good—but, however, the Cardinal said that he was sure Spain would come into it; that, for expedition, as soon as they were agreed on in France, they were immediately sent to Spain, and were there by this time. In talking with him about the King's orders, that orders for the fleet and the negotiations with Spain should be all from hence without first sending to Hanover, he told me that Lord Townshend was very much displeased at it; that he, in concert with the Queen, gained it by a stratagem; that the Queen wrote a letter to the King intimating that some people thought the orders for the fleet were too long coming from Hanover, but that she would not for the world desire the King to send a power to her or to any one here to give immediate orders; that would be to execute a power which belonged only to him, and should be only executed by him. Whereon he wrote her a letter, that he would trust his throne and kingdom entirely with her, and thereupon ordered, that not only the fleet, but also the Plenipotentiaries at Paris, should receive their immediate orders from hence, and not stay for his.—On this occasion he let me into several secrets relating to the King and Queen—that the

King constantly wrote to her by every opportunity long letters of two or three sheets, being generally of all his actions—what he did every day, even to minute things, and particularly of his amours, what women he admired * * * ; and that the Queen, to continue him in a disposition to do what she desired, returned as long letters, and approved even of his amours, not scrupling to say, that she was but one woman, and an old woman, and that he might love more and younger women. * * * ^g By which means, and a perfect subserviency to his will, she effected whatsoever she desired, without which it was impossible to keep him within any bounds.”

This certainly is a very singular correspondence between husband and wife, and we should not be justified in remarking upon it had they not been the King and Queen of these realms ; but it is matter of history, and discloses to us the real influences by which the nation was governed. There must have been an extreme intimacy between her Majesty and Walpole, that she should show him these letters ; and we cannot help suspecting that, as a method of perpetuating her favour with his Majesty and consequently his own ministerial stability, he framed the answers—which could scarcely have been spontaneously suggested by her own mind. Indeed it is possible that the whole was the invention of Walpole, who over his wine might wish to mystify the Chancellor. Queen Caroline is generally, and I believe truly, represented to us as not only chaste and pure in her own conduct, but as a zealous patron of religion and morality.^h

The Diary, which had been kept very irregularly, entirely breaks off in October, 1729. I will try to supply its place by here introducing several letters addressed to Lord King while Chancellor, which will throw light upon his conduct and upon the manners and customs of his age.

On the sudden death of Sir Clement Wearg, there was a keen contest about the filling up of his office. Sir April 6,
1726. John Willes, afterwards Attorney-General, and a distinguished Judge, did not consider it beneath his dignity thus to address the distributor of legal patronage :—

“The occasion of this is humbly to beg your Lordship’s favour that I may succeed the late Solicitor-General. I have been King’s Counsel above seven years, and none of my seniors, as I am informed, desire it.

^g Diary, p. 111. I have been obliged to omit some other expressions imputed to her Majesty as too coarse to be copied.

^h I am sorry to say that the “Memoirs of

Lord Hervey,” recently published, have removed all doubt as to the genuineness of the disgusting correspondence between George II. and Queen Caroline.—*Note to 3rd edit.*

During my whole life, in whatever station I have been, I have never omitted any one opportunity of showing my zeal for the present establishment; and your Lordship, I believe, can bear me witness that I was not wanting in my poor endeavours to promote his Majesty's interest at a time when it was not only very unfashionable, but very dangerous to do so. My behaviour in this respect will, I hope, be thought sufficient to balance my other imperfections, of which I am fully sensible."

Lord King, however, espoused the interest of Mr. Talbot, who was now appointed Solicitor-General and afterwards succeeded him as Chancellor.

It is curious to observe how judges who wished to resign on Sept. 21, 1725. account of age and infirmity were obliged to beg for a pension or retired allowance. Sir Littleton Powys, in a letter to Lord Chancellor King, after describing a severe illness from which he had recently recovered, thus proceeds to state his claims:—

"I was in arms myself with three servants, at the time of the Revolution, under the then Lord Herbert, who chose me to read the Prince of Orange's Declaration at the head of many hundreds of the best of the county then met at Shrewsbury, which I did with a very loud voice, and I am sure with very great heartiness. I was the first circuit after that made Second Justice of Chester, and afterwards, by the great favour of my Lord Chancellor Somers, I was advanced into the Exchequer. I was afterwards, by the approbation of my Lord Chief Justice Holt, removed into the King's Bench, where I have been twenty-three years—so that I have now sat a Judge in Westminster Hall thirty years and in three reigns, and I have had the protection of the clause 'Quamdiu se bene gesserit,' without any misbehaviour ever imputed to me. I am sure I have been most hearty and zealous for his Majesty's person and government, and the present establishment." [Having described his terrible attacks of the gout, he says:] "I might by the help of the bath and other means try to restore my health, and endeavour to die a Judge, but my success in such restoring meets with a most untoward objection, that I am now fourscore years old wanting but one, and I am therefore thinking it better to resign my place if I may be admitted by the great favour and generosity of his Majesty, after so long and faithful service, to go off with honour, by having a pension, in like manner as my brother Powel had, who was a Judge in Westminster Hall eight years fewer than I have been, and my brother Blencowe now hath, who was my junior one year."

He continues at great length to urge his petition—hinting that it might be very convenient for some worthy friend of the Lord Chancellor, that there should be a vacancy on the bench.

The Prime Minister does not seem to have encroached by any means improperly on the Lord Chancellor's legal patronage. Thus he good-naturedly solicits him for the most inconsiderable appointment which could be held by a barrister :—

“ My Lord,

“ Mr. Green, the bearer, has desired me to recommend him to your Lordship to be continued a Commissioner of Bankrupts. He is now a Fellow of King's College in Cambridge, was clerk to Sir Edward Northey for ten years,—is well known to Lord Chief Justice Raymond and others from whom you may have his character. Our education at the same place and college entitles him to my good wishes, and is the occasion and excuse for my giving you this trouble.

“ I am very truly, my Lord,

“ Your Lordship's most faithful humble Servant,

“ R. WALPOLE.”

In the disposal of livings, however, I suspect that for election purposes Sir Robert interfered pretty freely—without very scrupulously considering the merits of candidates. Here is a specimen :—

“ My Lord,

“ I am afraid you will think me a hackney solicitor about Church preferments, but my friends will make me the canal to your Lordship's favour, which must plead my excuse. I have just Sept. 8, 1733. received an account that the vicarage of Lostwithiel, in Cornwall, is vacant. My son being now chosen for that borough, makes my troubling your Lordship more excusable, and begging that you will not be engaged for this vacancy till I receive my instructions in whose behalf I shall be obliged to receive your Lordship's favour,

“ I am very truly,

“ Your Lordship's most faithful humble Servant,

“ R. WALPOLE.”

I will give another application to Lord King for a living—from the head of my clan in favour of a poor countryman :—

“ My Lord,

“ This letter will be delivered to your Lordship by the young man I had the honour to recommend to you. He has been hitherto Dec. 15, 1729. instructing the good people of England *for nothing* in the primitive style, but now giving in to the modern taste of prophesying for money, and having at present nothing, will be glad to have any preferment, from the prelacy of Canterbury to the least living in your gift.

If your Lordship will be so good as to enable him to tread in the paths of his brethren, you will do a great favour to

“Your most faithful and most obedient humble Servant,

“ARGYLL AND GREENWICH.”

The next letter shows that in those days the Lord Chancellor, both in England and Ireland, was enabled to conciliate the goodwill of persons of the highest eminence in church and state by a lavish distribution of stationery at the public expense. Thus writes the Most Reverend Father in God, JOHN LORD ARCHBISHOP OF DUBLIN, &c. &c. &c., to Lord King:—

“My Lord,

“Ever since I have had the honour of being acquainted with Lord
April 10, Chancellors, I have lived in England and Ireland upon Chan-
1733. cery paper, pens, and wax. I am not willing to lose an old
advantageous custom. If your Lordship hath any to spare me by my
servant, you will oblige your very humble Servant,

“JOHN DUBLIN.”

I shall add one letter more, showing that the King thought the surest way to attach the citizens of London to his dynasty was by giving them a good dinner. The Treaty of Vienna being made public, whereby Austria and Spain had engaged to place the Pretender on the throne of Great Britain, a loyal address was voted by the Lord Mayor, Aldermen, and Common Council, to his Majesty,—and the Secretary of State sent the following mandate to the Lord Chancellor:—

“My Lord,

“The King having ordered a dinner to be provided at St. James’s for
Jan. 30, the citizens who shall accompany the address which is to be
1726-27. presented to-morrow, and it being proper that his Majesty’s
servants should dine with them, which they cannot conveniently do in
case the House of Lords should sit, I must beg your Lordship will be so
good as to get the House adjourned till Wednesday next. I am with
the greatest truth and respect,

“My Lord,

“Your Lordship’s most obedient humble Servant,

“TOWNSHEND.”

Very different from the economy of modern times!—when the Attorney-General, deprived of his salary, on which he still pays the land-tax, is obliged gratuitously to draw

public acts of parliament with his own pens and ink on his own paper, being deprived of his stationery and of the pecuniary compensation for some time substituted for it.

I have now only to consider Lord King as a juridical reformer. He found the Court of Chancery in the ^{A.D. 1725-}most deplorable state of confusion. The old usage for ^{1733.}the Lord Chancellor, on taking possession of his office, like the Roman Prætor, to revise the procedure by issuing a new set of Orders (or an Edict), had been long laid aside, and abuses for the profit of the practitioners, the officers, and the Chancellor, had been greatly multiplied and aggravated. The most crying grievance was the loss which many suitors had sustained by the insolvency of the Masters in Chancery, who, to indemnify themselves for the large sums paid for their places, had been speculating in the South Sea Bubble with the trust-money in their hands. Lord King, upon his appointment, framed various regulations to enforce those lately issued by the Lords Commissioners of the Great Seal, for the purpose of compelling the Masters to do justice to the injured suitors.^k At his desire the Lords of the Regency directed that Mr. Paxton, the Solicitor to the Treasury, should prepare an account of the deficiency of the Masters to be laid before the Council, and the Attorney and Solicitor-General were required to take care that the suitors might receive satisfaction for their several demands. There were four offices found deficient to the amount of 82,301*l.* 19*s.* 11½*d.*, the whole of which would have been lost—to the utter ruin of many families, the loss falling particularly on widows and orphans—if a legislative remedy were not found. In the first place, Lord Macclesfield's fine of 30,000*l.* was most righteously applied to this purpose, and the remainder was made up by an expedient too often resorted to in Chancery reform—by mulcting future innocent suitors:^m a tax was imposed for thirty-two years on writs and other proceedings; and on the credit of this the requisite sum was borrowed, so that the suitors who had been robbed were all fully indemnified. To check the like abuses in time to come, Lord King, with the concurrence of the Master of the Rolls, remodelled Lord Macclesfield's order, forbidding Masters in Chancery any longer to make any use of suitors' money for their own advantage, and commanding them forthwith to pay all sums received by them into the Bank of England.ⁿ

This for the future secured the principal of the money, but would not have done justice to the suitors, whose fortunes

^k Sanders's Orders, i. 505-537.

be paid by heavy fees.

^m Thus in 1843, on the abolition of the Six Clerks office, the indemnities were directed to

ⁿ Sand. Orders, i. 514.

might be locked up many years in the course of administration or pending a complicated litigation. A plan was therefore devised, whereby interest should be allowed to them in the mean time, the money being vested in public securities in the name of a new officer, acting under the control of the Lord Chancellor, to be called the ACCOUNTANT-GENERAL. This was carried into effect by two acts of parliament, the one entitled "An Act for better securing the Monies and Effects of the Suitors of the Court of Chancery;"^o and the other, "An Act for the Relief of the High Court of Chancery."^p "Happy had it been," says Oldmixon, "if the acts had farther relieved the suitors in that Court, by regulating the litigious, tedious, and expensive suits, and the enormous extortions of hungry solicitors, and the vexatious and chargeable attendances upon Masters, which render even a Court of Equity in too many instances equally ruinous and terrible."^q But the difficulties in the way of further improvement were probably then insurmountable. A contemporary writer says, "If an order is but made to cut off a burthensome expense, to shorten the old lengths for the benefit of suitors, a defalcation never so small runs to the very quick in Chancery Lane. Malice goes to work, clamours, outcries, and oppositions arise, and in the end may grow worse than one man perhaps could tell how to deal with." We must recollect that not only the Lord Chancellor himself, but that all the officers in the Court down to the door-keepers, were chiefly paid by fees; that the Chancellor of the Exchequer and the public would not have tolerated a proposal to pay them by fixed salaries out of the public revenue; and that the fund arising from unclaimed sums of money, now found so very convenient for Chancery improvements, was then in embryo. When we censure those who have gone before us for inefficiency in law reform, we should recollect that we ourselves have never solved the problem of recompensing professional labour without the test of the length of law proceedings, and that till this is done all attempts to check prolixity will be vain.* Under the auspices of Lord King, returns were obtained of all fees and emoluments of officers in courts of justice; and these were referred to a commission,

^o 12 Geo. 1, c. 32.

^p 12 Geo. 1, c. 33.

^q Vol. iii. 784.

^r History of Chancery, &c. 1726, 12mo.

* A striking illustration of the brevity

which lawyers could attain, there being no interest to be verbose is the judgment of death upon a felon, which, as there was no fee according to the number of words contained in it, was thus recorded—"SUS. PER COL."

that their legality and reasonableness might be thoroughly scrutinised in order to their being regulated and reformed; But the report of the commissioners was not presented till after his death.* It should be mentioned to Lord King's credit that he made several attempts to improve the practice of the Court respecting applications to rectify the minutes of decrees; respecting appeals from the Master of the Rolls, and respecting petitions for rehearings;—but he had little success in this department, and the complaints of the delays and expense of Chancery proceedings were as loud as at any former period.

There was one great improvement in law proceedings which, while he held the Great Seal, he at last accomplished. From very ancient times the written pleadings, both in criminal and civil suits, were, or rather professed to be, in the Latin tongue; and while the jargon employed would have been very perplexing to a Roman of the Augustan age, it was wholly unintelligible to the persons whose life, property, and fame were at stake. This absurdity had been corrected in the time of the Commonwealth, but, along with many others so corrected, had been re-introduced at the Restoration, and had prevailed during five succeeding reigns.^x The attention of the public was now attracted to it by a petition from Jan. 12, the magistracy of the North Riding of the county of 1730. York, representing the evils of the old law language being retained in legal process and proceedings, and praying for the substitution of the native tongue. The bill, by the Chancellor's direction, was introduced in the House of Commons, and it passed there without much difficulty. In the Lords it was fully explained and ably supported by the Lord Chancellor; but it experienced considerable opposition, several noble lords being greatly alarmed at such an innovation, and contending that, "if it were sanctioned, our records would be neglected, and the true knowledge of the law would be lost; that much uncertainty and confusion would be produced by attempting to translate the well-established Latin forms into

* In 1730 an act was passed to terminate certain disputes respecting the orders and decrees of the Master of the Rolls—confirming them subject to an appeal to the Lord Chancellor.—3 Geo. 2, c. 30; Com. Journ. xxi. 563. It was not thought necessary to introduce any bill to forbid the sale of master-ships in Chancery, this being considered ad-

judged in Lord Macclesfield's case to be illegal, though constantly practised.

¹ Sand. Orders, i. 506, 511, 521.

^x See an instance of it, ante, p. 85, where the question arose whether the word "impressit" could properly be used to mean *he printed*.

English; that great delays would arise in the administration of justice; that a wide door would be opened to fraud; that prosecutions for crimes would be rendered more difficult and expensive; that the recovery of small debts would become almost impossible, and that the supposed reform would multiply law-suits instead of bringing ease to the people." Lord Raymond, the Chief Justice of the King's Bench, speaking, I presume, the sentiments of all his brother Judges, strongly opposed the measure—availing himself of the weapons of ridicule as well as of reason, and saying, "that, if the bill passed, the law might likewise be translated into Welsh, since many in Wales understood not English." The Duke of Argyll, after a general defence of the bill, said he was glad that nothing could be brought forward against it by the Chief Justice of the King's Bench, as wise and learned a lord as ever sat in that House—beyond a joke.—Amidst heavy forebodings of future mischief the bill passed, and mankind are now astonished that so obvious a reform should have been so long deferred.⁷

Lord Chancellor King's career, most honourable if not very brilliant, was now drawing to a close. His fall was not by a revolution in the state, by the death of a Sovereign, or by a ministerial crisis. With health and fitness for his office, he might have continued to hold it for many years. But, after a long and arduous struggle, he thought it would be decent and becoming that he should voluntarily resign. He had materially injured his constitution by the intense application to which he began to submit for the purpose of qualifying himself as an Equity Judge, soon after he received the Great Seal; and his supervening illnesses were aggravated by the anxiety and mortification to which he was exposed from per-

⁷ 4 Geo. 2, c. 26; and see 6 Geo. 2, c. 14, allowing technical expressions, such as *nisi prius, quare impedit*, &c., still to be used. Blackstone laments the loss of the old law Latin (Com. iii. 322); and I have heard the late Lord Ellenborough from the bench regret the change, on the ground that it has had the tendency to make attorneys illiterate. Serjeant Heywood, the vindicator of Fox, seriously acted upon Lord Raymond's jest. As I have been told by the counsel who were present, while he was sitting as Chief Justice of the Caermarthen Circuit on a trial for murder, it appeared that neither the prisoner nor the jury understood one word of English,

and it was proposed that the evidence and the charge should be translated into Welsh; but his Lordship said that "this would be repealing the act of parliament which requires that all proceedings in courts of justice shall be in the English tongue, and that the case of a trial in Wales, the prisoner and the jury not understanding English, was a case not provided for, although it had been pointed out by that great Judge, Lord Raymond." The Jury very properly brought in a verdict of *not guilty*,—the evidence, to those who understood it, being decisive to prove that the prisoner had murdered his wife.

ceiving that he did not enjoy the confidence of the Bar, as he had done when he was a Common Law Judge. As early as November, 1727, he enters in his Journal his refusal to a pressing request from the Duke of Newcastle to come to town, from Ockham, to attend a cabinet: "To this I returned answer, that my constant and continued application to the business of the Court of Chancery had brought upon me rheumatical and sciatical pains; and if I had any regard to myself or family, I must, for remedy, stay three or four days in the country." He had a very able and experienced Master of the Rolls, but Sir Joseph (piqued, probably, that a common lawyer should have been put over his head), instead of cordially assisting him, kept aloof as much as he could, and sometimes actually thwarted him in the framing of orders respecting the practice of the Court.² He made extraordinary exertions to clear off arrears, often sitting in court to a late hour; but even for these exertions he was censured. The author of a pamphlet, then published, "Upon the Abuses of the Court of Chancery," bitterly exclaimed, "It was not lawful for the PRÆTOR URBANUS to hear causes after sunset; but ours we see post on till *midnight*, to master and put down the business of his Court."³ This complaint of late sittings appears very sulky and capricious, but I am afraid it might be excused by what was to be spied in the Court of Chancery in the latter days of Lord Chancellor King. The celebrated Jeremy Bentham, in a letter to Cooksey, the author of the "Lives of Lord Somers and Lord Hardwicke," has given, from the relation of his father, an eminent solicitor, a very lively picture of the manner in which Equity business was then disposed of:—

"Lord King became so far advanced in years when he held the Seals as Chancellor, that he often dozed over his causes when upon the bench; a circumstance which I myself well remember was the case; but it was no prejudice to the suitors; for Sir Philip Yorke and Mr. Talbot were both men of such good principles and strict integrity, and had always so good an understanding with one another, that, although they were frequently, and almost always, concerned for opposite parties in the same cause, yet the merits of the cause were no sooner fully stated to the Court, but they were sensible on which side the right lay; and, accordingly, the one or the other of these two great men took oc-

² Diary, p. 19. "His secretary delivered me a letter from him, whereby he declares that he will prevent as much as he can the usher

submitting to any such hills."

³ History of Chancery, &c., 1726, 12mo.

casion to state the matter briefly to his Lordship, and instruct the Register in what manner to minute the heads of the decree.”^b

At last, when Lord King had been Chancellor eight years—from the exertions he made beyond his strength, he was struck by a paralytic affection, which happily left him conscious of the propriety of his retirement. He yielded to the necessity with decency and firmness, and intimated, first to the Minister, and then to his Majesty, his determination to resign. Not being in a state of health to go to St. James’s to surrender the Great Seal with his own hand,—at his request George II., on the 19th of November, 1733, sent the Secretary of State to his house to receive it, and to bear warm acknowledgments of his long and faithful services.

Having delivered up the bauble with little regret, the Chancellor felt that he was now completely disabled
A.D. 1734. for public life, and that the time that might be spared to him was to be devoted to contemplation. He immediately hastened to his favourite retreat at Ockham, and, having a mind early tinctured with literature and devotion, he was not sorry to exchange the distractions of business for the resumption of his theological studies and the settlement of that great account which he was about to render of his thoughts and of his actions in this mortal state. He seemed to rally from repose and the pure air of the country, but on the 22nd of July in the following summer, about noon, he had a fresh and much more severe attack of his disorder, and, at eight o’clock in the evening of the same day, he expired, in the sixty-sixth year of his age.

His body was interred in the parish church at Ockham, where there was erected a most splendid and tasteful monument to his memory by Roubiliac—with these words engraved on an urn :—

“ DEPOSITUM
 PETRI DOMINI KING,
 BARONIS DE OCKHAM.”

^b Cooksey’s “Somers,” p. 60. When business is divided in a court between two great leaders without competitors, justice may thus be substantially administered, although not always to the satisfaction of the losing party, who expects his counsel to make the best fight he can in return for his fee. The late Chief Justice Gibbs told me that when he led

the Western Circuit against Serjeant Lens, they kept a weak Judge right. “Thus,” said he, “I once, knowing I had no case, opened a nonsuit before my brother Graham. He was for deciding in my favour; but I insisted on being nonsuited, and saved my client the expense of having a verdict in his favour set aside.”

And the following inscription on a tablet underneath :

“ He was born in the City of Exeter, of worthy and substantial parents,
 but with a genius superior to his birth.
 By his industry, prudence, learning, and virtue,
 he raised himself to the highest character and reputation,
 and to the highest posts and dignities.
 He applied himself to his studies in the Middle Temple,
 And to an exact and complete knowledge in all parts and history of the Law,
 added the most extensive learning, Theological and Civil.
 He was chosen a Member of the House of Commons in the year 1699 ;
 Recorder of the City of London in the year 1708 ;
 Made Chief Justice of the Common Pleas in 1714, on the accession of King George I. ;
 Created LORD KING, BARON OF OCKHAM,
 and raised to the post and dignity of Lord High Chancellor of Great Britain, 1725 ;
 under the laborious fatigues of which weighty place,
 sinking into a paralytic disease, he resigned it Novr. 19, 1733,
 And died July 22, 1734, aged 65,
 A Friend to true Religion and Liberty.”

This panegyric is modest and well deserved. The voice of posterity re-echoes “ A friend to true religion and liberty ! ” He was not celebrated for his eloquence : he has not enriched our literature with any very attractive compositions ; and he did not, in his highest elevation, equal the expectation that had been formed of him ; but he was a most learned, enlightened, and upright magistrate, ever devoted to the conscientious discharge of the duties of his station. He rose from obscurity to high distinction by native energy and self-reliance, —without courting the favour of any patron or of the multitude, and without ever incurring the suspicion of a dishonourable or mean action. If he did not dazzle by brilliant qualities, he gained universal good-will by such as were estimable and amiable. He himself unostentatiously ascribed all his success in life to his love of labour, and he took for his motto, “ Labor ipse voluptas,”—upon which I find in the *Biographia Britannica* the following paraphrase by one of his admirers :—

“Tis not the splendour of the place,
 The gilded coach, the purse, the mace,
 Nor all the pompous strains of state,
 With crowds that at your levee wait,
 That make you happy, make you great :
 But whilst mankind you strive to bless
 With all the talents you possess,
 Whilst the chief joy that you receive
 Arises from the joy you give,
 Duty and taste in you unite
 To make the heavy burden light ;

For pleasure, rightly understood,
Is only labour to be good." ^c

I have not been able to discover much of him in private society, but he seems, notwithstanding his addiction to divinity and law, to have had no inconsiderable share of humour, and he must have been a most determined punster if we may judge from the following epitaph, which he is said, when Chancellor, to have written upon an old carpenter of the name of Spong, and which is still to be read on a square granite grave-stone covering this "plane" man's remains in Ockham churchyard:—

"Who many a sturdy oak had laid along,
Fell'd by DEATH's surer hatchet, here lies SPONG.
Posts oft he made, yet ne'er a *place* could get,
And liv'd by *railing*, tho' he was no wit.
Old *saws* he had, although no antiquarian,
And *styles* corrected, yet was no grammarian.
Long liv'd he Ockham's premier architect;
And lasting as his fame a tomb t' erect
In vain we seek an artist such as he,
Whose pales and gates were for eternity.
So here he reats from all life's toils and follies,
O spare awhile, kind Heaven, his fellow-labourer, Hollis." ^d

Lord King, as I have before stated, was married early in life, and he continued to live with the object of his affections to the day of his death in perfect harmony and happiness. By her he left four sons, three of whom successively inherited his honourable title and ample estate. Though all well-behaved, none of them appear to have in any way gained much renown. The eldest, for dabbling in poetry, is grouped in the DUNCIAD with other dull sons of distinguished sires:—

"Great C**, H**, P**, R**, K**,
Why all your toils? your sons have learned to sing;
How quick ambition hastes to ridicule!
The sire is made a peer, the son a fool."

^c When Lord King was about to be raised to the peerage, a gentleman of the name of Whatley sent him a long dissertation on "MORROES," warning him against a punning or "canting" one, as "A Rege pro Rege," and submitting three for his choice: "Est Modus in Rehus," "Discite Justitiam," and "Vincit Ratio." This is preserved among the "Somers' Tracts," edited by Sir Walter Scott.

^d Hollis was bricklayer to the family, as Spong had been carpenter.—*Gent. Mag.* vol. lxx. p. 113. The present Earl of Lovelace denies that his ancestor was the author of these lines on Spong's tombstone: it is stated that he died Nov. 17, 1736, which is two years and four months after Lord Chancellor King; so that if the Chancellor wrote the *jeu d'esprit*, it must have been to amuse the old carpenter in his life-time.

But in another generation the talent of the founder of the family again broke out with fresh lustre. The late Lord King, so eminent for wit, eloquence, and every great and amiable quality, was the grandson of the youngest of the four brothers. The Chancellor is now represented in the direct male line by the Earl of Lovelace, whom I rejoice to see deservedly raised in the peerage, but whom, from my regard for the memory of old Sir Peter, I should have been still better pleased to have hailed as "EARL KING."^e

^e Grandeur of the Law, p. 114.

CHAPTER CXXVII.

LIFE OF LORD CHANCELLOR TALBOT FROM HIS BIRTH TILL HE RECEIVED
THE GREAT SEAL.

WE have now bid a final adieu to the stirring times of William III. and of Anne, in which the six last preceding Chancellors played a distinguished part. Those who are to follow did not enter public life till the House of Hanover was securely on the throne; and, without being engaged in revolutionary intrigues, they rose to high office merely by professional eminence. The Georgian period of English history, to which we are to be confined, was comparatively tranquil; but it presents us with great men at the head of the law, who would have been capable of guiding the destinies of the nation under any circumstances, however arduous. The first of these was praised in a more vehement and less qualified manner than almost any one who ever held the office of Lord Chancellor. Historians and poets were equally eager to celebrate his good qualities. But this arose in part from the sympathy excited by his fate, for he was only shown as a Judge to excite the admiration of mankind when he was snatched away to an early tomb.

CHARLES TALBOT sprang from a very ancient and illustrious family, which has produced a great number of distinguished warriors and statesmen,—having for his ancestor the companion of Henry V., who, after the death of that monarch, so heroically sustained the interest and glory of the English name in France. He was of a younger branch of the Talbots—settled first at Grafton, and then at Salwarp, in Worcestershire.^f His father, a younger brother, went into the Church, and, displaying learning and liberality of sentiment, was successively Dean of Worcester, and Bishop of Oxford, of Salisbury, and of Durham. The Earl of Shrewsbury, the early friend of Lord Somers,—head of the house at the close of the seventeenth and beginning of the eighteenth century,—

^f This branch was descended from Sir Gilbert Talbot, third son of John second Earl of Shrewsbury.

who took a leading part in two revolutions,—in bringing in King William, and bringing in King George,—no doubt assisted the merits of his kinsman in procuring these promotions. Bishop Talbot was, as might be supposed, a zealous Whig. From him was inherited the eloquence in debate which distinguished his son. He seems to have had considerable weight in the House of Lords. Burnet particularly celebrates his speech in favour of the Union with Scotland, and his speech against Dr. Sacheverell. On this last occasion he boldly denied that the Church condemned resistance in cases of extreme tyranny, and he relied upon the instance of the Jews who, under the brave family of the Maccabees, revolted against Antiochus, and formed themselves into a free and independent government. “Our homilies,” he said, “only condemn wilful rebellion against our kings *while they are governing by law.*”[§] These sentiments he instilled into the minds of his descendants, who, steadily defending the just prerogatives of the Crown established for the good of the people, were zealous friends of civil and religious liberty.

The Bishop, by his wife Catherine, daughter of Alderman King, of London, had eight sons. Of these the eldest, the subject of this memoir, was born in the year ^{A.D. 1684.} 1684, while his father was only a country parson. I have not discovered anything respecting his school education, and there seems reason to think that he continued under private tuition till he was sent to the University. The diligent habits and taste for polite literature, which afterwards distinguished him, he must have contracted at an early age. In Michaelmas Term, 1701, he was entered a gentleman commoner at Oriel College, Oxford, where his father likewise had been educated. Learning had then fallen to a low ebb in this once famous university,—Jacobite politics being the chief business of the place, and hard drinking its chief recreation :—

“Now Isis' elders reel, their pupils sport,
And Alma Mater lies dissolv'd in port.”

Luckily for young Talbot, he was generally regarded with a sort of horror as the son of a Whig bishop who had opposed the “Bill against Occasional Conformity,” ^{A.D. 1701—1707.}

§ Vol. iv. 176, 286. He seems even to have been ready to draw his sword in a good cause, like Bishops of old. In the account of a royal review in Hyde Park to be found in the “Flying Post” of June 14th, 1722, it is

said that “Bishop Talbot was finely mounted in a long habit of purple, with jack boots, and his hat cocked, and black wig ty'd behind him like a militant officer.”

and he was excluded from the coteries where measures were debated to put down Dissenters, along with Low Church divines—if possible, more odious,—and to atone for the national sin of the Revolution (in which the Church had for a short time been implicated), by re-establishing the doctrine of divine right, and by recalling the true heir to the throne. Our banished student consoled himself with the Orations of Cicero and Demosthenes, and he surreptitiously got possession of a copy of the works of John Locke, which, carefully concealing it from his tutor, he pored over late at night, in his bed-chamber, where he thought he was in no danger of a visit from the proctors. Now, likewise, he most usefully devoted much of his time to the study of the Roman Civil Law,—which was probably the secret of his afterwards turning out so skilful a jurist, and such an admirable Judge. Being impatient to breathe in a freer atmosphere, he claimed, under the statutes of the University, an honorary degree as the son of a bishop, before the ordinary time for his graduating had arrived; and it was found that, notwithstanding the loose opinions which he was supposed to have inherited from his father, this could not be refused to him, for he had been remarkably regular in his attendance at chapel and at lectures, and no breach of academical discipline could be imputed to him. He proceeded B.A. in Trinity Term, 1704. Forthwith he left the University with the highest reputation for his accomplishments; and his manners were so agreeable, that in the following year, although known to be a Whig, and, what might be equally alarming, known to be more than “*mediocriter doctus*,” he was elected a fellow of All Souls.^b

He spent two or three years very agreeably, having his college for his head quarters,—not yet determined on a profession, and with a strong inclination for the easy life he might expect to enjoy in the Church. But he grew more and

^b It is said that, by the statutes of this college, those to be elected Fellows are required to be “*bene nati, bene vestiti, et mediocriter docti* ;” but, in modern times, the Fellows have often been distinguished for their learning, as well as their social qualities.—*1st edit.*

I have since been informed that the current story of the Fellows of All Souls being required to be only “*moderately good scholars*, so that they are well-born and smartly dressed,” is a calumny upon them and the

Founder, and that the following is the true reading of the statute referred to:—

“*Statuentes præterea quod nulli alii scolares in prædicto collegio eligantur, nisi qui rudimentis grammaticæ sufficienter, et in plano cantu competenter, prius fuerint eruditi, et qui primam tonsuram clericalem habentes ad sacerdotium sint habiles et dispositi, liberæ conditionis, de legitimo matrimonio nati, bonis conditionibus et moribus perornati, et in studio proficere cupientes, et re ipsâ proficientes.*”—(1849.)

more sick of the monotony of Oxford, and falling into the company of Lord Chancellor Cowper, that discerning man soon discovered his extraordinary talents and fitness for public life, and advised him to study the law. Accordingly, on the "28th of June, 1707, Charles Talbott, Esq., son and heir apparent of William Lord Bishop of Oxford, was admitted of the Honourable Society of the Inner Temple,"ⁱ and he took up his residence in chambers.

I have not been able to obtain any authentic account of him while he remained *in statu pupillari* there. He must have been exposed to the disadvantage of a comfortable home at the west end of the town while his father was attending parliament, and to the danger of easy access to fashionable society—more formidable to a law student than penury and friendlessness. But, on the other hand, he had a powerful stimulus to exertion and perseverance in recollecting that his father had such a numerous family, and that a finished education was all the patrimony he had to expect.^k

From extraordinary proficiency in his studies, or from family interest, the period of his studentship was abridged. According to the rules then subsisting in the Inns of Court, he could not be called to the bar till he was of seven years' standing, and had kept sixteen terms; but on the 11th of February, 1711, he had "a call of grace."^m

ⁱ Admission Book, 1693-1707.

^k Instead of inheriting large possessions from his father, he is said afterwards to have contributed generously to pay his father's debts; who, in princely magnificence, spent more than his princely revenue at Durham.

^m " * Interius Templum Ricus Webb, Armiger. Thesaurarius ibm. }	Parliamentu tentum undecimo die Februarij Anno Dom. 1710.
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"At this Parliament, M^r Charles Talbott is called to the Bar, and to be utter Barrister of this Society."

The following entries likewise appear in the books of the Inner Temple respecting Lord Chancellor Talbot:—

" Interius Templum Nathan! Manlove, Ar. Thesaurar. ibm. }	Parliament. tentum Sexto die Maij Anno Dom. 1726.
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"At this Parliament, Charles Talbot, Esq^r, his Majesties Soil General, is called to the Bench."
"Interius

* "Bench Table, 5 Feb. 1710-11.—Ordered that notice be given to the Masters of the Bench, that a call to the Barr will be proposed at the Table on Friday next. And it is also ordered that Mr. Charles Talbot, eldest son of the Bishop of Oxford, be put into the paper in order for such call."

During the reign of Queen Anne he seems to have abstained from politics, and to have devoted himself entirely to his profession. His success was rapid and steady. He went the Oxford Circuit, where he got into good practice, but he chiefly flourished in the Court of Chancery. He was one of the first who, early in their professional career, confined themselves to the sittings of the Lord Chancellor, which, since the abolition of the Star Chamber, were held, during the seasons of business, every morning, and in the afternoons of Wednesdays and Fridays,—and to the sittings of the Master of the Rolls, held in the afternoons of Mondays, Tuesdays, and Thursdays. But he had laid a solid foundation of common law, and continued to go the circuit till he was appointed Solicitor-General to the King. An equity draughtsman's office was not thought a sufficient school for Chancellors till a century afterwards.

On the accession of George I., Talbot's father succeeded the famous Gilbert Burnet as Bishop of Salisbury; and, at the general election which soon followed, he was himself returned to the House of Commons as member for Tregony. His name is hardly ever mentioned in the printed debates, but it is quite certain that he spoke frequently and well; and such a position had he established for himself, that although a lawyer, he was selected to second the nomination of Spencer Compton as Speaker. The seconder seems to have made the best speech on that occasion. Although the mover was the celebrated Philip Earl of Chesterfield, then Lord Stanhope, he seems to have said little more than, "considering the present circumstances of the times, and the many important affairs that seemed urgent to come before

" Interius Templum Nathl Manlove Arm. Thesaurarius ihm	} Parliamentum tentum decimo nono die Novembris Anno Dom. 1726.
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" At this Parliament, it is ordered that Charles Talbot, Esq^r, his Majesty's Solicitor-General, one of the Masters of the Bench of this Society, be and is hereby unanimously elected Treasurer for the year ensuing."

" Int̄ius Templum Carolus Talbot, Ar. Soil̄ Gen̄al Dni R ^o . Thesaurarius ihm.	} Parliamentum tentum undecimo die Februarij Anno Dom̄ 1726.
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" At this Parliament, Charles Talbot, Esq^r., his Majesties Solicitor-General, Treasurer of this Society, is chosen Reader for the next Lent Vacation (in the room of Richard West, Esq^r., late Lord Chancellor of Ireland, and one of the Masters of the Bench of this Society, deced.)"

the House, the House ought, in this first step, to give his Majesty and the whole nation convincing proofs of their firm adherence to our present happy establishment, by choosing for their Speaker a person of unshaken fidelity to his Majesty, and of undoubted zeal for the Protestant succession." But, according to the slight sketch we have of Talbot's oration, after congratulating the House on the numerous attendance, which he hailed as an earnest of public spirit in the new parliament, he said "he hoped every gentleman came there resolved to support the liberty of the subject, the just rights of the Crown, and our present happy establishment in church and state: that it would be impossible to give a more striking proof of these laudable feelings than by placing in the chair the honourable person named, who had been ever distinguished for his love of freedom and his unalterable adherence to a government framed for the good of the people. If there be any enemies to our peace who have entertained imaginary hopes that the people of this kingdom are inclined to exchange Protestant for Popish rule, let us show, by the known character of the person we place at our head, what is to be expected from this House of Commons." He then goes on to give the form, which has been followed ever since on such occasions;—to enumerate all the qualifications of a perfect Speaker, and to assert that they are all concentrated in the individual whom it is proposed to call to the chair.^a

In 1717 a feather was put into Talbot's cap by appointing him Solicitor-General to the Prince of Wales; but he had been eleven years in parliament before he had any valuable professional advancement. Lord Chancellor Macclesfield entertained a prejudice against him, or, at any rate, sacrificed him to the indulgence of his excessive partiality for a favourite—certainly a very deserving one—Philip Yorke, who was made Solicitor-General while almost a boy. A.D. 1723. Talbot, having resented this promotion, incurred the decided displeasure of the Lord Chancellor, and was passed over on the next move in the law, which took place on the elevation of Sir Robert Raymond to be Lord Chief Justice of the King's Bench.

At last, after the fall of Lord Macclesfield, Lord King, the new Chancellor, expressed himself sensible of the April 23,
1726. injustice hitherto done to Mr. Talbot, who had continued to enjoy high distinction both in his profession and in

^a 8 Parl. Hist. 22.

parliament; and on the sudden death of Sir Clement Wearg, although a strong effort was made in favour of Sir John Willes, Mr. Talbot was appointed to succeed him as Solicitor-General to the King. He escaped knighthood, and continued Charles Talbot, Esquire, till made Lord Chancellor and a Peer. He had some time before been returned member of parliament for the city of Durham, where his father was now Prince-Bishop. On his promotion he vacated his seat under the recent act of parliament, but he was re-elected without opposition.^o

Notwithstanding former jealousies, a perfect friendship was now established between him and his colleague, and seldom has the Crown of England had such law officers,—Sir Philip Yorke being Attorney-General, while Talbot was Solicitor. They continued to serve together cordially, zealously, and honourably, for above six years. Sir Robert Walpole was sensible of their great value, and on the death of George I., as soon as he found that his own power was to continue, took care that their patents should be renewed.

The members of the Government, for a long while, had easy

^o Talbot, remaining a member of the Inner Temple, had for the convenience of occupying chambers in Lincoln's Inn been admitted of that Society, and was now made a bencher and treasurer. The following entries respecting him appear in our books:—

"London ff. Carolus Talbot de Interiori Templo London Armiger admissus est in Societatem hujus Hospicij tricesimo primo die Jaonarij anno regni Lm̄i nri Georgij Dei Gra Magne Britanie Franc et Hibœie Regia quinto. Annoq. Dni 1718. Et solvit ad nsum Hospicij p̄d. £iij ijs. lijd."

"At a Council held the 10th day of December, 1722.

"Upon the nomination in writing of Sr. John Williams and Sr. Edward Gould, Kn̄, touching a certain chamber situate in Serles Court, Lincolnea Inne, &c. to Charles Talbot, of Lincolnea Inne, aforesaid, Esq^{re}. It is ordered that the said M^r Talbot be admitted to y^e said Chamber, he first paying the fine of ten pounds to y^e Treasurer of This Society, and the usual fees to the Officers of y^e House, and all arrears due on y^e said chamber."

"At a Council held the 27th day of April, 1726.

"Ordered that Charles Talbot, Esq^{re}, his

Majesty's Sol^r Generall, be invited to the Bench of this Society; and that M^r Willes, and M^r Hungerford, do waite upon him and acquaint him therewith."

"At a Council held the 11th day of May, 1726.

"Upon the report of M^r Willes and M^r Hungerford, two of the Masters of the Bench of this Society, who were by Order of Council of y^e 27th of April last desired to attend M^r Sollicitor Generall with an Invitation to the Bench, 'That they had attended the said M^r Sol^r Generall, who accepted of the said Iovitation.'—Ordered, that y^e said M^r Sollicitor Generall be called to the Bench of this Society, and that he be published at the next Exercise in the Hall, first paying all his arrears of duties to this Society."

"At a Council held the 27th day of July, 1726.

"Ordered, that Charles Talbot, Esq^{re}, his Majesties Sollicitor Generall, he Treasurer of this Society for the remaining part of this yeare, in the place of John Browne, Esq^{re}, who hath lately resigned his place of Treasurer."

"At a Council there held the 28th day of Nov^r, 1726.

"Ordered, that M^r Sollicitor Generall be Master of the Lihrary for the year ensuing."

work in the House of Commons, for, as yet, there was no organised opposition, and a session would go off with a tame discussion on Spanish intrigues, or a complaint about publishing proceedings in parliament.

Sir Robert, at last, brought forward his famous Excise scheme;^p and although the measure is now allowed to have been highly favourable to free trade, and well calculated to improve the revenue and to lessen the weight of taxation, such was the clamour against it, that it had nearly caused a change of administration. During this crisis, the Minister was nobly supported by the Solicitor-General, who was not a mere equity practitioner, but an enlightened statesman, capable of understanding and discussing any question on which the safety or prosperity of the country might depend. In answer to the Minister's most masterly statement of his plan, Sir John Barnard, Pulteney, and Sir William Wyndham having attacked and misrepresented it, Talbot gallantly rose, and having first shown that instead of being a "General Excise," it was merely an alteration of the mode of levying the tax on tobacco and wine, to facilitate commerce in these commodities, by requiring the tax to be paid when they were to be used, instead of when they were imported; he proved that, by the operation of the bill, infinite frauds would be prevented, the fair dealer would be protected, prices would be reduced, consumption would be doubled, and the revenue would be proportionably improved, so that the land-tax might be entirely remitted. He further argued, that, by the extension of the same system, all the ports in Great Britain might be made free ports, and our trade and our wealth might be infinitely increased.—The legal profession shone much in this debate, for the measure was likewise ably defended by the Attorney-General, and by Sir Joseph Jekyll, the Master of the Rolls. It was carried through the first stage by 266 to 205; but this majority dwindled away on subsequent divisions, and the opposition to it was so tremendous out of doors, that it was abandoned—to the great joy and loss of the nation.^q The session was as soon as possible closed by a prorogation, and Talbot never again appeared in the House of Commons. Before parliament reassembled, there were very important changes, by which he was removed to another scene of action.

^p In this instance he violated and proved the wisdom of his maxim, "*quieta non moveas*," ^q 8 Parl. Hist. 1268—1328; 9 Parl. Hist. 1—48; Coxe's Walp. i. 404.

In the Life of Lord King, I have related how, in his declining days, Talbot and Yorke, who led against each other in the Court of Chancery, amicably settled between them the decrees and orders to be pronounced by the Chancellor, but that in November, 1733, this mode of disposing of the business came to an end. It so happened that a little time before Lord King's resignation, Lord Raymond, the Chief Justice of the King's Bench, suddenly died, and no successor to him being yet appointed, the highest Equity Judgeship and the highest Common Law Judgeship were vacant at the same time. "Although Sir Philip Yorke, then Attorney-General, was considered as such to be entitled to the Seals in preference to Mr. Talbot, yet the latter having confined himself very early to the practice of the Court of Chancery, and not having been much conversant with the practice of the Common Law, he thought himself not sufficiently qualified to preside in the Court of King's Bench; on which account, Sir Philip Yorke being equally competent to preside either in that Court or the Court of Chancery, it was agreed between them that Sir Philip should waive his pretensions in favour of Mr. Talbot; and the King and the Ministry so well approved of it, that it was settled among them that Sir Philip Yorke should have the place of Chief Justice of the King's Bench, and should have 2000*l.* a year added to his salary as Chief Justice,—which, however, Sir Philip, to his honour, refused to accept without its being made permanent to the office of Chief Justice of that Court, by being secured to his successors; and upon these terms the Seals were delivered to Mr. Talbot. In consequence of which Sir Philip was created Lord Hardwicke, and Mr. Talbot Lord Talbot." ^r

I have thought it right to state this transaction in the very words of Bentham, the philosopher of Queen's Square, who had good means of information, and whose sincerity may be depended upon. But I cannot help suspecting that there were other reasons for conferring the higher office upon Talbot besides his supposed want of qualification for the lower. Although for the last eight years he had confined his practice to the Courts of Equity, he had been familiarly acquainted with the Common Law by private study and by going circuits, and he must have been as well prepared to be a Chief Justice as Lord Eldon was, who presided with full as much applause in the Court of Common Pleas as in the Court of Chancery. Nor

^r Jeremy Bentham's Letter to Cooksey: *Cooksey*, 61.

can the true solution be, that Yorke, having the first choice, preferred, as others have done, the certainty of tenure to splendour of present enjoyment, for he afterwards willingly resigned for the Great Seal the office which he now accepted. Some have supposed that the arrangement was the result of political intrigue, and that the descendant of the Earls of Shrewsbury by family connection triumphed over the son of the country attorney. But this is a merely gratuitous conjecture, and is at variance with Talbot's open and upright character and the cordial intimacy that now subsisted between these rivals for honourable distinction. The probability is, that Walpole, much as he no doubt valued Sir Philip Yorke, thought that Talbot would be a still more desirable associate in the Cabinet, and would be still more useful to him presiding on the woolsack than in a court of law. In such arrangements political convenience has ever had more weight than nice considerations of judicial fitness. From a very long official career Lord Hardwicke has left a far greater reputation as a judge and as a statesman than Lord Talbot, who was so suddenly cut off when beginning to gather his fame; but, while they were running the race of glory together, the latter seems to have excited most applause, and, if his life had been prolonged, a statue would have been erected to him in the new palace at Westminster, by the side of Lord Somers and Lord Mansfield. The circumstance of their relative rank as law officers of the Crown, when the vacancies occurred, would be of small importance; for although it has always been considered that the Attorney-General may claim as of right any Common Law Judgeship which is vacant, the disposal of the Great Seal in earlier times was the personal act of the Sovereign, and more recently was left to the Prime Minister, who was not guided by any fixed rotation, but considered what would most conduce to the credit and strength of his government. Upon this occasion, the Attorney-General could not consider himself aggrieved with the Chiefship of the King's Bench, a Peerage, and a large addition to his salary; and the two continued cordially to co-operate in the public service without any envious or jealous sentiment arising to disturb their friendship.

The Great Seal having been received from Lord King, it was delivered to Mr. Talbot as Lord Chancellor, by his Majesty George II., at a council held on the 29th of November, 1733. The same day he was sworn a Privy Councillor, and

on the 5th of the following month he was raised to the Peerage by the title of Lord Talbot, Baron Talbot of Hensol, in the county of Glamorgan.

CHAPTER CXXVIII.

CONCLUSION OF THE LIFE OF LORD TALBOT.

AN illustration was now given of the excellence of the English practice of selecting for the Bench men of the highest eminence at the bar, who have distinguished themselves as law officers of the Crown,—instead of following the French system of keeping the order of advocates and of judges distinct. If men are appointed Attorney and Solicitor-General from family interest, or from considerations of party convenience, without looking forward to their fitness or their judicial destiny, their promotion is a heavy misfortune to the public; but it is only from the long experience in the administration of justice obtained as an advocate that the public could have the advantage of such consummate Judges as Hardwicke and Talbot. Their appointment gave universal satisfaction; and as the latter was the more popular, great delight was expressed that he was placed at the head of his profession, and that the wrong formerly done to him was completely redressed.

A few days after receiving the Great Seal, the new Chancellor sat for the despatch of business in Lincoln's Inn Hall, but he was not formally installed in his office till the 23rd of January following, the first day of Hilary Term,—when, after a most splendid procession to Westminster Hall he was placed in the marble chair in the Court of Chancery with all the ancient solemnities.*

* "Anno 7^{mo} Georgii 2^{di} Regis. 29 Nov. 1733. Memorandum, that on Thursday, the 29th of November, 1733, at the request of Peter Lord King, Lord High Chancellor of Great Britain, his Majesty sent to his Lordship for the Great Seal; and about three in the afternoon of the same day, his Majesty was graciously pleased to deliver the same to

Charles Talbot, Esq., with the title of Lord Chancellor, and his Lordship was sworn in council at the same time; and though he sat at Lincoln's Inn Hall the 4th day of December following, yet his Lordship was not sworn by the Clerk of the Crown till the 23rd of January, being at Westminster Hill the first day of the then next Hilary Term when his

A grand "Revel" was given in honour of the new Chancellor by the Inner Temple,—being the last royal festivity at an Inn of Court till the visit of Queen ^{A.D. 1734.} Victoria to Lincoln's Inn, more than a century after,—when the Prince Albert, her Consort, vouchsafed to become a member of that Society, and was called to the degree of an utter barrister.

It would require the pen of a Dugdale to do justice to such scenes, but the following not ungraphic account of the "Talbot pageant" has been transmitted to us:—

"On the 2nd of February, 1733–4, the Lord Chancellor came into the Inner Temple Hall about two of the clock, preceded by the Master of the Revels, Mr. Wollaston, and followed by the Master of the Temple, Dr. Sherlock, Bishop of Bangor, and by the Judges and Serjeants who had been members of that House. There was a very elegant dinner provided for them and the Lord Chancellor's officers; but the barristers and students of the house had no other dinner provided for them than what is usual on GRAND DAYS; but each mess had a flask of claret besides the common allowance of port and sack. Fourteen students waited at the bench table, among whom was Mr. Talbot, the Chancellor's eldest son, and by their means any sort of provision was easily obtained from the upper table by those at the rest. A large gallery was built over the screen, and was filled with ladies, who came for the most part a considerable time before the dinner began; and the music was played in the little gallery at the upper end of the Hall, and played all dinner time. As soon as dinner was ended the play began, which was—'*Love for Love*,' with the farce of '*The Devil to Pay*.' The actors who performed in them all came from the Haymarket in chairs, ready dressed, and (as it was said) refused any gratuity for their trouble, looking upon the honour of distinguishing themselves on this occasion as sufficient. After the play, the Lord Chancellor, Master of the Temple, Judges and Benchers entered into their parliament chamber, and in about half an hour after came into the Hall again, and a large ring was formed round the fire-place (but no fire or embers were on it). Then the Master of the Revels, who went first, took the Lord Chancellor by the right hand, and he by his left took Mr. Justice Page, who, joined to the other Judges, Serjeants and Benchers present, danced or rather walked 'round about the coal fire,' according to old ceremony, three times, during which they were aided in the figure of the dance by Mr. George Cook the prothonotary, then sixty; and all the time of the dance the ancient song, accompanied with music, was sung by one Toby Aston, dressed in a bar gown, whose father had been formerly Master of

Lordship took the oaths appointed to be taken by the 1st of William and Mary, and the oath of Lord Chancellor, the Master of the Rolls

holding the book, and the Clerk of the Crown giving the oaths."—*Roll*, 1727—1760.

the Plea Office in the King's Bench. When this was over, the ladies came down from the gallery, went into the parliament-chamber, and stayed about a quarter of an hour, while the Hall was being put in order. Then they went into the Hall, and danced a few minuets. Country dances began at ten, and at twelve a very fine collation was provided for the whole company, from which they returned to dancing, which they continued as long as they pleased, and the whole day's entertainment was generally thought to be very genteelly and liberally conducted. The Prince of Wales honoured the performance with his company part of the time; he came into the music *incog.* about the middle of the play, and went away as soon as the farce of 'walking round the coal fire' was over."†

† "Wyone's Eunomus. Notes." A newspaper of the day says, "The ancient ceremony of the Judges 'dancing round the coal fire' was performed with great decency."

As these festivities in the Inns of Court are not only closely connected with the history of the Law, but possess permanent interest as illustrating the manners of the age, I will here insert, from the records of our Society, the official record of Queen Victoria's visit on the occasion of the opening of the New Hall of Lincoln's Inn in the year 1845. After describing an audience with which the Treasurer and two other Benchers were honoured to invite her Majesty and her Royal Consort, her Majesty's gracious intimation that they would be present at a "déjeuner" on the 30th of October, and the preparations made to receive them,—it thus proceeds:—

"The Queen's Counsel wore their silk gowns, and the long full-bottomed wig. Lord Cottenham, Lord Campbell, and the Speaker wore their black velvet court dresses; the three Vice-Chancellors their full dress, Judges' wigs, and Lord Bexley his blue and gold official dress, as a former minister of the Crown.

"At the top of the Hall a table was placed upon the dais for the Queen, his Royal Highness Prince Albert, and the other guests who accompanied the Queen, the benchers and the preacher of the Inn; and then, transversely, four tables reaching to the bottom of the Hall were devoted to the Bar and such of the students as attended.

"The band of the Coldstream Guards attended, and played during the time her Majesty was in the Hall.

"All the benchers being assembled, and the hour of arrival drawing nigh, the procession for receiving her Majesty, headed by the Treasurer, made its way down the Hall, and placed itself at the south-east entrance of the Hall,

and shortly afterwards the Queen, with Prince Albert, attended by four of the ladies in waiting, and certain high officers of her household, arrived. The party came in five private carriages, attended by a body of the Life Guards; and soon in the Hall the National Anthem was heard. Her Majesty immediately entered, passing up the middle of the Hall, leaning on Prince Albert's arm, and preceded by the Treasurer walking backwards, and amidst loud and hearty cheering Her Majesty walked to the library, followed by her ladies, the Cabinet Ministers, Officers of State, and the Benchers, who came two and two, according to the date of their election to the bench.

"The Queen wore a blue drawn silk bonnet with a blue feather, a dress of Limerick lace, and a scarlet shawl with a broad gold edging.

"In the Library, the Queen, seated on a chair of state, held a levee, and received an address from the benchers, the barristers represented by the four seniors, and the students or fellows, two of whom were also present. The address was read by the Treasurer to the Queen, on his knee, and was as follows:—

" 'Most Gracious Sovereign,

" 'We your faithful subjects, the Treasurer and Masters of the Bench, the Barristers and Fellows of the Society of Lincoln's Inn, in treat your Majesty's permission humbly to testify the joy and gratitude inspired by your august presence. The edifice in which, under such happy auspices, we are for the first time assembled, is adorned with memorials of many servants of the Crown, eminent in their talents, their learning, and their integrity. To the services as recorded in history of these our distinguished predecessors, we appeal in all humility for our justification in

As an Equity Judge, Lord Talbot exceeded all the high expectations which had been formed of him. In my long

aspiring to receive your Majesty beneath this roof.

"Two centuries have nearly passed away since the Inus of Court were so honoured by the presence of the reigning prince. We cannot, therefore, but feel deeply grateful for a mark so conspicuous of your Majesty's condescension, and of your gracious regard for the profession of the law.

"It is our earnest desire to deserve this proof of your Majesty's favour, by a zealous execution of the trust reposed in us, to guard and maintain the dignity of the Bar of England.

"In our endeavours to this end, we shall but follow in the course which it has been your Majesty's royal pleasure to pursue. Signally has your Majesty fostered the independence of the Bar and the purity of the Bench, by distributing the honours which you have graciously bestowed on the profession among the members of all parties in the State.

"Permit me also, most gracious Sovereign, to offer your Majesty our sincere congratulations on the great amendments of the law which have been effected since your Majesty's accession to the throne throughout many portions of your vast empire.

"The pure glory of these labours will be dear to your Majesty's royal heart; for it arises from the welfare of your subjects.

"That your Majesty may long reign over a loyal, prosperous, and contented people, is our devout and fervent prayer to Almighty God."

"The following reply, which her Majesty received from Sir James Graham, was then read:—

"I receive, with cordial satisfaction, this dutiful address. My beloved Consort and I have accepted with pleasure your invitation, for I recognise the services rendered to the Crown at various periods of our history by distinguished members of this Society; and I gladly testify my respect for the profession of the law, by which I am aided in administering justice, and in maintaining the prerogative of the Crown and the rights of my people.

"I congratulate you on the completion of this noble edifice; it is worthy of the memory of your predecessors, and the station which you occupy in connection with the Bar of England.

"I sincerely hope that learning may long flourish, and that virtue and talent may rise to eminence, within these walls."

"A chair was placed for the Prince on the left of her Majesty; he did not occupy it, but remained standing.

"The above address, and its answer, having been read, the Treasurer was knighted; and his Royal Highness Prince Albert was invited to become a member of the Inn, to which he at once agreed, and the admission book being handed to her Majesty and Prince Albert, they were graciously pleased to sign their names therein, as also did the following persons:—The Lord Chancellor, the Duke of Wellington, the Marquis of Exeter, the Earl of Aberdeen, Lord Liverpool, the Earl De La Warr, the Earl of Jersey, the Earl of Hardwicke, the Earl of Lincoln, Lord George Lennox, Sir James Graham, the Honourable Colonel Grey, the Honourable Captain Alexander N. Hood, Colonel Bouverie, and Captain Francis Seymour.

"The ceremony being over in the Library, her Majesty, accompanied by the above party, then proceeded to the Hall. Grace being said by the chaplain, the assembly received the permission of the Queen to be seated; her Majesty, occupying a chair of state with a canopy, partook of the refreshment provided, appearing pleased and well contented.

"On the right of the Queen sat Prince Albert; next to his Royal Highness the Lord Chancellor, then came the Duke of Wellington, and then the Earl of Aberdeen, and then Lord Cottenham.

"On the left of her Majesty sat the Treasurer, Sir Francis Simpfkinson, and then one of the ladies in waiting; next the Earl of Hardwicke and Lord Campbell. At the end of the banquet, which lasted about half an hour, grace was again said; and then the Treasurer, having received permission from her Majesty to propose a toast, proposed 'the health of her Majesty the Queen, who had that day honoured them with her Royal presence.' This was responded to with plaudits. After some minutes, the cheering having subsided, the Treasurer stated that his Royal Highness had that day become a member of the Inn, and begged, with the permission of her Majesty, to propose the health of their new member 'His Royal Highness Prince Albert.' This

journey from the reign of Ethelred to that of George IV., I find this Chancellor alone without an accuser; without an enemy; without a detractor; without any one, from malice or mistake, to cavil at any part of his character, conduct, or demeanour. While in no respect deficient in judicial gravity and dignity, the flowing courtesy of his manners seems to have won all hearts. Well acquainted with the most abstruse branches of the law of real property, he had himself heard delivered in court all the important judgments of Lord Harcourt, Lord Cowper, Lord Macclesfield, Lord King, and Sir Joseph Jekyll, and he knew familiarly the most minute details of practice, which are only to be learned thoroughly by experience, and to which there was then hardly any printed guide. In addition to these qualifications, he was energetic and indefatigable in business, punctual in his hours of sitting—till he had subdued his arrears, eager to avoid, instead of to make, a holiday, and to postpone, instead of hastening, the adjournment of the Court. He was under the influence of no leader at the bar, and he on no occasion showed peculiar favour to any counsel, unless to those who required encouragement from their modesty and timidity. He never even incurred a suspicion of corruption in the disposal of office or of undue influence in his decrees."

Some of his decisions are to be found in Peere Williams,

also was received with loud cheering, and was rendered even more interesting by the manner in which the Queen joined in it. Holding a glass of port wine in her hand, she stood up all the time, and drank it off to the bottom. His Royal Highness, in a peculiarly distinct voice, returned thanks, and said he had received her Majesty's commands to propose 'Prosperity to the Honourable Society of Lincoln's Inn,' which was drunk. Soon after the Queen, accompanied by the ministers and benchers, withdrew, amidst loud cheering. Her Majesty and her party retired into the council-room; from whence, after her carriage had been summoned, she came again into the Hall, and, accompanied by the Treasurer and benchers, she proceeded amidst loud cheering into her carriage, and departed.

"It is further to be noticed that Prince Albert, on withdrawing after the feast, put on a student's gown over his Field Marshal's uniform, and so wore it on returning from the Hall."

Afterwards, his Royal Highness Prince

Albert was in due form called to the Bar, and was elected a Bencher.

On the grand day of the following Trinity Term, his Royal Highness dined in the Hall as a Bencher—when he most gracefully entered the dining hall, after Henry Tancred, Esq., M.P. for Banbury, the Treasurer. Such intercourse tends to strengthen the throne, and to perpetuate the liberties of the people!

"It is related of him, that he much valued a maxim taken for the motto to a law book, published by Judge Jenkins. "The common law has been from the beginning of the world, for it is common reason;" and that "he quoted and avowed this maxim from the bench whenever any thing repugnant to it was offered from the bar." But I think he was too sensible a man to set up for law his own notion of what was reasonable or unreasonable, expedient or inexpedient. It was well said by Mr. Justice Burrough, "Public policy is a unruly horse, which, if a Judge unwarily mounts, ten to one he is run away with."

but his chief reporter is Forrester, a barrister who practised before him, and has left us an octavo volume, entitled, "Cases Tempore Talbot." This gentleman, with an adequate share of professional knowledge and accuracy, possessed little skill in composition, so that he gives us a very faint notion of the lucid reasoning and felicity of illustration universally ascribed to the Judge whose fame he ought to have perpetuated.

I can do little more than show how Lord Chancellor Talbot disposed of a few of the principal questions which came before him. He first decided that the Court will assist a testamentary guardian to prevent an improper marriage of an infant heir. The son of the late Lord Raymond, Chief Justice of the King's Bench, while a boy of seventeen, was about to marry a Miss Chetwynd. Thereupon his guardians, under his father's will, filed a bill in the Court of Chancery, and presented a petition, stating that it would be a great disadvantage to the minor to marry at this time, and that it had been necessary to keep him in close custody to prevent his marrying, and praying that the Lord Chancellor would give such directions as he should think fit for the benefit of the minor. *Lord Chancellor*: "I am glad that this application has been made. The Court will prevent the marriage if it has the power to do so. It is admitted that the young lady is of a good family, and it is not shown what fortune the young peer has, so that I cannot tell whether this be a Smithfield bargain or not; but his age is improper for marriage; that is the consideration which weighs most with me, and upon which I think myself bound to interfere. In order to strengthen the hands of the guardians, I order them to retain the Lord Raymond in their care and custody, and that they do not permit him to marry without the consent of the Court. But it has been said that it would be very cruel and unnatural in a father not to suffer his daughter to marry to her advantage, and she would have reason to blame him for it ever after. Now, to prevent that charge upon Mr. Chetwynd, I order him not to suffer his daughter to marry the Lord Raymond without the consent of the Court—which prevents any imputation or charge upon Mr. Chetwynd from the lady, or any body else; since, if there be any fault in it, it will fall upon the Court, and I shall be very willing to bear it."*

In *Cray v. Rooke*, he had to determine whether a bond which a testator had given to his mistress should be set aside; and if not, in what order and from what fund it should be satisfied.

* The Lord Raymond's case.—Cas. Temp. Talbot, 58.

After great deliberation, he held that, as it had not been obtained by fraud, it should not be set aside in favour of the legitimate children or heir; that it should not be paid out of the personal estate until after simple contract debts; but that it should be paid out of the real estate if the personal estate should fall short.[†]

The question arose in *Heard v. Stanford*, “whether, if a man marries a woman of large personal property which comes to him by the marriage,—after her death he is liable for the debts due from her before marriage?” It was strongly urged that, as he would be liable for them during her life, her fortune in his hand should be considered equitable assets for the benefit of her creditors. *Lord Chancellor*: “The question is, whether the husband, as such, be chargeable for a debt of his wife after her death, in a court of Equity? As, on the one hand, the husband is liable to all his wife’s debts during the coverture, though he did not get one shilling portion with her; so, on the other hand, it is as certain that if the debt be not recovered during the coverture, the husband is no longer chargeable as such, let the fortune he received with his wife be ever so great. The case, perhaps, may be hard, but the law has made it so,—that it may be equal on both sides, as well where the husband is sued during the coverture for a debt of his wife’s with whom he had no fortune, as when by her death he is discharged from all her debts, notwithstanding any fortune he may have received in marriage with her. So is the law; and the alteration, if desirable, is the proper work of the legislature only.”[‡]

In *Barbuit’s* case it was debated “whether a foreign minister resident in England, by engaging in commerce, forfeits his privilege not to be arrested, and whether a foreign consul is privileged as a minister.” *Barbuit*, commissioned by the King of Prussia “to do what his Prussian Majesty should think fit to order with regard to his subjects trading in Great Britain,” exercised the trade of a tallow-chandler in London, and, being imprisoned under an order made in a Chancery suit, he claimed, as an ambassador, to be discharged. *Lord Chancellor*: “Though this is a very unfavourable case, yet if the defendant is truly a public minister, I think he may insist on his privilege after allowing the suit to go on ten years against him without objection; for the privilege of a public minister is to have his person sacred and free from arrests, not on his own account,

[†] *Cas. Temp. Talbot*, 155.

[‡] *Heard v. Stanford*, *Cas. Temp. Talbot*, 173.

but on the account of those he represents: and this arises from the necessity of the thing, that nations may have intercourse with one another in the same manner as private persons, by agents, when they cannot meet themselves. And if the foundation of this privilege is for the sake of the prince by whom an ambassador is sent, and for the sake of the business he is to do, it is impossible that he can renounce the privilege introduced not for his own benefit. He may deserve to be thrown into prison, but we must protect the state which he represents. The exception in the statute of Anne of persons trading, relates only to the servants of ambassadors, for the parliament never imagined that the ambassadors themselves would trade. The question is, whether the defendant be a public minister? If he had been accredited to negotiate a commercial treaty, he would have been so. It is of no weight with me, that he was not to concern himself about other matters of state. The commission need not be general to entitle him to protection. But this person is not to transact affairs between the two Crowns: the commission is to assist his Prussian Majesty's subjects here in their commerce. Although he is called an agent of commerce, I do not think that the name alters the case. At most he is only a CONSUL, and it is the opinion of Barbeyrac, Wiquefort, and other writers on public law, that a Consul is not entitled by the *Jus Gentium* to the privileges of an ambassador. I therefore cannot discharge him." ^a

In *Duke of Somerset v. Cookson*, from a desire to do complete justice, he a little stretched his authority by holding that a bill in Equity lies to compel the preservation and the delivery to the right owner of a valuable piece of art. The plaintiff, as lord of the manor of Carbridge in Northumberland, having a grant of "*treasure trove*," was entitled to an antique silver altar dug up there, which had a Greek inscription upon it, and was dedicated to Hercules. The altar had been purchased by the defendant with notice of the claim to it, and he threatened to deface it or melt it down. On a demurrer to a bill filed by the Duke for an injunction, and to have the altar delivered up to him, it was objected that the remedy was at law by action of trover or of detinue; that Equity had not yet gone farther than to allow a suit for the recovery of title deeds, which *savour of the realty*; and that if the present plaintiff were to succeed,

^a Cases Temp. Talbot, 181. But, to please the Prussian Government, the Secretary of State satisfied his creditors, and he was discharged.

all actions of trover and detinue would be turned into bills in Chancery. But Lord Talbot held, "that this suit was maintainable on the ground that the thing sued for was matter of curiosity and antiquity; that it would be very hard if a person who wrongfully gets possession of such a relique might destroy or retain it, paying the intrinsic value of it; and that the law being defective in this respect, such defect is properly supplied in Equity."^b

One other case of general interest I find to have been decided by him,—*Hunter v. Murray*—in which the question arose, "whether, since the Union with Scotland, under a writ of *ne exeat regno*, a party might be prevented from going into that part of the United Kingdom." *Lord Chancellor*: "This, in its origin, was a mandatory writ to prevent the King's subjects from going into foreign parts to practise treason with the King's enemies: but since, it has been made ancillary to the jurisdiction of this Court, that persons residing within the realm of England may be compelled to do justice to their fellow subjects. How can I alter the terms or the operation of the writ by reason of the legislative Union with Scotland, which in no respect enlarges or affects the jurisdiction of any Court in England? It is dangerous to alter established forms. I will make no order, but leave parties to proceed in the old beaten path."^c

These specimens of Lord Talbot's decisions may not exalt him in our view above the level of modern Vice-Chancellors, but by his contemporaries he was regarded almost as a superior being.—His great despatch, and the admirable manner in which he comported himself, caused a prodigious influx of business into his Court, and "Chancery" having for the first time in England become a popular word, it was said that "a new era had begun in the administration of Equity." I ought likewise to mention to his credit, that he powerfully assisted the inquiries which were going on respecting the taking of excessive fees from the suitors, and that he had important measures in preparation for correcting judicial abuses. Thus was Lord Talbot successfully labouring as a magistrate, and if his life had been spared I make no doubt that the praise of perfecting our equitable system would have been bestowed upon him still more loudly than it has been upon his successor.^d

^b Peere Williams, 390.

^c *Hunter v. Murray*, Cas. Temp. Talb. 196.

^d In mentioning the universal satisfaction

which Lord Talbot gave as a Judge, perhaps I ought to have excepted old Sarah Duchess of Marlborough; but, as we say in Scotland,

As a politician we read hardly anything of Lord Talbot from the time of his appointment as Chancellor. This arises from the profound tranquillity of the times—the masterly policy of Walpole having warded off foreign war, suppressed Jacobitism, and, for a season, paralysed faction. After the tremendous storm excited by the Excise scheme had subsided, the nation was pleased by the marriage of the King's eldest daughter, the Princess Anne, to the Prince of Orange; the apprehension of plots was allayed by Bolingbroke's retirement into France, and for three years nothing more memorable occurred than hopeless motions for the repeal of the Test Act and of the Septennial Act, the passing of the Gin Act, Porteous's riots in Edinburgh, and the blowing up of a little gunpowder in Westminster Hall to frighten the Judges. Lord Mahon says, "It was to stem in some degree the formidable attacks expected in the Upper House on his dismissal of Chesterfield, Clinton, Burlington, Montrose, Marchmont, and Stair, for their opposition to the Excise scheme, that Walpole determined to send there two of his most eminent commoners, the Attorney and Solicitor-General."^e But for a long time in that assembly hardly any show of opposition appeared. The circumstance of the Prime Minister continuing a commoner—then quite unexampled—diminished the consequence of the Lords, and they were rapidly falling from the palmy state which they had occupied in the beginning of the century, and which, without more energy, I see little prospect of their ever resuming. Lord Talbot's name is seldom mentioned in their deliberations.

He took his seat as a Peer on the 17th of January, 1734, being the first day of the seventh session of the seventh parliament of Great Britain. The account ^{A.D. 1734.} of this ceremony as recorded in the Journals^f may be amusing:—

"her tongue is no scandal," and her abuse may be considered a necessary addition to the commendation of others—to make out a perfect character. Pope was wrong in saying that her ruling passion was gratified, for it ever remained craving and insatiable:

"From loveless youth to unrespected age,
No passion gratified except her rage."

Lord Talbot, soon after his appointment, pronounced a decree against her; and she scurrilously abused him to all her correspondents. Thus, in a letter to Lord Marchmont, dated

June 11, 1734, writing about election petitions to the House of Commons, she says, "There will be one against my Lord Chancellor, who has done most unbecoming and unjustifiable things to make a return for his son against Mr. Mansell for Glamorganshire. This is a step very had to begin his reign with; but it is certain he is a man of no judgment, whatever knowledge he may have in the law; nor does he know any thing of the world, or the qualities of a gentleman."

^e Vol. ii. 257.

^f 9 Parl. Hist. 182.

“The Lord President acquainted the House that his Majesty had been pleased to create Charles Talbot, Esq., Lord Chancellor of Great Britain, a Peer of this realm. Whereupon his Lordship, taking in his hand the purse with the Great Seal, retired to the lower end of the House; and having there put on his robes was introduced between the Lord Harrington and the Lord Delawarr (also in their robes),—the Gentleman Usher of the Black Rod, Garter King of Arms, the Lord Great Chamberlain, and the Deputy Earl Marshal of England preceding. His Lordship laid down his patent on the Chair of State kneeling; and from thence took and delivered it to the Clerk, who read the same at the table. [The entry, having described the reading of the patent, and the writ, and the taking of the oaths, thus proceeds:] which done, he took his place on the lower end of the Barons’ bench; from whence he went to the upper end of the Earls’ bench, and sat there as Lord Chancellor, and then returned to the woolsack.”⁸

Lord Talbot is mentioned this year as having spoken once, and once only. In consequence of the commencement of hostilities on the continent of Europe, between the Spaniards and the House of Austria, a message was brought down from the King recommending that power should be given to augment the forces, and a motion to this effect was made by the Duke of Newcastle. This being opposed by Lord Carteret, Lord Chesterfield, and Lord Bathurst, the Lord Chancellor left the woolsack and spoke as follows:—

“The present situation of affairs in Europe is so well known to every noble Lord that it does not require to be detailed by me to justify the course proposed by the Government. Considering the heavy war actually begun, and the different powers already actually engaged in it, there can be no doubt that it may produce imminent dangers to this nation, for which, in prudence, and for the preservation of our own neutrality, we ought to be prepared. By his Majesty’s message he asks no powers beyond those already constitutionally vested in him, and the message may be considered only as an application from his Majesty for the advice of his parliament with relation to what may be thought most proper to be done at such a critical juncture. The most dutiful and becoming return we can make, is, in my opinion, the address proposed by the noble Duke. If, without any appeal to parliament, ministers had augmented our forces by sea and land, can there be a doubt that parliament would have approved of what was necessary for our defence, and would have provided for the necessary expense thereby occasioned? If the increased force should be unnecessary, and the expense of it thrown away, there is nothing in the address to justify such mismanagement, and the next parliament will be at full liberty to animadvert on his Majesty’s advisers as if no such message had been brought down, and no such ad-

⁸ Lord Hardwicke took his seat as a Peer the same day.

dress had been voted. As between parliament and the government, the power of censure and of punishment remains untonebed. I will grant, my Lords, that by the address proposed the ministers may have a little more credit among the people than otherwise they might have had. I will allow that by the address the honour of parliament will be engaged to provide for the expense to be incurred, whether inevitable or unnecessary. But this is the very reason why I support the course proposed for our adoption. Surely, in our dangerous situation from the disturbed state of Europe, we are not to be left defenceless for fear a bad use should be made of the means granted for our defence. Without confidence, neither the affairs of individuals nor of nations can be conducted. There may be a breach of trust; yet trustees must be appointed. Ministers may be guilty of delinquencies, but you must vest in them power to provide for the public safety, and that power must be increased in proportion to the perils which surround you. His Majesty tells us there is nothing he has more at heart than to see the flame of war extinguished before we are involved in it; and to strengthen his hands for this purpose, nothing can be so effectual as to show to the world the perfect harmony which is subsisting between his Majesty and his parliament. This address will prove to Europe that his Majesty has all the resources of this mighty nation completely at his command, and will enable him to arbitrate irresistibly for the general good. This parliament must very speedily be dissolved, as nearly seven years have expired since it was summoned. Let its last act be to declare that as we are free at home, we are determined to be respected abroad. 'Britons never will be slaves.' This sentiment will be repeated by all the constituent body at the coming elections, and will be the rallying cry of the new House of Commons. When his Majesty is thus seen to be warmly supported by a parliament which is to last seven years, we may rest assured that he will be able to restore tranquillity to the Continent on equitable terms, and that at all events he will effectually provide for British interests, and make the British name respected all over the world."

The address was carried by a majority of 101 to 58.^h

In the following session, the business which seems chiefly to have occupied the Upper House arose out of a A.D. 1735. complaint respecting intimidation and undue influence in the election of the sixteen peers for Scotland. The Lord Chancellor had to speak frequently on the subject, and to write letters by order of the House to the complainants, who were Scotch Peers; but their petition was at last dismissed, the nomination remaining with the Government,—and the subject was without permanent interest.ⁱ The proper remedy was pointed out in Lord Sunderland's Peerage Bill,—by giving a certain number of hereditary seats in the House of Lords to

^h 9 Parl. Hist. 520—559.

ⁱ *Ibid.* 720—796.

the Scotch Peerage.—The only other subject on which the Chancellor is stated to have spoken this session was the quartering of soldiers at elections, and no intelligible account of his speech is preserved. He maintained that there was no law for taking troops from places where parliamentary elections are going forward; that an express law against their being allowed to be present would destroy a useful discretion in cases of necessity; that the difficulties surrounding the subject would for ever prevent legislation upon it; and that the wise course would be to leave all to the Ministers of the Crown upon their parliamentary responsibility.^k

During the session of 1736, the Lord Chancellor is not mentioned as having spoken once, and the only subjects of debate recorded in the Lords were respecting the collection of Quakers' tithes, and the prevention of smuggling.^m

On the first day of the session of 1737, the Speaker and the
A.D. 1737. Commons having come to the bar, the Lord Chancellor spoke as follows:—

“ My Lords and Gentlemen,

“ In pursuance of the authority given us by his Majesty's Commission under the Great Seal, amongst other things, to declare the causes of holding this parliament, we are, by his Majesty's command, to state to you that his Majesty has been graciously pleased to direct us to acquaint you that he hath seen, with the greatest satisfaction, the unwearied application of this parliament in framing good laws, for advancing the prosperity and securing the welfare of his loving subjects; and that it hath been one of his Majesty's principal cares to enforce them by a due execution, with the strictest regard to the rights and properties of the people, no invasion whereof can with any colour be suggested by the most malicious enemies of the present establishment. Whilst this hath been our condition, his Majesty cannot but observe that it must be matter of the utmost surprise and concern to every true lover of his country, to see the many contrivances and attempts carried on in various shapes, and in different parts of the nation, tumultuously to resist and obstruct the execution of the laws, and to violate the peace of this kingdom. These disturbers of the public repose, conscious that the interests of his Majesty and his people are the same, and of the good harmony which happily subsists between him and his parliament, have levelled their sedition against both, and in their late outrages have either directly opposed, or at least endeavoured to render ineffectual, some acts of the whole legislature. His Majesty, in his great wisdom, thinks it affords a melancholy prospect to consider to what height these audacious practices may rise, if not timely suppressed, and that it deserves no small attention that they may go on to affect private persons in the quiet

^k 9 Parl. Hist. 885, 887.

^m Ibid. 969—1270.

enjoyment of their property, as well as the general peace and good order of the whole. His Majesty apprehends it to be unnecessary to enlarge upon a subject of this nature, and therefore hath commanded us barely to mention it to you, who, by the constant tenour of your conduct, have shown that you consider the support of his government as inseparable from the preservation of the public tranquillity and your own safety."

This speech referred to riots in London in consequence of the act to check the drinking of gin,—to an insurrection in the West against turnpike gates,—to a dispersion of libels in Westminster Hall while the Judges were sitting there by means of an explosion of gunpowder,—and above all, to the murder of Captain Porteous by a general rising of the citizens of Edinburgh.

It is a curious fact, that the first measure brought in by the Ministers as a cure for these evils was opposed by Lord Chancellor Talbot, as well as by Lord Chief Justice Hardwicke and several other Peers. This was a bill to prevent smuggling, which contained a clause "subjecting any three persons travelling with arms to the penalty of transportation, on proof by two witnesses that their intention was to assist in the clandestine landing or carrying away prohibited or uncustomed goods." The opposers said, "We have in our laws no such thing as a crime by implication, nor can a malicious intention ever be proved by witnesses. Facts only are admitted to be proved, and from these facts the judge and the jury are to determine with what intention they were committed; but no judge or jury can ever by our laws suppose, much less determine, that an action in itself innocent or indifferent was attended with a criminal and malicious intention. Another security for our liberties is that no subject can be imprisoned unless some felonious and high crime be sworn against him. This, with respect to private men, is the very foundation-stone of all our liberties; and if we remove it, if we but knock off a corner, we may probably overturn the whole fabric. A third guard for our liberties is that right which every subject has, not only to provide himself with arms proper for his defence, but to accustom himself to the use of those arms, and to travel with them wherever he has a mind. But this clause is repugnant to all the maxims of free government. No presumption of a crime can be drawn from the mere wearing of arms, an act not only innocent, but highly commendable,—and to admit witnesses to swear 'that men are armed in order to assist in smuggling,' would be admitting

witnesses to prove *an intention*, which is inconsistent with the whole tenour of our laws." They objected to another provision, subjecting a party against whom a charge was preferred that he intended to assist in smuggling, to imprisonment without bail, though the offence in itself were in its nature bailable;—to another, which made informations for assaults upon revenue officers triable in any county in England;—and still more to the protection thrown round the same favoured class, "that the justices should be bound to admit them to bail on charges of killing or wounding any one in the execution of their duty."ⁿ The bill was carried, though by a small majority, and, still remaining in force, is mentioned by Mr. Hallam as an illustration how, in framing our fiscal code, "a sad necessity has overruled the maxims of ancient law," so that "it is to be counted as a set-off against the advantages of the Revolution, and has, in fact, diminished the freedom and justice which we claim for our polity."

Lord Talbot took up the prosecution of the Porteous rioters with much vigour, and expressed his hearty concurrence in the resolution of the Government to bring them to condign punishment. An order was made that the Lord Provost of Edinburgh, the four Bailies, the Commander of the City Guard, and the Commander of the King's troops in the castle of Edinburgh, should attend at the bar of the House. But a great calamity was now impending over the nation.

Before the day for the attendance of the parties arrived, Lord Talbot was no more. When apparently in the enjoyment of perfect health, when in the full possession of the confidence and esteem of his Sovereign, and of all classes in society,—while equally respected by his countrymen of all political parties, and all religious persuasions,—while he was supposed to have before him a long career of usefulness and glory,—he was suddenly seized with a spasm in the heart, which from the first was pronounced to be fatal. Being made sensible that his dissolution approached, he prepared for it with fortitude and serenity. He had a brief space allowed him to settle his worldly affairs, and, having received the last consolations of religion, he set a pattern of dying, as he had always lived,—like a Christian. Early in the morning of Wednesday the 14th of February, 1737, he expired at his house in Lincoln's Inn Fields, in the fifty-third year of his age.

ⁿ Const. Hist. iii. 384; Parl. Hist. ix. 1229.

The news was received with consternation, not only in Westminster Hall and in the House of Lords, where he had been that day expected to preside, but a gloom was cast over the whole metropolis, as if every family had been visited with the loss of a beloved relative.

A general desire was felt that he should have a public funeral, and that his remains should be deposited in Westminster Abbey; but, according to a wish which, when dying, he had intimated, he was buried, attended only by his children and nearest connections, in the chancel of the parish church of Barrington, in Gloucestershire, where some of his ancestors reposed.^o

Instead of now attempting to draw a character of Lord Talbot, I shall best please my readers by introducing some of the contemporary eulogiums pronounced upon him; for every notice of him was an unqualified eulogium. Those who value him as I do can never tire of the repetition of his praise.

The obituary of the succeeding number of the "Gentleman's Magazine" contained the following statement:—"Feb. 14. Charles Talbot, Lord Talbot, &c., in whom all the qualities that can constitute a good man, or can adorn a wise one, were eminently united. No man ever arrived to his high dignity with such universal approbation, nor conducted himself in it with such universal applause; no man was ever more the delight of his country, or had a larger share of the hearts and affections of the people, and yet he never made use of any other method to please than a constant course of wisdom and virtue. He had the peculiar felicity to join together those contrary qualities so rare to be met with in the same person, the mildest disposition with the greatest firmness of mind; and at the same time that he had a heart susceptible of the strongest impressions of tenderness and compassion, he maintained inviolably the strictest justice and most inflexible integrity. He had a mind so enlightened, that no falsehood could ever

^o On his coffin were engraved his arms, the purse, mace, and regalia, on a brass plate, with this inscription:—

"The Right Honourable
CHARLES LORD TALBOT,
BARON OF HENSLY,
Lord High Chancellor of England,
And one of His Majesty's most Honourable Privy Council.
Died Feb. 14, 1736-7,
In the 53rd year of his age."

elude his sight, but, with inimitable sagacity, he would pursue her through all the intricate labyrinths which she took to escape him. His judgment was so clear, that he could at one view discover the most entangled points; and yet he had patience and temper to hear every thing that could be said on the most plain and obvious. He always chose to make truth appear in native simplicity, though he could have adorned it with all the graces of rhetoric. He was, in all characters and relations of life, one of the ablest, greatest, uprightest men that any age or nation has produced, and was not only an honour to his country, but an ornament to human nature."

In another periodical work, in great circulation at the time, though long forgotten,^p he was thus characterised by one who seems to have known him well in domestic life:—"His religion was his governing principle; it was well grounded and active; his piety was rational and manly. He was a sincere son of the Church of England, and ready to maintain her in her just rights and legal possessions. He was an enemy to persecution, and had a diffusive general and Christian charity, which made him a friend to all mankind. He had a great regard for such of the most worthy of the clergy as were distinguished by their learning, sincerity, moderation, and charity. He was a careful and indulgent father, and as no man ever deserved more of his children, no man could be more affectionately beloved by them; there was something so peculiar in this respect, that none seemed to know how to be in such friendship with his sons as my Lord Chancellor. The harmony which subsisted in his house was a very great pleasure to all who beheld it."

Another notice of him, written by a friend, said,—“He was the delight and honour of his country, both in his judicial and ministerial capacity. Eloquence never afforded greater charms from any orator than when the public attention listened to his sentiments delivered with the most graceful modesty. In apprehension he so far exceeded the common rank of men, that he instantaneously, or by a kind of intuition, saw the strength or imperfection of any argument; and so penetrating was his sagacity, that the most intricate and perplexing mazes of the law could never so involve and darken the truth as to conceal it from his discernment. So excellent was his temper, so candid his disposition in debate, that he never offended those whose arguments he opposed. When intrusted with the

^p See Biogr. Brit., title "Talbot."

Great Seal, his universal affability, his easiness of access, and his great despatch of business, engaged to him the affection and almost veneration of all who approached him. By clearly delivering, with his decrees, the reasons on which they were founded, he made his court a very instructive school of equity; and his decisions were generally attended with such conviction to the parties against whose interest they were made, that their acquiescence in them prevented any further expense. When he could obtain a short interval from business, the pompous formalities of his station were thrown aside; his table was a scene where wisdom and science shone, enlivened and adorned with elegance of wit. There was joined the utmost freedom of dispute with the highest good breeding, and the vivacity of mirth with primitive simplicity of manners. When he had leisure for exercise he delighted in field sports, and even in those trifles showed that he was formed to excel in whatever he engaged. If he had relaxed more from the fatigues of office, the nation might not yet have deplored a loss it could so ill sustain. But though he was removed at a season of life when others but begin to shine, he might justly have said 'se satis et ad vitam et ad gloriam vixisse,' and his death united in one general concern a nation which scarce ever unanimously agreed in any other particular; and, notwithstanding the warmth of our political divisions, each party endeavoured to outvie the other in due reverence to his memory."¹

These characters of Lord Talbot were supposed to come from men of the same political party with himself; but the "CRAFTSMAN," then under the influence of Bolingbroke and Pulteney, and in such bitter opposition to Sir R. Walpole's government as to be several times prosecuted *ex officio*, thus spoke of him who, when a law officer of the Crown, had assisted in these prosecutions:—"He rose, by merit, to the head of his profession, and not only supported himself in it with dignity, but adorned it, and acquired every day new praise and esteem. His prudence, moderation, and patience in the execution of his office, even amidst the highest provocations, make one shining part of his character, and are hardly to be paralleled by any instances of those who have sat before him upon that bench. Yet, notwithstanding this amiable disposition of mind, he discovered such courage and resolution upon all occasions, as could not be shaken by the tricks of

¹ See Biog. Br. Chalmers, "Lord Talbot."

the wealthy, the applications of the powerful, or the tears of the distressed. In a word he possessed all the great talents of his most renowned predecessors, without any of their frailties, and hath left a noble example to all his successors; so that he was not only a blessing to the age in which he lived, but may possibly derive the same happiness to his posterity, by exciting those who follow him in that high office to an emulation of his virtues. The great increase of business in the Court of Chancery since the Seal was put into his hands is an evident proof of that confidence which the suitors reposed in him, and will do immortal honour to his memory, though it proved fatal to his life; for the constant fatigue of his employment was one of the principal causes of his death, and therefore he may be truly said to have fallen *a martyr to the public good!* He died full of glory, but, to the great misfortune of his country, not full of years; and the general sorrow which his death has occasioned will do his noble family more honour than the highest titles, or the most sumptuous monuments.”^r

Smollett, who seldom rises above a dry and uninteresting narrative of political facts, characterises Lord Talbot as possessing “the spirit of a Roman senator, the elegance of an Atticus, and the integrity of a Cato.”^s

All subsequent historians who treat of that period, swell the note of praise. Says Tindal,—“He was an illustrious exception to the venality charged upon the profession of the law: his life was moral, his heart was good, and his head was clear; nor did ever man fill that high station with greater abilities and approbation of the public. But just as the nation was in a manner beginning to reap the benefits of his virtues he was snatched away by death.”^t

I will only farther quote our most recent historian, who, after referring to Lord Hardwicke, says—“Lord Talbot is less conspicuous in history only because he was more brief in life; he died at the age of fifty-two, and, even amidst the strife of parties, was universally lamented as a man of the highest legal talents, of unimpeachable character, and of most winning gentleness of manners.”^u

The Muses likewise were invoked to do honour to the

^r Craftsman, A.D. 1737.

^s Vol. iii. p. 54.

^t Tind. Cont. xx. 340. Tindal, in stating Lord Talbot's appointment as Chancellor, had

said—“He was looked upon as one of the clearest-headed as well as the best-hearted lawyers that ever practised.”

^u Lord Mahon, vol. ii. 257.

memory of Lord Talbot. Soon after his death, there was printed and privately circulated the following Elegy, which shows at least a deep feeling of the virtues of the deceased :

“Magos sæpe viros cecinit cum Musa, repente
 Obstrepuit miseræ turba maligna lyræ.
 Scilicet arguitur carmen, quia displicet heros,
 Et mala, quæ jactat fama, Poeta luit.
 At vos securi Talbotum dicite Vates!
 In quo nil livor quod male rodât habet.
 Jura humana a se qui nulla aliena putavit^x
 Delicium humanæ gentis habendus erat,
 Partium in hoc non est studio locus, omnibus idem
 Ut vixit charus, flebilis interiit.”

The most eminent English poets joined in the same strain. Pope, in the early editions of his Epistle to Lord Bathurst, “on the Use of Riches,” thus sang:—

“The sense to value riches with the art
 T’ enjoy them, and the virtue to impart,
 Not meanly nor ambitiously pursued,
 Not sunk by sloth, nor rais’d by servitude,
 To balance fortune by a just expense,
 Join with economy magnificence,
 With splendour charity, with plenty health,
 O teach us, TALBOT! thou’rt unspoil’d by wealth,
 That secret rare, between th’ extremes to move
 Of mad good nature and of mean self-love.
 Who is it copies TALBOT’s better part,
 To ease th’ oppress’d, and raise the sinking heart?
 Where’er he shines, O, Fortune, gild the scene,
 And angels guard him in the golden mean.
 At Barrington shall English bounty stand,
 And Hensol’s honour never leave the land.
 His glories in his progeny shall shine,
 And propagate the virtue still divine.”^y ;

A most touching poetical tribute to the memory of Lord Talbot comes incidentally from the author of THE SEASONS, in lamenting the early death of a pupil who was thought destined to inherit the title and the virtues of an illustrious sire. The Chancellor, always eager to patronise literary merit, had formed an acquaintance with Thomson soon after

^x Alluding to his motto, “*Humani nihil lieum.*”

^y For some reason which no commentator has explained, in the later editions of this epistle the name of TALBOT is entirely excluded, and it is turned into a dialogue between the poet and Lord Bathurst. Warton, in his “*Life of Pope,*” in reference to Lord Bathurst, says—“I never saw this very amiable old nobleman, whose wit, vivacity, sense,

and integrity are well known, but he repeatedly expressed his disgust and his surprise at finding in later editions this Epistle awkwardly converted into a Dialogue, in which he has little to say. ‘And I remember he once remarked that this line,

‘P. But you are tir’d: I’ll tell a tale.
 B. Agreed,’

was insupportably insipid and flat.”—p. xxxiii.

the publication of *Winter*, had appointed him to the office of "Secretary of Briefs," and sent him to make the tour of Europe with his eldest son. This promising youth died of a fever soon after his return from his travels, and his sorrowing tutor and friend thus opens the poem on *Liberty*, which was to have been dedicated to him :—

"O my lamented Talbot! while with thee
The Muse gay rov'd the glad Hesperian round,
And drew th' inspiring breath of ancient arts;
Ah, little thought she her returning verse
Should sing our darling subject to thy shade.
And does the mystic veil, from mortal beam,
Involve those eyes where every virtue smil'd,
And all thy father's candid spirit shone?
The light of reason, pure, without a clond;
Full of the generous heart, the mild regard;
Honour disdain'g blemish, cordial faith,
And limpid truth, that looks the very soul."

Thomson afterwards published a long poem to the memory of Lord Talbot, which is rather diffuse, but from which some passages may fitly be extracted :—

"Let the low-minded of these narrow days
No more presume to deem the lofty tale
Of ancient times, in pity to their own,
Romance. In Talbot we united saw
The piercing eye, the quick enlighten'd soul,
The graceful ease, the flowing tongue of Greece,
Join'd to the virtues and the force of Rome."
 "All his parts,
His virtues all, collected, sought the good
Of human kind. For *that* he, fervent, felt
The throb of patriots when they model states:
Anxious for *that*, nor needful sleep could hold
His still-awaken'd soul; nor friends had charms
To steal with pleasing guile one useful hour;
Toil knew no languor, no attraction joy."
 " How the heart listen'd while he, pleading, spoke! ,
While on th' enlighten'd mind, with winning art,
His gentle reason to persuasion stole,
That the charm'd hearer thought it was his own."
 "Plac'd on the seat of justice, there he reign'd,
In a superior sphere of cloudless day,
A pure intelligence. No tumult there,
No dark emotion, no intemperate heat,
No passion e'er disturb'd the clear serene
That round him spread.
Till at the last, evolv'd, it full appear'd,
And ev'n the loser own'd the just decree.
But when in Senates he, to freedom firm,
Enlighten'd freedom, plann'd salubrious laws,
His various learning, his wide knowledge, then
Spontaneous seem'd from simple sense to flow."

"I, too, remember well that cheerful bowl
Which round his table flow'd. The serious there
Mix'd with the sportive, with the learn'd the plain;
Mirth soften'd wisdom, candour temper'd mirth;
And wit its honey lent without the sting."

Lord Talbot delighted in the society of eminent men in every department of literature; and Bishop Butler, of whom he was the friend as well as the patron, dedicated to him his celebrated "Analogy between Natural and Revealed Religion."

I have only further to state, that Lord Talbot, soon after he was called to the bar, married Cecil, daughter of Charles Matthews, Esquire, of Castle-y-Menich, in Glamorganshire, and great-grand-daughter of the famous Judge Jenkins, who defied the tyranny of the Long Parliament, and from whom descended to the Chancellor's family the estate of HENSOL. With her he lived in a state of great connubial happiness, and she brought him a numerous offspring. The eldest son, of whom such hopes were entertained, the pupil of Thomson, died, as we have seen, before his talents and accomplishments could be of service to his country. William, the next brother, succeeded to his father's title, estates, and virtues. Of him it is related, that in the debate, in 1741, on the dismissal of Sir Robert Walpole, being rudely called to order by Lord Cholmondley, "he declared himself an independent Peer, a character which he would not forfeit for the smiles of a court, the profit of an employment, or the reward of a pension: he said, when he was engaged on the side of truth, he would trample on the insolence that would command him to suppress his sentiments."^z He was afterwards created Earl Talbot and Baron Dynevor, with a remainder of this barony to his daughter, an only child. She married the heir of the ancient family of the Rices, in the county of Caermarthen; and their son, Lord Dynevor, is the heir-general of the Chancellor.^a The earldom becoming extinct, the barony of Talbot descended on John Chetwynd Talbot, the Earl's nephew, who was himself, in 1784, created Earl Talbot and Viscount Ingestre. His son, the second Earl Talbot, who at a critical period filled the office of Lord Lieutenant of Ireland with much ability, is the Chancellor's representative in the male line.

^z Smollett, ii. 397.

^a This venerable nobleman is in possession of all the Chancellor's papers, but, after some misunderstanding, for which he is not to

blame, I have been politely informed by him that none of them are of any public interest.

CHAPTER CXXIX.

LIFE OF LORD CHANCELLOR HARDWICKE FROM HIS BIRTH TILL HE WAS APPOINTED ATTORNEY-GENERAL.

WE now come to the man universally and deservedly considered the most consummate judge who ever sat in the Court of Chancery—being distinguished not only for his rapid and satisfactory decision of the causes which came before him, but for the profound and enlightened principles which he laid down, and for perfecting English Equity into a symmetrical science. He is at the same time to be honoured as a considerable statesman, co-operating powerfully for some years with the shrewdest minister this country produced during the eighteenth century, and after the fall of that chief being the principal support of his feeble successors in times perilous to the national independence, and to the reigning dynasty.

Yet the task of his biographer is by no means easy. Though he never said or did a foolish thing, he is not to be regarded with unmixed admiration. There were shades on his reputation which ought to be delineated. Personally, he does not much excite our interest or our sympathy. His career is not checkered by any youthful indiscretions or generous errors. He ever had a keen and steady eye to his own advantage, as well as to the public good. Amidst the aristocratic connections which he formed, he forgot the companions of his youth; and his regard for the middle classes of society, from which he sprung, cooled down to indifference. He became jealous of all who could be his rivals for power, and, contracting a certain degree of selfishness and hardness of character, he excited much envy and ill will amidst the flatteries which surrounded him. To do justice to the qualities and actions of so extraordinary a person would require powers of discrimination and delineation which I greatly fear I do not possess. However, after bespeaking the indulgence of my readers, I proceed,—resolved not to be sparing of praise, nor to shrink from censure, when I think the one or the other is deserved.

It is curious to observe, that the three greatest Chancellors after the Revolution were the sons of attorneys, and that two

of them had not the advantage of a university education. The illustrious Earl of Hardwicke was the son of a small attorney at Dover, of respectable character, but in very narrow circumstances. The family, though much reduced in the seventeenth century, is said anciently to have held considerable possessions in Wiltshire, of which county Thomas Yorke was thrice High Sheriff in the reign of Henry VIII. Philip, the father, was married to Elizabeth, daughter and co-heir of Richard Gibbon of Rolvenden, in Kent.^b They had three children who grew up—two daughters and a son. They were glad to marry one daughter to a dissenting minister, and the other to a tradesman in a country town.

Philip the son, the subject of this memoir, was born at Dover on the first day of December, 1690. He never was at any school except a private one, kept at Bethnal Green by a Dissenter, of the name of Samuel Morland, who is said to have been an excellent teacher. Here he won the good opinion of this worthy pedagogue, by displaying the quickness of parts and steady application which afterwards distinguished him through life.

When he had reached the age of fourteen, being noted as

^b Gibbon, the historian, being of this family, has given us a very pompous account of it—showing how, being settled in “the great forest of Anderida,” now the *Weald of Kent*, they, in 1326, possessed lands which still belong to them; that one of them was “Marmorarius,” or architect to Edward III.; that they had for arms “a lion rampant guardant, between three schallop-shells, argent on a field azure;” and that they were allied to Jack Cade’s Lord Say and Seale, “who had most traitorously corrupted the youth of the

realm in erecting a grammar-school, who had caused printing to be used, and, contrary to the King, his crown and dignity, had built a paper-mill,—talking of a noun and a verb, and such abominable words as no Christian can endure to hear.”—*Misc. Works*, i. 4.

Lord Hardwicke, when Chancellor, erected a monument to his father and mother, with the arms of Yorke and of Gibbon impaled upon it, and with the following simple description, which he composed:

“Here lieth the body of PHILIP YORKE, Gent.,
who married Elizabeth, the only child
of Richard Gibbon, Gent.

They had issue

three sons and six daughters,

of whom one son and two daughters are surviving.

The other six are buried near this place.

He died June 18th, 1721, in the 70th year of his age.

Here lieth also the body of the said ELIZABETH,

Wife of the above mentioned Philip Yorke,

who died October 17th, 1727, in the 69th year of her age.

QUOS AMOR IN VITA CONJUNXIT
NON IPSA MORS DIVISIT.”

The Gibbon arms are quartered in the Chancellor’s shield in the Temple Hall, and in Charles Yorke’s in Lincoln’s Inn Hall.

a "cute lad," the father desired that he should be bred to his own profession of an attorney; but the mother, A.D. 1704. who was a rigid Presbyterian, very much opposed this plan. She expressed a strong wish "that Philip should be put apprentice to some *honest trade*;" and sometimes she declared her ambition to be that, breeding him a parson in her own religious persuasion, "she might see his head wag in the pulpit." However, her consent to Philip's legal destination was at last obtained on an offer being received from Mr. Salkeld, a very eminent London attorney, who had been many years Mr. Yorke's town agent, to take the boy as articled clerk without a fee.^c

Philip Yorke, when transferred to the metropolis, exhibited a rare instance of great natural abilities, joined with an early resolution to rise in the world, supported by acquired good habits and aided by singular good luck. A desk being assigned to him in Mr. Salkeld's office, in Brooke Street, Holborn, he applied to business with the most extraordinary assiduity, and, at the same time, he employed every leisure moment in endeavouring to supply the defects of his limited A.D. 1705— education. All lawyers' clerks were then obliged in 1706. a certain degree to understand Latin, in which many law proceedings were carried on; but he, not contented with being able to construe the "Chirograph of a fine,"^d or to draw a "*Nur*,"^e took delight in perusing Virgil and Cicero, and made himself well acquainted with the other more popular Roman classics, though he never mastered the minutiae of Latin prosody, and, from the apprehension of a false quantity, ventured with trembling on a Latin quotation. Greek he hardly affected to be acquainted with.

"By these means he gained the entire good will and esteem of his master; who, observing in him abilities and application that prognosticated his future eminence, entered him as a student in the Temple,^f and suffered him to dine in the Hall

^c The "Biographia Britannica" confounds this Mr. Salkeld with Serjeant Salkeld, author of the well-known "Reports," and erroneously supposes that Philip Yorke was sent to the Serjeant as a pupil when destined for the bar.

^d The record of a fictitious suit, resorted to for the purpose of docking estates tail and quieting the title to lands.

^e Familiar contraction of "*Narratio*," the "Declaration," or statement of the plaintiff's grievance or cause of action.

^f "Novembris 29^o, 1708^o,
die et anno p'dict.

Mr Philippus Yorke filius et
heres apparens Philippi Yorke
de villa et port de Dover in Com.
Kant. gen. admissus est in Socie-
tatem Medij Templi spealter et } 04.00.00"
obligatur una cum
Et dat ꝑ fine
—Books of Middle Temple.

during the terms. But his mistress, a notable woman, thinking she might take such liberties with a *gratis clerk*, used frequently to send him from his business on family errands, and to fetch in little necessaries from Covent Garden and other markets. This, when he became a favourite with his master, and intrusted with his business and cash, he thought an indignity, and got rid of it by a stratagem, which prevented complaints or expostulation. In his accounts with his master there frequently occurred, ‘*coach-hire for roots of celery and turnips from Covent Garden, and a barrel of oysters from the fishmonger’s, &c.*,’ which Mr. Salkeld observing, and urging on his wife the impropriety and ill housewifery of such a practice, put an end to it.”^g

There were at the same time in Mr. Salkeld’s office several young gentlemen of good family and connections, who had been sent there to be initiated in the practical part of the law—Mr. Parker, afterwards Chief Baron of the Exchequer, Mr. Jocelyn, afterwards Lord Chancellor of Ireland, and Mr. Strange, afterwards Sir John Strange, Master of the Rolls. With these Philip Yorke, though an articulated clerk, associated on terms of perfect equality, and they had the merit of discovering and encouraging his good qualities.

He now received from time to time Latin letters from his former preceptor, to encourage him in his career, and to give him the news of Bethnal Green. In one of these, Morland, after dwelling with complacency on the talents of his pupil, confidently predicts the youth’s future celebrity, and pronounces that to have been the most auspicious day of his life when the cultivation of so happy a genius was first committed to his charge:—“*Non mirandum est si futuram tui nominis celebritatem meus præsagiat animus. Quas tantopere olim vices meas dolui, eas hodie gratulor mihi plurimum, cui tale tandem contigerit ingenium excolendum. Nullum unquam diem gratiorem mihi illuxisse in perpetuum reputabo, quàm quo te pater tuus mihi tradidit in disciplinam.*”

But the young man still had to struggle with many difficulties, and he probably would have been obliged from penury to go upon the roll of attorneys, rising only to be clerk to the magistrates at petty sessions, or perhaps to the dignity of town clerk of Dover, had it not been for his accidental introduction to Lord Chief Justice Parker, which was the foundation of all his prosperity and greatness. This distinguished

^g Letter to Cooksey from “an old man of the law, who knew him well.”—*Cooksey*, p. 71.

Judge had a high opinion of Mr. Salkeld, who was respected by all ranks of the profession, and asked him one day, if he could tell him of a decent and intelligent person who might serve as a sort of law tutor for his sons,—to assist and direct

A.D. 1707—
1712.

them in their professional studies. The attorney eagerly recommended his clerk, Philip Yorke, who was immediately retained in that capacity, and giving the highest satisfaction by his assiduity and his obliging manners, gained the warm friendship of the sons, and the weighty, persevering, and unscrupulous patronage of the father. He now bade adieu to the smoky office in Brooke Street, Holborn,^b and he had a commodious chamber assigned him in the Chief Justice's house in Lincoln's Inn Fields. Released from the drudgery not only of going to Covent Garden market, but of attending captions and serving process, he devoted himself with fresh vigour to the abstruse parts of the law and to his more liberal studies. Farther, he took great pains to acquire the habit of correct composition in English—generally so much neglected by English lawyers that many of the most eminent of them will be found, in their written “opinions,” violating the rules of grammar, and without the least remorse constructing their sentences in a slovenly manner, for which a schoolboy would be whipped.ⁱ The “Tatler” had done much to inspire a literary taste into all ranks. This periodical had ceased, but being now succeeded by the “Spectator,” Philip Yorke “gave his days and nights to the papers of Addison.”

Although he never approached the excellence of his model, he was so far pleased with his own proficiency that he aspired to the honour of writing a “Spectator.” Accordingly, with great pains, he composed the well-known Letter, signed “PHILIP HOMEBRED,” and dropped it into the Lion's mouth. To his inexpressible delight, on Monday, April 12, 1712, it came out as No. 364, with the motto added by Steele :—

——— “Navibus atque
Quadrigris petimus bene vivere.”

As a lawyer desirous of upholding our craft by all fair means, I should have been proud to have warmly praised this

^h “Three years he sat bis smoky room in
Pens, paper, ink, and pounce consumin’.”

ⁱ This undoubted fact shows strikingly the difference between speaking and writing; for some of those who did not at all know the division of a discourse into sentences, or the grammatical construction of a sentence, have

been listened to with great and just admiration when addressing a jury,—without their inaccuracies and inelegancies being discovered. Erskine could compose with accuracy and elegance, but this could be said of very few of his contemporaries.

performance, but I am sorry to acknowledge that I cannot honestly object to the terms in which it was "vilipended" by Dr. Johnson.^k I will, however, select one or two of the best passages, in the hope that the reader may form a more favourable judgment of it. Having described a foolish mother, who is persuaded that "to chain her son down to the ordinary methods of education with others of his age, would be to cramp his faculties, and do an irreparable injury to his wonderful capacity," Mr. Philip Homebred, trying to imitate the manner of Addison, thus proceeds:—"I happened to visit at the house last week, and missing the young gentleman at the tea-table, where he seldom fails to officiate, could not, upon so extraordinary a circumstance, avoid inquiring after him. My Lady told me he was gone with his woman, in order to make some preparations for their equipage; for that she intended very speedily to carry him to travel. The oddness of the expression shocked me a little; however, I soon recovered myself enough to let her know that all I was willing to understand by it was, that she designed this summer to show her son his estate in a distant county in which he had never yet been. But she soon took care to rob me of that agreeable mistake, and let me into the whole affair." . . . "When I came to reflect at night, as my custom is, upon the circumstances of the day, I could not but believe that this humour of carrying a boy to travel in his mother's lap, and that upon pretence of learning men and things, is a case of an extraordinary nature, and carries on it a particular stamp of folly. I did not remember to have met with its parallel within the compass of my observation, though I could call to mind some not extremely unlike it. From hence my thoughts took occasion to ramble into the general notion of travelling, as it is now made a part of education. Nothing is more frequent than to take a lad from grammar and law, and under the tuition of some poor scholar, who is willing to be banished for thirty pounds a year and a little victuals, send him crying and snivelling into foreign countries. Thus he spends his time as children do at puppet-shows, and with much the same advantage, in staring and gaping at an amazing variety of strange things; strange, indeed, to one who is not prepared to comprehend the reasons and meaning of them; whilst he should be laying the solid

^k "He would not allow that the paper (No. 364) on carrying a boy to travel, signed *Philip Homebred*, which was reported to be written by the *Ld. Ch. Hardwicke*, had merit,

He said, 'it was quite vulgar, and had nothing in it luminous.'—*Boswell's Life of Johnson*, vol. vi. p. 152.

foundations of knowledge in his mind, and furnishing it with just rules to direct his future progress in life, under some skilful master of the art of instruction."—Here we have good sense and grammatical language, but does the writer give us "thoughts that breathe, and words that burn?"—has he succeeded in attaining "an English style, familiar but not coarse, and elegant but not ostentatious?" Had he taken to literature as a trade, he would have had poor encouragement from Lintot and Cave, and he would hardly have risen to the distinction of being one of the heroes of the *Dunciad*. I fear me it will be said that a great lawyer is made *ex quovis ligno*, and that he who would starve in Grub Street from his dulness,—if he takes to Westminster Hall, may become "the most illustrious of Chancellors."

This paper, though not of the highest excellence, is said to A.D. 1712— have gained for the writer the notice of Lord Somers; 1715. and there is now at Wimpole a pocket Virgil on the fly-leaf of which are the following words, in the handwriting of Lord Somers, "Sum Johannis Dryden, 1685,"—supposed to have been given to him by the great poet, and on this occasion presented to Mr. Yorke as an incentive to literary exertion. It was rumoured that our law student wrote another, which was published in a subsequent volume, but it probably had less applause, for he did not distinctly own it, and his family could never identify it. He wisely adhered to juridical studies, and laboured more and more assiduously to qualify himself for his profession.

He now regularly attended the courts in term time, taking notes of the arguments and judgments,—which in the evening he revised and digested. He likewise devoted himself to oratory, and acquired that close and self-possessed manner of speaking before the public by which he was afterwards distinguished. I do not find any thing expressly said about his politics in early life, but, from his father's connection with the Dissenters, he was probably bred in the Low Church party. He, no doubt, was a zealous Whig when patronised by Lord Parker; and I do not find any charge of inconsistency ever brought against him.

The house of Brunswick was actually on the throne prior to his appearance in public life. He was called to the bar in Easter Term, 1715, being then in his twenty-third year.^m

^m "Parliament, tent. 6^o die Maij, 1715.— York P. propoed by M^r Mulso, M^r fforster
M^r Simpson T. proposed by M^r Jauncy, M^r J. proposed by M^r Harcourt, M^r Newton J.

His progress was more rapid than that of any other *débutant* in the annals of our profession. He was immediately pushed by old Salkeld, who himself had many briefs to dispose of, and who had great influence among his brother attorneys. Several young men with whom he had formed an intimacy while in his clerkship, now being "upon the roll," were perhaps of still greater use to him.

He began his practice in the Court of King's Bench, where he enjoyed the marked favour of Lord Chief Justice Parker. It soon happened that he had to argue a special case upon an important and intricate point of law. The judgment of the Court was with his client, and he received high compliments from the Chief Justice for the research, learning, and ability which he had displayed.^a From that day forth he was much employed in the "special argument line," although it was some years before he acquired the reputation of a "leader."

By Mr. Salkeld's advice, he chose the Western Circuit, where, although he had no natural connection,—by means which must have excited some jealousy and distrust, but which could not be proved to be incorrect, he was suddenly in good junior business at every assize town.^o About two years after his start, Mr. Justice Powys, who had been eminent in his profession, but was now bending under the weight of years, went the Western Circuit, and, surprised to see so young a man in every cause, was anxious to know how he had got on so rapidly. It has been said since, that early success on the Circuit must arise from "sessions, a book, or a miracle." The practice of barristers practising at Quarter Sessions had not then begun, and, miracles having ceased, Powys thought that young Yorke must have written some law book, which had brought him into notice. The bar dining with the Judges at the last place on the Circuit, and the party being small on account of so

proposed by M^r Offley, M^r Idle J. proposed by M^r Avery, M^r Brabant H. proposed by S^r William Whitelock, and M^r Sherwood J. proposed by M^r Attorney Gen^l, for the Degree of the Utter Barr."

On the 20th of the same month Mr. Philip Yorke was admitted to a set of chambers.

The following is the only other entry relating to him in the Books of the Middle Temple :

"Ad Parliament. tent. 10^{mo} febij, 1720^{mo}. — It is ordered — That S^r Philip Yorke, Kn^t, his Maj^{ties} Soll^r Generall, be called up to the Bench of this Society in order to his

Reading."

^a We are not told how he received these compliments. He was probably pleased and grateful; but I once heard a young barrister, who entertained a very high, and perhaps somewhat excessive opinion of his own merits, say, under similar circumstances, "I think the Judges use a very great liberty in presuming to praise me for my argument."

^o He afterwards had the satisfaction of rewarding Mr. Salkeld for all his kindness by appointing him Clerk of the Errors in the Court of King's Bench.

many having taken their departure for London, before the toast of "Prosperity to the Western Circuit," and "*Quinden. Pasch.*" were given,^p there was a pause in the conversation, and Mr. Justice Powys, addressing the flourishing junior, who was sitting nearly opposite to him, said, "Mr. Yorke, I cannot well account for your having so much business, considering how short a time you have been at the bar: I humbly conceive you must have published something; for look you, do you see, there is scarcely a cause before the Court, but you are employed in it, on one side or other. I should, therefore, be glad to know, Mr. Yorke, do you see, whether this is the case?"—*Yorke.* "Please ye, my Lord, I have some thoughts of publishing a book, but, as yet, I have made no progress in it." The Judge, smiling to think that his conjecture was not quite without foundation, became importunate to know the subject of the book, and Yorke, not being able to evade his inquiries, at last said, "I have had thoughts, my Lord, of doing Coke upon Littleton into verse; but I have gone a very little way into it."—*Powys.* "This is something new, and must be very entertaining; and I beg you will oblige us with a recital of a few of the verses." Mr. Yorke long resisted, but finding that the Judge would not drop the subject, bethought himself that he could not get rid of it better than by compounding a specimen of such a translation, something in the Judge's own words, and introducing the phrases with which his Lordship was in the habit of interlarding his discourse upon all occasions, let the subject be grave or gay. Therefore, accompanying what he intended to say with some excuses for not sooner complying with the Judge's request, he recited the following verses, as the opening of his translation:—

"He that holdeth his lands in fee
Need neither to quake nor to quiver,
I humbly conceive; for look, do you see,
They are his and his heirs' for ever."^q

^p It would appear that the present custom then prevailed of the Judges, when the barristers dine with them, giving as a toast when the party is to break up, "Prosperity to the O. Circuit," except that, at the last place on the Spring Circuit, they afterwards give "*Quinden. Pasch.*," being the first return of Easter Term; and on the Summer Circuit, "*Cras. Animarum*," being the first return of Michaelmas Term; which is as much as to say, "To our next merry meeting in West-

minster Hall."

^q The first section of Littleton in prose says—"Tenant in fee simple is he which hath lands or tenements to hold to him and his heirs for ever." Of which we have another metrical translation:—

"Tenant in fee simple is he,
And needs neither to shake or shiver,
Who has his lands free from demands
To him and his heirs for ever."

A knavish speech sleeps in a foolish ear. Although all others present perceived the jest, the learned Judge was not struck by the peculiarity of the diction, and was so much convinced that this was a serious attempt to impress upon the youthful mind the great truths of tenures, that, meeting Mr. Yorke a few months afterwards in Westminster Hall, he inquired "how he was getting on with the translation of Littleton?"

The wicked wag, out of revenge, turned into rhyme the Judge's last charge to the grand jury,—of which I give a specimen:—

"Next, libellers, gentlemen present,
Which all mistakes for to prevent
I thus define: it is, to wit,
Not w^hst is spoke but what is writ,
Or printed upon paper sheets,
And cry'd by wenches 'bout the streets.
Most generally it is a lye
To blacken King or ministry."†

But our poet continued to deal in profitable prose in the courts of justice, and was now so prosperous that he thought he might not improperly contract a matrimonial alliance. In the object of his choice he showed his usual prudence and good sense. This was a gay widow with a good jointure, the niece of Lord Somers, and the niece by marriage of Sir Joseph Jekyll, the Master of the Rolls, at whose house in Chancery Lane he became acquainted with her.* Yorke was a remarkably handsome young man, and his addresses were well received by the lady, but she referred him to her father, Mr. Cocks, a Worcestershire squire. Fortified by a letter of introduction from Sir Joseph, who encouraged the match, he repaired full

† Duke Wharton says, in the once popular lines,—

"When honest Price shall trim and truckle under,
And Powis sum a cause without a blunder;
Then shall I cease my charmer to adore,
And think of love and politics no more."

Yet the simplicity of the Judge in believing in the metrical translation of Littleton is not so great as unlearned readers may suppose. My professional brethren have all read and tried to recollect "The Reports of Sir Edward Coke, *Knt.* in verse." This volume was first printed in 1742, and a new edition of it was published so lately as 1825. It professes, in two lines,—with the name, to give the point

decided in every case which Coke has reported: *e. g.*

"Archer, if he for life infeoff in fee,
It bars remainders in contingency."
"Shelley, whose ancestors a freehold take,
The words (his heirs) a limitation make."
"Monopolies granted by King are void,
They spoil the trade in which the youth's employed."

When I was in a special pleader's office, a brother pupil thus began to versify "Tidd's Practice:"—

"Actiona are all, and this I'll stick to,
Vel ex contractu vel delicto."

* Her maiden name was Cocks, she being the daughter of Charles Cocks, Esq., by a sister of Lord Somers.

of confidence to the residence of his intended father-in-law. The old gentleman received him politely, but learning the object of his visit asked him for his *rent roll*, and Mr. Lygon, his daughter's first husband, having had a very ample one, was surprised to hear that all Mr. Yorke's estate consisted of "a perch of ground in Westminster Hall." However, in answer to a letter to the Master of the Rolls, asking "how he could think of introducing into the family a young man incapable of making a settlement," his Honour so strongly represented the brilliant prospects of the rising lawyer, that the required consent was given, and the union took place,—which turned out most auspicious, for the married couple lived together till old age in uninterrupted affection and harmony, sharing the most wonderful worldly greatness, and seeing a numerous family of sons and daughters grown up—all well behaved and prosperous, and as fully fixed among the high aristocracy as if they had descended from companions of the Conqueror.* Mr. and Mrs. Philip Yorke began their married life in a very small house near Lincoln's Inn, the ground floor of which served him for an office, and saved him the expense of chambers in the Temple, then considered by him a very great object.

In the year 1718, upon the resignation of Lord Cowper, Chief Justice Parker, shortly after created Earl of Macclesfield, received the Great Seal, and Mr. Yorke transferred himself to the Court of Chancery, still continuing to go the Western Circuit.† Equity business soon flowed in upon him—partly from his own merit, and partly from the favour of his patron, testified in a manner which gave mortal offence to the seniors at the bar. Serjeant Pengelly, in particular, was so disgusted at frequently hearing the Chancellor observe—"what Mr. Yorke said has not been answered," that he one day threw up his brief, saying in a loud voice, "I will no more attend a Court where I find Mr. Yorke is not to be answered." Some have gone so far as to ascribe Lord Macclesfield's subsequent ruin to this favouritism, asserting that "Serjeant Pengelly's resentment, joined with that of others in the same situation, brought upon the Chancellor that investigation of his private management, and the abuses committed or connived

* The Lord Chancellor wrote him a letter to congratulate him, "y^e an affair of y^e great importance in life was so happily over."

† For more than half a century afterwards

the Chancellor's sittings were so arranged as to allow the counsel practising in his Court to go circuit, and Equity men had the advantage of keeping up their common law learning.

at by him in his appointment of the officers of his Court, which terminated in his impeachment and conviction." *

However, there can be no doubt that the discontent of the old Chancery pleaders arose very much from the superior talent of the young common lawyer, whose invasion was so formidable to their empire. Most of them had been contented to pick up a knowledge of Chancery practice from experience, referring *pro re natá* to what was to be found on the subject in the Reports and Abridgments; but he entered upon a systematic course of study, qualifying him to be a great advocate or a great judge in the Court of Chancery—tracing the equitable jurisdiction of the Court to its sources, and thoroughly understanding all the changes it had undergone.

In the case of *Rex v. Hare and Mann*,^y in which Sir Robert Walpole's family was interested, he had an opportunity, of which he fully availed himself, of showing that he was deeply skilled in the history and practice of this tribunal, and he raised his reputation as high among the Solicitors here as it had been among the Attorneys in the King's Bench. In his celebrated letter to Lord Kames, on the distinction between Law and Equity, written many years after, he speaks with much complacency of his argument on this occasion, and insinuates that it contributed greatly to his elevation. "It was," says he, "when I was a very young advocate, before I was Solicitor-General, but it is correctly reported; for I remember Sir John Strange borrowed my papers to transcribe, so that the faults in it are all my own. In arguing that cause, which turned upon a critical exception to the return of a writ of *scire facias* in Chancery, I found, or at least fancied it to be necessary to show, that all the various powers of that court were derived from, or had relation to, the Great Seal, and I endeavoured to prove that the equitable jurisdiction exercised by the Chancellor took its rise from his being the proper officer to whom all applications were made for writs to ground actions at common law, and from many cases being brought before him, in which that law would not afford a remedy, and thereby being induced through necessity or compassion to extend a discretionary one."^z

* Cooksey, 72. Serjeant Pengelly was certainly the most bitter manager of the impeachment.

^y 1 Strange, 146, Feb. 1719, 5 Geo. 2.

^z This very learned argument arose out of

a seemingly very trifling objection to a writ of *scire facias*, which required the defendant "to appear in Cancellariâ nostrâ in Octobris, &c. ubicunque tunc fuerit." Objection, that it ought to have been "ubicunque eadem Can-

Lord Macclesfield now determined on the first vacancy to make a resolute effort to have his *protégé* appointed a law officer of the Crown, notwithstanding the shock such a promotion might give to aged Serjeants who had been in vain expecting advancement ever since the coming in of King William; and with this view he prevailed upon the Duke of Newcastle, who had immense borough interest, to return him to the House of Commons for Lewes.^a

Parliament met on the 11th of November after Yorke was elected, and, with the exception of the Christmas recess, continued sitting till he went on the Spring Circuit in the beginning of March; but I cannot find that he opened his mouth in this interval, and it is probable that he prudently remained silent; for the only measure of public interest then debated in the House of Commons was Sunderland's Peerage Bill, on which the Whigs were divided, and it might have appeared presumptuous for a young lawyer to give any opinion.^b

Before he had made his maiden speech in parliament,—the folly as well as the favour of others working for his advantage,—an opportunity most unexpectedly arose for promoting him in his profession. The Attorney and Solicitor-General, though not free from personal dislikes and jealousies, have almost always preserved ostensibly a mutual good understanding, and have cordially co-operated in the public service. But Mr. Lechmere and Sir William Thompson, the then Attorney and Solicitor-General, hated each other so intensely that they had several very indecent quarrels in private causes

cellaria tunc foret in Angliâ," on the ground that since the Union with Scotland there was only one Great Seal for Great Britain; that the Chancery might be held in Scotland; that for matters arising in England suitors could not lawfully be summoned to Scotland; and therefore that this return, which might call the defendant into Scotland, was bad.—*Yorke*, for the defendant, gave a learned history of the jurisdiction of the Court of Chancery, contending that it arose entirely from the Great Seal; and as the Great Seal was the Great Seal of Great Britain, the Chancery had become the Chancery of Great Britain. But Lord Macclesfield said, that "although the Act of Union had made the Great Seal the Great Seal of Great Britain, it had not made the Chancery so. The powers of the Chancery as a Court are over private property;

and the articles of Union preserving to each country its municipal jurisdictions, the English Court of Chancery could not be held in Scotland, although the Great Seal might be carried to Scotland, and for some purposes used there."—1 Str. 158.

^a So little squeamish were they then about peers interfering in elections, that the electors of Lewes presented an address to the Duke, "thanking him for having recommended to them so respectable a representative, and testifying their desire, on all future occasions, to show their sense of the favours his Grace had been pleased to lay upon them."

^b A list of the majority and of the minority was published, but his name does not appear in either.—7 Parl. Hist. 624.

at the bar, and in the transaction of official business. Their enmity was whetted by a sordid competition,—“which of them should be most resorted to in granting charters of incorporation to Joint Stock Companies?” Now was raging the fever of speculation throughout the nation, of which the “South Sea Bubble” was a symptom, and companies were formed which, both for object and means, equalled in extravagance any thing witnessed in our own times. They brought a great harvest to the law officers of the Crown, but of this Lechmere, being more popular, and supposed to have more influence, carried off by far the largest share. Thompson at last, openly in the House of Commons, preferred a charge against him of corruptly taking excessive fees and recommending improper grants. The charge was indignantly denied by Lechmere, who said that “he had the honour to be a Privy Councillor, Chancellor of the Duchy of Lancaster, Attorney-General, a Member of that House, and, more than all, a *gentleman*; that such an accusation could not therefore but fall upon him more heavily; that he defied all the world—the worst and bitterest of his enemies—to prove him guilty of corrupt or unwarrantable practices, and that he demanded an immediate inquiry.” Thompson undertook to make good the accusation, and a committee sat to hear the evidence. It appeared that the Attorney-General’s clerk had been rather eager to make joint stock companies “pay handsomely,” but there did not rest even a passing shadow of suspicion on his master; whereupon it was unanimously resolved, “that the informations of Sir William Thompson were malicious, scandalous, and false, and that the Right Honourable Nicholas Lechmere had discharged his trust in the matters referred to him with honour and integrity.” Thompson was immediately dismissed from his office of Solicitor-General.^c Lechmere tried to procure the appointment for an attached friend of his own, that he might no more be exposed to such squabbles; but the Lord Chancellor claimed the appointment as his patronage,—and he was at this time all powerful, both with the King and the minister.

Philip Yorke had joined the Western Circuit during this controversy, little thinking that he had any personal interest in it, but while he was attending the assizes at Dorchester he received the two following letters. The first was from the Lord Chancellor, and was directed

^c However, he was afterwards made Recorder of London and a Baron of the Exchequer.

to "Philip Yorke, Esq., Counsellor at Law, M.P., at the Assizes at Dorchester:"

"Sir,

"The King having declared it to be his pleasure that you be his Solicitor-General in the room of Sir Wm. Thompson, who is already removed from the office, I with great pleasure obey his Majesty's commands, to require you to hasten to town immediately upon receipt hereof, in order to take that office upon you. I heartily congratulate you upon this first instance of his Majesty's favour, and am with great sincerity,

"Sir,

"Your faithful and obedient Servant,

"PARKER, C."

The second was from Mr. Secretary Craggs:

"Dear Sir,

"You will be informed from other hands of what has happened between the Attorney and Solicitor-General. In the squabble the latter has lost his employment, and the first, I believe, will not succeed in his recommendation of Mr. Denton to be his successor, for I believe the King has resolved to appoint you, which I am glad of, for his service, and for my particular satisfaction: Who am entirely,

"Your most faithful Servant,

"J. CRAGGS.

"Cockpit, March 17, 1719 [1720]."

Mr. Yorke on reading these letters, after receiving the hearty congratulations of his brother circuiteers, who rejoiced sincerely in the elevation of such a formidable competitor, returned his briefs, and set off post for London. On the 22nd of March he was sworn in Solicitor-General before Lord Macclesfield, and a few days after, on being presented by him to the King, he received the honour of knighthood.

With the exception of the members of the Western Circuit, the profession considered Sir Philip's appointment a very arbitrary act. He was only twenty-nine years of age, and had been little more than four years at the bar. He had displayed great talents, but Wearg and Talbot, who were considerably his seniors, and had always deserved well of the Whig party, were men of distinguished reputation, and qualified to do credit to any office in the law, however exalted. Others of inferior merit were disappointed, and the blame being all laid on the Lord Chancellor, the resentment which he had before excited by his partiality for the tutor of his sons was greatly exasperated.

It is said that even the attorneys and solicitors looked askance at the new law officer, though disposed to be proud of the elevation of a gentleman so closely connected with them. Very much run after as a junior, he as yet had not got into any leading business, and they were alarmed by seeing him with so little experience suddenly put over the heads of the gentlemen with silk gowns, whom they had been accustomed to employ. When Easter Term came round and he took his place within the bar in the Court of Chancery, he was left out of most of the new causes which came on to be heard, and some of his discontented rivals were sanguine enough to hope that his premature elevation had ruined him for ever. But by the exertions of his personal friends among the solicitors, by being supposed to have "the ear of the Court," by his own great talents, by his indefatigable industry, by the gentleness of his manners, and by the insinuating complacency of his address, he rapidly overcame these prejudices, and was retained in every suit.^d

His acceptance of office having, under the recent statute, vacated his seat in the House of Commons, he was re-elected for Lewes without opposition. He afterwards sat for Seaford, being always returned without trouble or expense,—which was considered by some of his contemporaries as an instance of his luck, and by others as a proof of his management, in having so effectually insinuated himself into the good graces, first of Lord Macclesfield, and then of the Duke of Newcastle. But for some years to come his name is never mentioned in printed parliamentary debates, and we are left in great doubt as to the part he acted in the House of Commons.

It happened in little more than a year, that, Lechmere retiring from the bar with a peerage, there was a vacancy in the office of Attorney-General, and some supposed that the Chancellor would recklessly thrust his juvenile favourite into it, although only thirty years of age; but prudence prevailed, and it was filled up with the experienced Sir Robert Raymond, afterwards Lord Chief Justice of the King's Bench.^e

Sir Philip Yorke continuing Solicitor-General, first gained great public applause on the trial of Christopher Layer for high treason in conspiring to bring in the Pretender. The

^d One account of his *début* as Solicitor-General says, "The storm which was raised by his premature promotion fell wholly on his patron."—*Cooksey*, 73.

^e There is extant a curious joint opinion

given by them, "that the King might lawfully grant a pardon to a malefactor under sentence of death, on condition that he would suffer himself to be inoculated for the small-pox."

prisoner, after being ably defended by counsel, himself spoke so clearly and ingeniously in his own defence as to make a considerable impression on the Jury, and to endanger the conviction—then considered of the last consequence not only to the safety of the ministry, but of the family on the throne.

The Solicitor-General rose to reply when it was late at night, and delivered a speech between two and three hours long, which, during the whole of that time, riveted the attention of all who heard it, and was most rapturously praised as a fine specimen of juridical eloquence. Certainly it is what is technically termed a “hanging speech”—very quiet and dispassionate; seemingly candid, and even kind to the accused; but in the most subtle manner bringing forward all the salient points of the evidence against him—and, by insinuation and allusion, taking advantage of the prepossessions of the Jury. He thus concluded:—

“It has been said, indeed, that he is but an inconsiderable man—of no rank or fortune fit to sustain such an undertaking. That observation may be true; but since it is plain that he did engage in it, this with other things clearly proves that he was set on work and supported by persons of more influence. And, gentlemen, this is the most affecting consideration of all. But I would not even in this cause, so important to the King and to the State, say any thing to excite your passions: I choose rather to appeal to your judgments; and to these I submit the strength and consequence of the evidence you have heard. My Lord, I ask pardon for having taken up so much of your time. I have only farther to beg, for the sake of the King, for the sake of the prisoner at the bar, and for the sake of myself, that if, through mistake or inadvertency, I have omitted or misrepresented any thing, or laid a greater weight on any part of the evidence than it will properly bear, your Lordship will be pleased to take notice of it, so that the whole case may come before the Jury in its just and true light.”

The conviction was certainly according to law; and if Laver's head had been immediately placed on Temple Bar, his execution, though lamentable, might have been thought a necessary severity: but all concerned in the prosecution and the punishment incurred and deserved obloquy—by the delay interposed with a view to elicit from the prisoner the accusation of others, and by his execution long after the verdict, when he had disappointed the hope of further disclosures.^f

^f 16 St. Tr. 319.

CHAPTER CXXX.

CONTINUATION OF THE LIFE OF LORD HARDWICKE TILL HE WAS
APPOINTED LORD CHANCELLOR.

ON the 31st of January, 1723, Sir Robert Raymond being promoted to be Chief Justice of the King's Bench, Sir Philip Yorke, with general applause, succeeded him A.D. 1723. as Attorney-General. This situation he held above thirteen years, exhibiting a model of perfection to future law officers of the Crown. He was punctual and conscientious in the discharge of his public duty, never neglecting it that he might undertake private causes, although fees were supposed to be particularly sweet to him, and, having felt the ills of penury, he was, from the commencement to the close of his professional career, eager to accumulate wealth. Considering this propensity, he had likewise great merit in resisting the temptation to which others have yielded of accepting briefs in private causes, when he could not be present at the hearing of them, or could not do fair justice to the client who hoped to have the benefit of his assistance. I may likewise mention that, although he was afterwards supposed to have become stiff and formal in his manners, while he remained at the bar he was affable and unassuming, courteous to his brethren of longer standing, making himself popular with the juniors, and trying to soften the envy excited by his elevation. In parliament he never displayed any impatience to gain distinction, but he was regular in his attendance, and he was always ready to render fair assistance to the government, and to give his opinion on any legal or constitutional question for the guidance of the House. Without being a "prerogative lawyer," he stood up for the just powers of the Crown; and, without being a "patriot," he was a steady defender of the rights and privileges of the people.

As public prosecutor in Revenue cases in the Exchequer, he is universally lauded. "Though advocate for the Crown, he spoke," says one contemporary, "with the veracity of a witness, and the impartiality of a judge." When defending Walpole's Excise scheme against the misrepresentations of its

opponents, he not ungracefully appealed to his own practice in prosecuting those who attempted to defraud the revenue and to injure the fair dealer; pronouncing a eulogy upon himself to which, we are told, "the whole House assented with universal applause."

He was not so fortunate in his prosecutions for libel. In his time sprang up the controversy respecting the rights of juries, which was not settled till the close of the eighteenth century. He contended for the doctrine, that the jury were only to decide upon the sufficiency of the evidence of publication, and upon innuendoes; *i. e.*, whether particular words or abbreviations in the alleged libel had the meaning imputed to them by the indictment or information, as, whether "the K—g" meant "our Sovereign Lord the King;" but that the lawfulness or criminality of the writing prosecuted was pure matter of law for the opinion of the Court. The Judges coincided with him in their directions, but juries were sometimes rebellious. The obnoxious journal of that day was the "Craftsman," conducted by Bolingbroke, Pulteney, and the principal leaders of the opposition to Sir Robert Walpole. Sir Philip Yorke succeeded in obtaining a conviction in the case of the famous Hague letter, written by Bolingbroke;^g but he was foiled in his prosecution of a subsequent violent attack upon the Government, supposed to be from the pen of Chesterfield, for though the Chief Justice laid down the same law, and there could be no doubt about publication or innuendoes, the jury, very much approving of the sentiments of the supposed libel, and thinking them not only innocent but laudable, found a general verdict of *not guilty*. It was then that Pulteney composed his famous ballad, with the oft-quoted stanza,—

"For Sir Philip well knows,
That his innuendoes
Will serve him no longer
In verse or in prose;

For twelve honest men have decided the cause,
Who are judges alike of the facts and the laws." ^h

^g 17 St. Tr. 625: and see a very amusing account of this trial by Lord Mansfield, 21 St. Tr. 1037. "There was a great concourse of people: it was a matter of great expectation, and many persons of high rank were present to countenance the defendant."

^h The last two lines were misrepresnted in the Dean of St. Asaph's case by Lord Mansfield; who, to suit his purpose, or from

lapse of memory, said Pulteney had admitted that "libel or no libel?" was a question only for the Court, by saying in his ballad—

"For twelve honest men have decided the cause,
*Who are judges of fact, though not
judges of laws.*"

—21 St. Tr. 1037.

But, considering how the law of libel had been laid down by Lord Holt and other Judges deemed constitutional, I believe that Sir Philip is to be deemed forbearing in instituting prosecutions against the press, and mild in conducting them.ⁱ

While Attorney-General, he was not entirely absorbed in the routine of official and professional business. He contrived to have leisure, not only to attend to the literature of the day, but, when occasion required, to investigate thoroughly, by a reference to rare books and ancient records, questions respecting our judicial history. In consequence of some clashing of jurisdiction between Lord King as Chancellor, and Sir Joseph Jekyll as Master of the Rolls, he wrote and published "A Discourse of the Judicial Authority belonging to the Office of Master of the Rolls," which is full of recondite learning, and on which the declaratory act was passed, placing the jurisdiction of "His Honour" on its present footing.^k

His first appearance as Attorney-General in the House of Commons was in conducting the bill of pains and penalties against Bishop Atterbury, by which that learned and factious prelate was banished for life, and it was made high treason to correspond with him. There was no difficulty in producing a moral persuasion of the existence of the plot to bring in the Pretender on which it was founded, but no ingenuity could justify the departure from the rules of evidence established for the safety of the subject, or an attempt to punish, by a ministerial majority, where there must have been an acquittal before the regular tribunals of the country. The Attorney-General had to carry through similar bills against Plunket and Kelly, implicated in the conspiracy. In support of the last, he is said to have been particularly energetic, but no fragment of his speech is preserved.^m

ⁱ Lord Chesterfield thus speaks of him as a law officer of the Crown: "Though he was Solicitor and Attorney-General, he was by no means what is called a *prerogative lawyer*. He loved the constitution, and maintained the just prerogative of the Crown; but without stretching it to the oppression of the people. He was naturally humane, moderate, and decent; and when, by his employments, he was obliged to prosecute state criminals, he discharged that duty in a very different manner from most of his predecessors, who were too justly called the *blood-hounds of the Crown*."

^k 3 Geo. 2, c. 30; 3 Bl. Com. 450.

^m See 3 Parl. Hist. 54—293; 16 St. Tr. 323—693. Swift tried to revenge his friend Atterbury by ridiculing this plot in "Gulliver's Travels," published soon after:—"Another professor showed me a large paper of instructions for discovering plots and conspiracies against the government. He advised great statesmen to examine into the diet of all suspected persons, 'their time of eating, upon which side they lay, with what hand, &c.;" and then he describes a certain method "by an examination of the *ejecta*, of ascertaining whether the design of the traitor be to

In the year 1725, Sir Philip was placed in a very disagreeable predicament by the impeachment of his patron
A.D. 1725. —originating, as some thought, in the Chancellor's violent predilection for Sir Philip himself. He has been accused of heartlessness and ingratitude on this occasion, and of standing a silent and unconcerned spectator of the distress of the man to whom he owed all his advancement in life.^a But I think the charge is unjust, or greatly exaggerated. If, by resigning his office, he could have become the strenuous defender of his patron, with the remotest chance of saving him, it would have been his duty to have made the attempt. But the current ran so strong against the denounced "trafficker in judicial offices, and robber of widows and orphans," that to stem it was impossible,—and useless self-immolation could not be demanded from any one. The Commons were almost unanimous for the impeachment, although some thought there ought to have been a previous inquiry by a committee. When there appeared an opening for embarrassing the proceeding by a motion to recommit the articles of impeachment, Sir Philip Yorke strenuously, though ineffectually, supported it against Serjeant Pengelly, and Sir Clement Wearg, the Solicitor-General.

On the appointment of managers to conduct the prosecution at the bar of the House of Lords, the Attorney-General ought to have been of the number, but he begged to be excused on account of the private friendship subsisting between him and the late Lord Chancellor; and we are told that he had great "difficulty in obtaining his request."^o It is not easy to specify any other step he could have taken to show his sympathy. Yet I confess I should have been gratified to hear that he had tried to turn the tide of public opinion, by a pamphlet "On the Sale of the Office of Master in Chancery, proving that it has been at all times transferred for a valuable consideration," or that he had made one gallant speech in his place in the House of Commons, for the man who had such claims to public applause, and who had drawn down ill-will upon himself by befriending the friendless. Surely Sir Robert Walpole, who was not without generosity of sentiment as well as good

murder the King, or only to raise an insurrection, or to burn the metropolis."—*Voyage to Laputa*, ch. vi. Kelly having been confined thirteen years in the Tower, was allowed to make his escape. Atterbury, it is well known, died in exile; and when his body

came over for interment, the coffin was opened at the Custom House, "lest it should be made the medium of a treasonable correspondence, contrary to the act of parliament."

^a Cooksey, 73.

^o 8 St. Tr. 414—480.

nature (although he was anxious to rescue his government from the imputation of screening high delinquency), would not have discarded his Attorney-General for one solitary indiscretion. At all events, it would have much consoled me to know that Sir Philip visited Lord Macclesfield in the Tower, was in the habit of cheering his retreat at Derby, and showed a grateful solicitude to vindicate his memory. But I am afraid that he left the condemned Chancellor to his fate, like others whom "his former bounty fed,"—eager only for his own aggrandisement.

I must now pursue the prosperous career of the wary Sir Philip. Having, upon the introduction of Lord Macclesfield, made the acquaintance and gained the good graces of the Duke of Newcastle, on the fall of his first patron he devoted himself to that "place-loving nobleman," who, hardly gifted with common understanding, and not possessing the knowledge of geography and history now acquired at a parish school,—from the rotten borough system then in prime vigour, was in high office as a minister longer than ^{A.D. 1726.} Burleigh, and had much more power and patronage than that paragon of statesmen. Among other advantages which Yorke derived from this connection, he was always returned to parliament free of expense, although Willes, and other competitors at the bar, were involved in contests which made a serious inroad upon their professional gains, and kept them poor, while *he* was advancing to be a "millionaire." Lord Hardwicke's detractors allow that he never forgot these obligations. "The best thing that can be remembered of the Chancellor," says Horace Walpole, "is his fidelity to his patron; for, let the Duke of Newcastle betray whom he would, the Chancellor always stuck to him in his perfidy, and was only not false to the falsest of mankind."

On the vacancy occasioned by Lord Macclesfield's conviction, although Yorke had pretensions to the Great Seal, he ^{June 11,} was much better pleased to remain Attorney-General ^{1727.}—with the bar as a certain resource—than to accept a precarious office, the loss of which was likely soon to leave him without employment or profit,—considering that George I. was old and infirm, and that an entire change of ministry was anticipated at the accession of the Prince. When that event did take place, he was delighted to find himself, by the skilful management of Walpole, more secure than ever—in the enviable situation of Attorney-General to a powerful govern-

ment, with the certainty of succeeding to the highest offices in the law.^P

In the session of 1730, he was called into action by the combination between the Tories and discontented
A.D. 1730. Whigs, which began to annoy, without being formidable to, the minister. With the view of crippling the Austrians, with whom there were some differences pending, and who wished to negotiate a considerable loan in London, the Attorney-General brought in an Act to forbid the lending of money to any foreign power without the King's licence, and to compel all persons to answer a bill in Equity to discover if they were concerned in such transactions. This measure being strongly opposed by Pulteney, and by Sir Wm. Wyndham, Sir Philip Yorke ably urged all that could be said in its defence. He tried to support it on the principles of the common law, according to which the King has the prerogative to prevent his subjects from entering into the service of a foreign Prince by the writ of *ne exeat regno*, or by proclamation to recall them, —urging that “their money, the sinews of war, might be more useful and dangerous than their persons. The Dutch might have the advantage of being the lenders of the money if we were not, but the measure was not to be judged by mere commercial considerations of profit and loss, but was framed with a view to a question of peace and war, and to the balance of power in Europe: it was only a temporary restraint, and might be compared to an embargo, which interfered with trade more directly, yet when necessary for the public safety was not complained of. As to the clause compelling a discovery it was indispensable, as without it, from the facility of secretly entering into such transactions, the Act would be wholly

^P His position at this time may be estimated by the following letter of introduction, addressed to him from Tickell, the friend of Addison:

“Tho^o. Tickell, Esq. to S^r Philip Yorke, Attorney-General.

“Dublin Castle, Nov. 4, 1725.

“Sir,

“Mr. Broughton, whom my Lord Lieutenant has sent over with the Irish Money Bill and some private ones, has so often heard me boast of being known to you, that he has desired me to introduce him to you, by a Letter. He indeed thinks too highly of my interest in you, in imagining that my recommendation may incline you to give him the utmost de-

spatch in his business. But I will take upon me to say, that his conversation is so agreeable, that for your own sake you will endeavour to put a speedy end to the serious part of it, and fall into that, for which you have so nice a taste. I should not presume to take this liberty, if I did not honour you more for your humanity, than others can for your great talents; and if, upon that account, I was not with the truest respect,

“Your most humble and most

“obedient Servant,

“THO. TICKELL.

“To the honour. S^r Philip Yorke,

“his Majesty's Attorney-General.”

Bibl. Birch. Add. MS. 4325, p. 125.

nugatory.”⁹ It passed by a large majority; and Coxe says, “a sufficient justification of the measure was, that the want of money compelled the Court of Vienna to submit to terms of accommodation;”¹⁰ but the Dutch practice of selling ammunition to their enemies is probably more in accordance with true statesmanship as well as the principles of political economy.

The next time that Sir Philip Yorke’s name is mentioned as taking a part in the debates, is in the session of 1732, when, upon a great muster of opposition under the auspices of Bolingbroke, the minister was so hard run for speakers as to be obliged to put up the Attorney-General to defend the augmentation of the army. Thus called upon, he was not quite so *bellicose* as he is said to have been on a subsequent occasion when Walpole is represented to have hailed him as a military officer; but he contended that, with a view to peace, the proposed force was necessary. “It is certainly,” said he, “the interest of this nation to render itself as considerable as possible amongst our neighbours, for the greater opinion they have of our strength and power the less apt they will be to undertake any expeditions or invasions against us, and the more easy it will be for us to obtain from them any advantages or immunities which we may think necessary for improving the trade and increasing the riches of the kingdom. The factions and divisions which are springing up at home, encourage our enemies abroad, and render a commanding attitude on the part of the government more indispensable. His Majesty only asks that which is required for the public safety, and any apparent disagreement between him and his parliament will be the signal for internal commotion and foreign war.”¹¹ After the most furious debate which had been known since the reign of Queen Anne, the Minister had a majority of 241 to 171.

In the following year was brought forward the “Excise Scheme,” when Sir Philip Yorke is said to have delivered one of the best speeches in favour of that measure; but in print it is extremely vapid. The most valuable part of it probably was where he showed, from his professional knowledge and experience as Attorney-General, that the laws of *Excise* under which it was proposed to put the collection of the duties on wine and tobacco, were not more severe than the laws of the *Customs* from which they were to be

⁹ 8 Parl. Hist. 187.¹⁰ Coxe’s Walpole, vol. ii. p. 358.¹¹ 8 Parl. Hist. 893.

transferred. He denied that the measure encroached on the constitution, "unless frauds in the collection of the revenue by long usage had become a part of the constitution," and he maintained that "the only liberty which would be subverted was the liberty of smuggling."

A violent opponent of the measure had during the debate asserted that its object was to revive the worst practices of Empson and Dudley. So grossly ignorant of English history was the Prime Minister, that he had been obliged to ask Sir Philip Yorke, sitting by him on the Treasury bench, "*who Empson and Dudley were*;" and he was afraid to trust himself (lest he should commit some ludicrous blunder) to repel the charge. Sir Philip now took occasion to reprobate the conduct of the wicked tools of Henry VII., and drew a comparison between his own past conduct and that of his predecessor, Mr. Attorney-General Dudley, which drew forth cheers from all parts of the House.—We ought not to doubt that the speech deserved the high praise bestowed upon it, the report of it which we have being prepared by some one who probably (according to the usage of the time) had heard not a word of it, and who, at all events, was evidently ignorant of the principle and details of the bill.¹ Sir Philip had ample time to prepare, and he had strong motives to put forth all his strength; for now was the first occasion of his experiencing the danger of being turned out of office by a hostile majority.

He never again spoke in the House of Commons. Here he had now sat fifteen years, being heard respectfully on the rare occasions when he took part in the debate, but never having acquired much reputation as an orator. In addition to the prejudice then prevailing against him by reason of his profession, he was too didactic and logical for the understandings of the country gentlemen, and he did not sufficiently deal in personalities, and in clap-trap declamations, to suit himself to the somewhat mobbish taste of that assembly.

His elevation to the woolsack had been for some time anticipated from the age and growing infirmities of Lord King, whose immediate successor he was generally regarded. The secret history of the arrangements actually made on the resignation of Lord King, and the death of Lord Raymond, is not authentically known, and it would be vain to speculate farther upon them.²

The profession and the public were highly satisfied with

¹ 8 Parl. Hist. 1287.

² Ante, Ch. CXXVI.

the new Chancellor and the new Chief Justice. Talbot was considered of a more open and generous nature than his colleague; and all who knew him were pleased that he had recovered the precedence of which he had been unjustly deprived by Lord Macclesfield's partiality for another; while the learning, ability, and strict integrity which the world admitted in Sir Philip Yorke, though he was less remarkable for his amiable qualities, gave assurance that the duties of the important office of Lord Chief Justice of the King's Bench would be discharged in the most exemplary manner. He might not, himself, be perfectly contented with the allotment to him of the lower dignity, but this was no slight which he would have been justified in resenting; and, acquiescing with a good grace, he professed his determination to support the Government, and to back the new Lord Chancellor in the House of Lords to the utmost of his power. At the same time that he was made Chief Justice of England he was elevated to the peerage, by the title of Baron Hardwicke, of Hardwicke, in the county of Gloucester; and he was likewise sworn a member of the Privy Council. It has been said that he was now admitted into the cabinet; but this is certainly a mistake, although, on particular subjects, he was confidentially consulted by Walpole.*

He took his seat in the Court of King's Bench in Michaelmas Term, 1733, and continued to preside in that Court above three years. No case of very great importance, either A.D. 1733-1737. civil or criminal, came before him as a common-law Judge, but we know, as well by the general testimony of contemporaries as by the printed Reports of his decisions,^y that he uniformly displayed, in addition to the strictest impartiality, much acuteness of intellect and great depth of legal erudition. Following such men as Holt, Parker, and Raymond, he found the principles of the old common-law well defined, and they were still tolerably sufficient for the exigencies of society. He assisted a little in adapting them to the new commercial transactions and changed manners which were gradually springing up: but to his successor, Lord Mansfield, was reserved the glory of relieving the poverty of our feudal jurisprudence from the spoils of foreign codes. Although Lord Chief Justice Hardwicke showed high capacity while he presided in a common-law court, and did ample justice to the suitors, he did not make his name very distinguished by any

* See Biogr. Brit. "Hardwicke."

† See "Reports Temp. Hardwicke," by Lee.

considerable improvements in the system which he there administered. He subsequently exhibited greater powers when he had to expatiate in a new field.

The business of the Court of King's Bench now chiefly rested on his shoulders. Lee, his senior puisne, who afterwards succeeded him, was of some service from his knowledge of pleading; but Probyn, who came next, was a mere cipher; and Page, the junior, required to be kept in strict subjection, for he was ignorant, foolish, and presumptuous. In cases of importance, with a view to check the babbling of the puisnes, —after the arguments were finished, the Chief Justice insisted always that time should be taken to consider, and he afterwards delivered the decision in a written judgment, which he himself prepared. Thus he closed their mouths, unless they ventured to differ in opinion, which rarely happened.—So much for Lord Hardwicke as a common-law Judge.²

During his Chief Justiceship his political importance was greatly enhanced. Many had expected that he would succeed better as a debater in the Upper than he had done in the Lower House of Parliament, and this expectation was not disappointed. He now seemed to feel more at home, and, with increased confidence, his speaking rapidly improved. Not so graceful as Chesterfield, he was more argumentative and forcible; and after he had had a little experience in his new sphere, it may be truly said that, between the attainder of Bolingbroke and the appearance there of Lord Mansfield and Lord Chatham, the House of Peers presented no one who could attack or defend with more skill or success.

His first encounter was with Lord Chesterfield, who, smarting from his dismissal on account of his opposition to the Excise Scheme, made a furious attack upon the Government, when an address of thanks was moved in answer to a message from the King, proposing an augmentation of the forces, in order to be prepared for a threatened war. Indulging in the common-places about the danger to liberty from military vio-

² Horace Walpole says, that, while Chief Justice, "he had gained the reputation of humanity by some solemn speeches made on the circuit at the condemnation of wretches for low crimes;" but I know not to what the sarcasm refers, and I suspect that it is introduced to give point to the charge of inhumanity on the trial of the rebel Lords.—Lord Thurlow is represented as having thought Lord Hardwicke a better common-

law, than equity, Judge: "I have heard the late Lord Thurlow say, that he thought the Earl of Hardwicke was more able as Chief Justice of the King's Bench, than he was as Lord Chancellor; but I could never discover on what ground."—Nich. Recoll. ii. 119. This must have been with a view of lowering Lord Hardwicke in the latter capacity, rather than exalting him in the former.

lence, the "Wit among Lords" maintained that as a standing army in time of peace was contrary to law, it could only be legalised by an act of parliament, so that the proposed address would be nugatory. Lord Hardwicke immediately followed, and thus began :—

"As the noble Earl who has just sat down has based his objections to the motion so much on legal and constitutional grounds, perhaps, my Lords, I may be excused in now offering myself to your Lordships' notice, although I must confess that the marshalling of troops, and the sufficiency of military establishments, are not subjects with which I have ever been familiar. While the King by his prerogative may enlist soldiers when he pleases, I agree that a standing army cannot be maintained in time of peace without the authority of parliament, because of his own authority he could not punish them by martial law, nor could he raise funds for their support. But we have passed the 'Mutiny Bill,' and we shall pass the 'Appropriation Bill,' by which the army may be disciplined and paid,—and, with great submission to the noble Earl, no farther legislation will be necessary to gain the object recommended by the message from his Majesty. Under such checks, the maintenance of a sufficient force to preserve internal tranquillity, and to command the respect of foreign nations, while it is indispensable for the protection of our persons and our property, can raise no danger to liberty. Being summoned here to advise his Majesty *de arduis regni*, he now consults you whether the existing force is sufficient? If you are of opinion that it ought to be augmented, you will say so by the address which has been moved. According to the usage of parliament the Crown and the two Houses communicate by message and address; from the usage of parliament we know the law and the constitution,—and there is no pretence for the ingenious suggestion of the noble Earl, that on such an occasion you are to proceed by an act of parliament."

He then went into the general merits of the question, and from the state of Europe and our foreign relations showed the prudence as well as the legality of the proposed measure.^a

In the session of 1735 Lord Hardwicke is not mentioned as taking part in any debate except upon the bill respecting the withdrawing of troops from parliamentary elections,—when he tried to calm the fears that were entertained of the military overawing the electors, and to show how little necessity there was to provide new punishments for such offences.^b

The following year he rendered essential service to the public by supporting a bill to amend the mortmain acts,—

^a 9 Parl. Hist. 538.

^b Ibid. 886-910.

which, instead of being repealed (as some now wish), will I hope be extended to bequests of personal property,—for it is essentially necessary in all cases to guard death-bed from improper solicitations, by which superstition may be encouraged, and those for whom dying persons ought to provide may be left destitute.^c He next opposed and threw out a well-meant but impracticable bill for regulating the payment of tithes by Quakers, which seems to have excited very great interest at the time, but which, from the general commutation of tithes, is now unimportant.^d

The last speech he made while Chief Justice, was in a debate which took place a few days before the death of Lord Talbot, on the murder of Captain Porteous at Edinburgh, and the riots which had lately occurred in different parts of England. He now took occasion to refer to the explosion of gunpowder, and the dispersion of libels which had happened the preceding term in Westminster Hall. Between one and two in the afternoon, while all the courts were sitting,^e a loud report was heard, and the Hall was filled with smoke. This was found to be an ingenious device for dispersing a mass of libels on the government. Some of these being carried into the Court of King's Bench, and shown to the Chief Justice, he immediately made a comment upon their wickedness, ordered them to be laid before the Grand Jury, who were then sitting, and prevailed upon the Queen, acting as Regent, to offer a large reward for the discovery of the offender. The author of this "Gunpowder Plot" turned out to be a crack-brained, nonjuring parson, who had acted without any associates,—so that the affair was laughed at,—and it had been treated with some ridicule by the opposition peers. The indignant Chief thus expressed himself:—"The attempt which noble Lords opposite make the subject of their jests, was certainly one of the most audacious affronts ever offered to an established government, and was levelled directly at the illustrious family now upon the throne. I do not mean, my Lords, the powder or rockets then blown up, for I do not believe that the guilty contriver meant to destroy the Hall, or to injure any one in it; but I mean the scandalous and seditious libels spread about the Hall by the explosion, and afterwards dispersed over the whole of this vast metropolis. These libels not only

^c 9 Parl. Hist. 1119.

^d *Ibid.* 1218.

^e Hours had now greatly altered; and the Courts, instead of meeting at seven and break-

ing up at eleven, met at nine and sat till two.

For many years after, however, there were *post-prandian* sittings.

reflected most indecently on the proceedings of the two Houses of Parliament, but denied his Majesty's right to the crown, and asserted the Pretender to be our true and only lawful sovereign. If vigorous steps had not been taken to detect and punish the offender, the world would have believed that the established government was so feeble that it might be insulted with impunity, and this insult would soon have been followed up by an organised insurrection, and by foreign invasion." Having commented upon the death of Captain Porteous, which he denounced as "an atrocious murder, the authors of which must be brought to condign punishment," he described the formidable nature of the riots in different parts of England, and justified the suppression of them by the military. He strongly combated the notion that there was anything illegal in employing soldiers to preserve the public peace. "I am surprised, my Lords," said he, "to hear it said that if the King's troops should now and then, upon extraordinary occasions, be called to the assistance of the civil magistrate, we should on that account be supposed to live under a military government. I hope it will be allowed that our soldiers are our fellow-citizens. They do not cease to be so by putting on a red coat, and carrying a musket. Now, it is well known that magistrates have a power to call any subject of the King to their assistance, to preserve the peace, and to execute the process of the law. The subject who neglects such a call is liable to be indicted, and, being convicted, to be fined and imprisoned for his offence. Why, then, may not the civil magistrate call soldiers to his assistance, as well as other men? While the King's troops act under the directions of the magistrate, we are as much under civil government as if there were not a soldier in the island of Great Britain. The calling in of these armed citizens often saves the effusion of innocent blood, and preserves the dominion of the law."^f

On this day Lord Talbot, who took an active share in the debate, was in excellent health, and seemed likely for many years to fill the office of Chancellor, establishing a reputation as the greatest Equity Judge of the century in which he flourished.^g If these expectations had been realised, Lord Hardwicke would have attracted little comparative notice,

^f 9 Parl. Hist. 1294.

^g It appears from the Lords' Journals, that down to the 9th of Feb. 1737, Lord Tal-

bot was present in the House, and presided as Chancellor.

and, having gained no conspicuous place in history, would only have been recollected by lawyers, like Lord Raymond, as an eminent common-law judge. But he was destined to be nearly thirty years a cabinet minister,—to form cabinets himself,—and, a century after his death, to have a statue erected to his memory by the English nation as the greatest contributor to our Equity code.

On the day Lord Talbot died, the Great Seal was delivered by his executors into the hands of George II. at St. James's Palace. There never was any doubt as to his successor, for Lord Hardwicke was now regarded as decidedly the most useful man to be introduced into the cabinet and to preside on the woolsack as Chancellor,—and he himself, placing just confidence in the stability of the administration, did not hesitate to agree to a move which promised to gratify his love of fame, his love of power, and his love of money. But there being some difficulty with respect to salary and pension, and other accompanying arrangements requiring consideration, the Great Seal remained for a whole week in the personal custody of the King.^h

Meanwhile, as Parliament was sitting, and there was no Lord Chancellor or Lord Keeper, it was necessary to provide a Speaker for the House of Lords, and the Great Seal, while in the King's possession, was (somewhat irregularly) put to a commission authorising Lord Hardwicke to act in that capacity.ⁱ He accordingly did act for several days as Speaker without being Chancellor.^k During this interval, it is related that Walpole resisting some of Hardwicke's demands, said to him by way of threat,—“I must offer the Seals to Fazakerly.” “Fazakerly!” exclaimed Hardwicke, “impossible! he is

^h This is the last instance of such an occurrence. Since then no Chancellor has died in office; and the usual course has been, that the Great Seal has been surrendered up by the outgoing Chancellor at a Council, and, at the same Council, has been delivered to his successor.

ⁱ This, on principle, seems as objectionable as the act of Charles II. in sealing Lord Danby's pardon with his own hand. See ante, vol. iv. p. 260.

^k “Feb. 10.—The Lord Chancellor being absent, the Lords were informed by the Duke of Newcastle that his Majesty had been pleased to grant a commission under the Great Seal to Philip Lord Hardwicke, Lord Chief Justice of the Court of King's Bench, to

supply the room and place of Lord Chancellor in this House.”

“Feb. 11.—The Lord Hardwicke sat Speaker by virtue of his Majesty's commission.” On the 11th the House was adjourned to the 16th.

“Feb. 16.—The Lord President signified to the House that the Lord Chancellor being dead, his Majesty had been pleased to grant another commission under the Great Seal to the Lord Hardwicke to supply the room and place of the Lord Chancellor or Lord Keeper of the Great Seal in this House during his Majesty's pleasure.” This is the irregularly sealed commission. On the 21st Feb. Lord Hardwicke sat as Lord Chancellor.

certainly a Tory!—perhaps a Jacobite!” “It’s all very true,” coolly replied Sir Robert, taking out his watch, “but if by one o’clock you do not accept my offer, Fazakerly by two becomes Lord Keeper, and one of the stanchest Whigs in all England.” The bargain was immediately closed, and Lord Hardwicke was contented with the promise that the next Teller-ship should be bestowed upon his son.

Sir John Willes, the Attorney-General, being provided for by being made Chief Justice of the Common Pleas, and it being settled that Lee should be Chief Justice of the King’s Bench, and that Sir Dudley Ryder and Sir John Strange should be the new Attorney and Solicitor-General,—on the 21st of February the Great Seal was delivered to Lord HARDWICKE, with the title of Lord Chancellor. However, he continued Chief Justice of the King’s Bench till the commencement of Easter Term, and on the first day of that Term, after a grand procession to Westminster Hall, attended by Sir Robert Walpole and many of the nobility, having been sworn in and transacted business in the Court of Chancery, he went into the Court of King’s Bench, and there delivered a judgment in a case which had been previously argued,—so that he had the glory of presiding on the same day in the highest civil and the highest criminal Court in the Kingdom.^m

^m Memorandum—that on Monday, the 14th day of February, 1736-7, Charles Lord Talbot, Lord High Chancellor of Great Britain, departed this life; and, on the evening of the same day, the Great Seal was delivered by the Duke of Newcastle to his Majesty, who kept it in his custody till Monday, the 21st of the same month of February, during which time there was nothing sealed but a commission appointing Philip Lord Hardwicke Speaker of the House of Lords during pleasure; and, on the said 21st of February, his Majesty was graciously pleased to deliver the Great Seal to the aforesaid Philip Lord Hardwicke, with the title of Lord Chancellor, who was sworn at the

sama time in Council, and took his place accordingly; and his Lordship sat in Lincoln’s Inn Hall during the Seals after Hilary Term, but he was not sworn in Westminster Hall till the 27th day of April, 1737, being the first day of the then next Easter Term, when his Lordship took the oaths of allegiance and supremacy, and the oath of office, the Master of the Rolls holding the book, and the deputy clerk of the Crown giving the oaths. After which, the Attorney-General moved that the oath might be recorded, but his Lordship did not take the oath of abjuration till another day, in the King’s Bench.”—*Roll*, 1727—1760.

CHAPTER CXXXI.

CONTINUATION OF THE LIFE OF LORD HARDWICKE TILL THE DEATH OF
QUEEN CAROLINE.

I AM sorry to be obliged to begin my account of Lord Hard-
April 27, wicke, as Chancellor, by reprobating that conduct
1737. which his indiscriminate admirers have justified, and
which some moderate men have attempted to palliate.

I have related how Lord Chancellor Talbot, from his admiration of the genius of Thomson the poet, and from personal kindness for him, had rescued him from the penury and dependence, then the fate of men of letters, by appointing him "Secretary to the Briefs." This was an office in the Court of Chancery which, in strictness, was held only under the Chancellor making the appointment, but the holder of which was generally continued in it by the succeeding Chancellor. Of all the cases ever known, Thomson's is the one where it might have been expected that the usage of confirmation would have been most eagerly adhered to.ⁿ The author of *The Seasons* was not only a man of genius and most amiable in his private character, but he was warmly attached to the Whig party, and had essentially promoted its interests by his writings. He had received the office, on which he was entirely dependent, from the colleague and personal friend of the present Chancellor, as a reward for his public services, as well as for his attachment to young Talbot, with whom he had travelled, and to whose memory he had offered a touching tribute of applause.

I give the most mitigated account I can find of the affair—in the words of Dr. Johnson,—who disliked Thomson, as a Scotsman, as a Whig, and as the author of "*LIBERTY*," and was willing to cast blame in this affair upon him, rather than

ⁿ There are several such offices held under the Attorney-General. When I was first appointed to that office in 1834, I had the usual applications to be continued in them, which of course were granted. When I was

re-appointed in 1835, I intimated that such applications were unnecessary; and my successors, Sir Frederick Pollock, Sir William Follett, and Sir Frederick Thesiger, have behaved in the same spirit.

upon the Chancellor. After stating the poet's appointment to his office by Lord Talbot, he thus proceeds:—"Thomson now lived in ease and plenty, and seems for a while to have suspended his poetry; but he was soon called back to labour by the death of the Chancellor, for his place then became vacant; and though Lord Hardwicke delayed for some time to give it away, Thomson's bashfulness or pride, or some other motive, perhaps not more laudable, withheld him from soliciting; and the new Chancellor would not give him what he would not ask. He now relapsed to his former indigence; but the Prince of Wales was at that time struggling for popularity, and, by the influence of Mr. Lyttelton, professed himself the patron of wit; to him Thomson was introduced, and being gaily interrogated about the state of his affairs, said, 'that they were in a more poetical posture than formerly,' and had a pension allowed him of one hundred pounds a year."^o

We cannot without indignation think of a man in Lord Hardwicke's situation seeking to subject Thomson to the humiliation of asking a favour, when it might naturally have been expected that his continuance in the office of secretary would have been spontaneously and earnestly pressed upon him. Even Mr. Salkeld's "gratis clerk" had shown some degree of pride, and disliked carrying home cabbages from Covent Garden, and oysters from the fishmonger's! An attempt has been made to praise Lord Hardwicke as a patron of literary merit, because he afterwards obtained a pension from the public purse for Mallet as a reward for his pamphlet against Admiral Byng; but, says a contemporary, "let it be recollected that the same man, on his succeeding Talbot as Lord Chancellor, deprived Thomson, a poet and patriot of the first class, of the place of Secretary of Briefs, which had been given him by his predecessor, and was the poor poet's only subsistence and support."^p Although Lord Hardwicke always took care not only to have the law on his side, and was generally solicitous to have something plausible to say in his own defence, should his conduct be questioned,—it must be confessed that he was not only rather selfish, but that, from heartlessness, he even lost opportunities of doing acts which would have been considered generous, and which would have given him popularity—without depriving him of money, or of any family aggrandisement.

^o Dr. Johnson's Life of Thomson.

^p Cooksey, 36.

We are now to see him in his glory as an Equity Judge. Although he by no means distinguished himself in framing laws to be enacted by Parliament—viewed as a magistrate sitting on his tribunal to administer justice, I believe that his fame has not been exceeded by that of any man in ancient or modern times; and the long series of enlightened rules laid down by him having, from their wisdom, been recognised as binding on all who have succeeded him, he may be considered a great legislator. His decisions have been, and ever will continue to be, appealed to as fixing the limits, and establishing the principles, of that vast juridical system called EQUITY, which now, not only in this country and in our colonies, but over the whole extent of the United States of America, regulates property and personal rights more than the ancient COMMON LAW.

The student, animated by a generous ambition, will be eager to know whence this great excellence arose?—Like every thing else that is valuable—it was the result of earnest and persevering labour. A complete knowledge of the common-law was the foundation on which he built. This he had gained not only by reading but by circuit experience, by continuing frequently to plead causes in the King's Bench and Exchequer while he was Attorney-General, and by presiding above three years in a common-law court. Having been initiated in Chancery practice during his clerkship with Mr. Salkeld, he had read attentively every thing to be found in the books connected with equity, and he had actually been a regular practitioner in Chancery during the whole of the Chancellorships of Lord Macclesfield and Lord King. He now revived his recollection of that learning by again going over the whole of it as if it had been new to him; and he obtained MS. notes of such of Lord Talbot's decisions as were of any importance,—so that in all branches of professional information he was equal, and in many superior, to the most eminent counsel who were to plead before him. But that to which I mainly ascribe the brilliancy of the career on which he was entering, was the familiar knowledge he acquired of the Roman civil law. The taste for this study he is said to have contracted from the necessity of preparing himself first to argue as an advocate, and then to decide, as a judge, appeals to the House of Lords from the Court of Session in Scotland. In that country he found the Roman civil law regulating the enjoyment and succession of personal property,

A.D. 1737—
1756.

and even frequently alluded to by way of illustration in questions respecting entails. Like most English lawyers, in preparing for the bar, he had hardly paid the slightest attention to it. While Attorney-General he was retained in many Scotch appeals, and for the occasion he was obliged to dip into the Pandects and into the commentaries upon them; but although he had the discernment to discover the merit of these admirable compilations, it was not indispensably necessary for the discharge of his duty that he should examine them systematically, and his time was filled up with more urgent occupations. Now that he was to sit in the House of Lords as sole Judge to decide all appeals from Scotland, he saw the necessity of making himself a profound Scotch lawyer, and he found that this was impossible without being a good civilian. Therefore, having gone through Mackenzie, Bankton, and Stair,⁹ he regularly proceeded to the Corpus Juris Civilis with Vinnius, Voet, and other commentators, and his mind was thoroughly imbued with the truly equitable maxims of this noble jurisprudence. I delight in recording how his unrivalled eminence as an Equity Judge was achieved,—lest the aspiring but careless student should think it could be reached by natural genius and occasional exertion:—

— “Pater ipse colendi
Haud facilem esse viam voluit
. . . curis acuens mortalia corda.”

Lord Hardwicke, having bestowed unremitting pains in qualifying himself for the discharge of his high duties,—when occupying the judgment-seat exhibited a pattern of all judicial excellence. Spotless purity—not only an abstinence from bribery and corruption,⁷ but freedom from undue influence, and a hearty desire to do justice—may at that time, and ever

⁹ He took special delight in “*Dirleton’s Doubts*,” saying, “his doubts are more valuable than other people’s certainties.”

⁷ One attempt was made to bribe Lord Hardwicke. Thomas Martin, mayor of Yarmouth, being threatened with a bill in Chancery, wrote a letter to the Lord Chancellor bespeaking his favour, and enclosing a bank note for 20*l.*, of which his acceptance was requested “for his trouble in reading the papers.” An order being made upon his worship, to show cause why he should not be committed to the Fleet for his contempt, he swore “that the said letter was wrote,

and the said bank note enclosed therein by him, through ignorance, and not from any ill-intent whatsoever.” Upon his paying all expenses, and consenting that the 20*l.* should be distributed among the poor prisoners in the Fleet, the order was discharged.—27th April, 1748. *Sanders’s Orders*, ii. 628.—Lord Sidmouth prosecuted in the King’s Bench, for an offer to bribe him, a simpleton who, when the criminal information came down, joyfully showed it to his family and his friends, believing that it was the patent for the office he wished to purchase.

afterwards, be considered as belonging to all English Judges. But I must specially mention of this Chancellor, that he was not only a patient but an eager listener, conscious that he could best learn the facts of the case from those who had been studying it, and that, notwithstanding his own great stores of professional learning, he might be instructed by a junior counsel, who for days and nights had been ransacking all that could be found scattered in the books on a particular topic, actuated by a desire to serve his client, and to enhance his own reputation. While the hearing was going on, the cause had the Chancellor's undivided and devoted attention. Not only was he undistracted by the frivolous engagements of common life, but during a political crisis, when there were to be important changes in the cabinet, when his own continuance in office was in peril, he was, as usual, calm and collected; and he seemed to think of nothing but whether the injunction should be continued or dissolved, and whether the bill should be dismissed with, or without, costs? Some said that he was at times acting a part, and that he was considering how he should conduct a political intrigue, or how he should answer an opponent in debate,—when he pretended to be listening to a thrice-told tale; but so much is certain, that no argument ever escaped him, and that, in taking notes, it was observed that “his pen always moved at the right time.”^a He used to declare, that “he did not take his place upon the bench to write letters to his correspondents, or to read the newspaper.”^b His voluminous note books are still extant, containing, at great length, the material proceedings of the Court during each day,—the statement of the case, the evidence, and the arguments of counsel,—with the answers to be given to them enclosed within brackets. When he took time to consider, he generally wrote his judgments either in his note books or on separate papers, to which his note books refer. Unlike some Judges, deservedly of high reputation, whose impression on hearing a case stated was never known to vary, he appears not unfrequently, upon further argument

^a *i. e.* I presume, when anything was said worthy of being noted.

^b I must say, that this last practice has occasionally been carried to an indecorous and inconvenient length. A glance at a newspaper may be permitted to a Judge during a tedious reply, as a hint to the counsel against prolixity; and such was the habit of Lord Mansfield, who was ever completely master

of all the facts, and all the law, of every case that came before him. But I have seen a Judge indulge his curiosity by turning over the unwieldy pages of the “Times,” while a counsel has been opening, in a condensed manner, a very important and complicated case—requiring the closest attention of a Judge, however quick, learned, and discriminating.

and maturer consideration, finally to have arrived at an opinion quite different from that which he had at first entertained, and even expressed; and he certainly well merited the character he gave of himself in this respect, when he said, "These are the reasons which incline me to alter my opinion, and I am not ashamed of doing it, for I always thought it a much greater reproach to a Judge to continue in his error than to retract it."^u He never interrupted, to show his quickness, by guessing at facts, or anticipating authorities which he expected to be cited. Not ignorant that the Chancellor can always convulse the bar with "counterfeited glee," he abstained from ill-timed jocularity, and he did not level sarcasms at those who, he knew, could not retort upon him. He had a complete control over his temper, and, from the uniform urbanity and decorum of his own demeanour, he repressed the petulance and angry passions of those who practised before him, insomuch that it was remarked, that not only was he never himself led into any unbecoming altercation, but that he taught the rival leaders to behave to each other with candour and courtesy. It is likewise stated, to his credit, that, although in society he was supposed rather to be supercilious, presuming too much upon his acquired dignity, he was in Court uniformly affable to the solicitors, remembering that they were the class to which he expected himself to have belonged, and to whose kindness he had been greatly indebted for his advancement.

The arguments being finished, if the case seemed clear, and did not involve any new question, he immediately disposed of it; but wherever his decision was likely to be quoted as regulating "the doctrine of the Court," he took time for consideration, and having perused his notes and referred to the authorities cited, he came with a prepared and often a written judgment. On such occasions he was likened to "the personification of wisdom distributing justice and delivering instruction."

These performances certainly do come up to every idea we can form of judicial excellence. They are entirely free from any parade of learning, or the affectation of pointed or antithetical sentences. Two objects seem entirely to absorb the attention of the Judge: 1. Properly to adjust the disputed rights of the parties. 2. To establish a rule by which similar questions may be solved in future. He was anxious to bring

^u 2 Atk. 438.

every case within the scope of some general principle which he enunciated and defined, guarding it with its proper conditions and exceptions. He did not decide every case upon its "*specialties*" or peculiar circumstances,—leaving the profession entirely at a loss with respect to the general principle which had been discussed,—nor did he wrest the peculiar circumstances of the case to make it conform to his canon. Having lucidly stated the allegations on each side, and accurately enumerated the facts which were established, he propounded the question or questions which they raised, and on which his decree must depend. Then recollecting the observation of Lord Bacon, that "his equity was to be taken from his books, and not from his brains," and that "the Chancery was ordained to supply the law, not to subvert the law," he reviewed all the authorities upon the subject, and, if none of them were expressly in point, he tried to educe from them by analogy a rule which harmonised with them in principle, and which might equitably govern all cases similarly circumstanced. He never resorted, however, to forced interpretations or fanciful analogies, and he was always anxious to support his opinion by legal precedents—in the selection and application of which he was particularly happy. Nor was he betrayed into the seductive and dangerous practice of laying down rules in loose and sweeping terms, which might carry their authority far beyond the point necessarily to be decided, and mischievously include cases which were not then in contemplation. He, therefore, expressed himself in the most guarded terms, and mentioned distinctly the qualifications with which he meant his opinion to be received. There was no enthusiasm in his nature, but he really had a passion (such as I have seen exhibited by the cool-headed Tenterden) to do justice, and to advance the science over which he presided;—most unlike the reckless judge who is only anxious to escape open censure—indifferent as to the rights of parties, the improvement of jurisprudence, and his own permanent fame.

Lord Hardwicke's judgments are deservedly praised for luminous method in the arrangement of the topics, and elegant perspicuity of language in the discussion of them. But I will venture to point out what I consider their peculiar excellence—the fair and manly manner in which the arguments are stated which are to be overruled. I have known Judges who, in important cases, have entirely omitted to notice the most powerful objections to their view of the case

—not, probably, from any disingenuous motive, but from not understanding them. Lord Hardwicke always fully sees and appreciates the arguments against the side which he adopts—restates them with additional force and clearness, and refutes them so satisfactorily as almost to bring conviction to the minds of those who had invented them, and had for a time been the dupes of their own subtlety.

He was particularly praised for the manner in which he dealt with cases coming before him on exceptions to the Masters' Report, and on appeal from the Master of the Rolls. He showed no propensity whatever to reverse what had been decided, but he freely and boldly considered every question submitted to him as the superior Judge. Not shrinking from trouble or responsibility, he formed his own opinion upon it, and resolutely corrected what appeared to him to be amiss. There were four Masters of the Rolls successively under him, and he will be found to treat them all with great respect, but with great freedom.

By these means Lord Hardwicke, in a few years, raised a reputation which no one presiding in the Court of Chancery has ever enjoyed, and which was not exceeded by that of the great Lord Mansfield as a common-law Judge. The wisdom of his decrees was the theme of universal eulogy. "*Etiam quos contra statuit, æquos et placidos dimisit.*" Such confidence was there in his administration of justice, that the business of the Court was greatly increased, and it is said that more bills were filed under him than at any subsequent time, although the property administered by the Court of Chancery has since been increased sevenfold. There were still rare complaints of delays in Chancery, from the intricate nature of the inquiries, the death of parties, and other inevitable obstructions to the final winding up of a suit; but by great exertion arrears were kept down, "and this is fondly looked back upon as the golden age of Equity."^x

I hardly think it worth while to mention the statement which is so much harped upon by the common herd of Lord Hardwicke's petty biographers, that only three of his decrees were appealed against, and that in each of these cases the decree was affirmed. The truth is, that during the whole of his time, through management which I shall afterwards have

^x Lord Hardwicke,—abstaining from drinking his bottle after dinner—a sacrifice too great for his successor,—regularly, in addition to his morning sitting, sat twice a week in the afternoon or evening.

to consider, he was the sole law Lord, and substantially the Chancery was a court of the last resort.

But I should do injustice to his memory if I were not to praise what hitherto has attracted little notice—the admirable manner in which he disposed of the judicial business in the House of Lords. His demeanour on the woolsack appears to have been a model for all Chancellors. While he was affable and courteous, he studied to preserve order. He himself attended to the debates,⁷ and his example and influence generated a habit of attention and decorum among others. Though, in strictness, without more authority than any other Peer, all sides recognised him as *moderator*, and, by his quiet and discreet exertions, unseemly altercations and excessive familiarity were effectually discouraged. In his time a meeting of the Peers had somewhat the air of a deliberative assembly,—instead of being a lounging place to hear the news of the day before dressing for dinner.

Although there were only three appeals from Philip to Philip, in all of which the decrees were affirmed without difficulty, there were a good many writs of error from the common law courts, which, with the assistance of the Judges, he disposed of in a very masterly manner; and there were a great many appeals from Scotland, which, without assistance, he decided to the universal satisfaction of that country, where he was much honoured, till he abolished heritable jurisdictions, and compelled the inhabitants to wear breeches.

I am now desirous of laying before the reader specimens of Lord Hardwicke's performances as a civil Judge; and there are ample materials for doing so: for, besides his own note books and his judgments in his own handwriting, there are several MS. collections of his decisions, by very able hands, during the whole time he sat in Chancery,⁸ and the principal cases before him have been digested and published by Atkyns, Vesey, sen., and other reporters.⁹ Although these "Vates

⁷ There are extant copious notes taken by him of debates which, with those of Archbishop Secker, have filled up *lacunæ* in the Parliamentary History.

⁸ Of one of these, by the great kindness of my friend, Mr. Charles Purton Cooper, I am now in possession. It consists of four quarto volumes, beautifully written by Mr. Jodderell, an eminent Chancery barrister. He often does more justice to Lord Hardwicke than Atkyns or Vesey, sen.; and I am told

that, upon a reference to the register's book, he is found to be more accurate.

⁹ It seems strange to us, who see reports of all judgments in print almost as soon as they are delivered, that none of Lord Hardwicke's were printed till after he had resigned the Great Seal. The newspapers and magazines of that day thought as little of the Court of Chancery as of the Court of Pelkin. The first volume of Atkyns did not come out till 1757; nor the second till 1767. The first edition of

sacri” prevent his name from perishing,—from their condensation, they do not render justice to his copious illustrations, his lucid arrangement, and his elegance of diction. Yet they give us the pith and substance of his discourses in pronouncing his decrees, and they afford an exquisite treat to the scientific reader. From these stores I am rather embarrassed with my riches, and,—instead of writing a volume to give a sketch of Lord Hardwicke’s new doctrines, with the restrictions and expansions of what had been before laid down,—being confined to the selection of a few detached points decided by him, I am much afraid of being thought to resemble the Σχολαστικος in Hierocles, who, to prove the fine proportions of a building, produced a brick which he had taken from it. The Equity lawyer who feels the little justice I do to the object of his adoration, will best appreciate the difficulty of my task.

Lord Hardwicke established the rule that persons, though not Christians, if they believe in a divinity, may be sworn according to the ceremonies of their religion, and that Dec. 1739. the evidence given by them so sworn is admissible in courts of justice, as if, being Christians, they had been sworn upon the Evangelists. This subject first came before him in *Ramkissenseat v. Barker*, where, in a suit for an account against the representatives of an East India Governor, the plea being overruled that the plaintiff was an alien infidel, a cross bill was filed, and an objection being made that he could only be sworn in the usual form, a motion was made that the words in the commission, “on the holy Evangelists,” should be omitted, and that the commissioners should be directed to administer an oath to him in the manner most binding on his conscience:—

Lord Chancellor. “I have often wondered, as the dominions of Great Britain are so extensive, that there has never been any rule or method in cases of this sort. All persons who believe a God are capable of an oath; and what is universally understood by an oath is, that the person who takes it imprecates the vengeance of God upon him if the oath he takes is false. It was upon this principle that the Judges were inclined to admit the Jews, who believed a God according to our notion of a God, to swear upon the Old Testament; and Lord Hale very justly

Vesey, sen., was published in 1771.

At that time MS. notes were much quoted; and counsel depended on recollection,—which had this advantage, that it always made the

case recollected, and the case at bar *on all fours*

There are decisions of Lord Hardwicke to be found in Strange, Ambler, Barnardiston, Ridgeway, and West, published subsequently.

observes, 'it is a wise rule in the kingdom of Spain, that a heathen and idolater should be sworn upon what he thinks is the most sacred part of his religion.' In order to remove the difficulties in this case, I shall direct that the words, 'on the holy Evangelists,' be left out.—The next consideration is, what words must be inserted in their room? On the part of the plaintiff in the cross bill, it is desired that I should appoint a solemn form for the oath: I think this very improper, because I may possibly direct a form that is contrary to the notions of religion entertained by the Gentoo people. I will, therefore, direct that the commissioners may administer such oath in the most solemn manner, as in their discretion shall seem meet; and if the person, upon the usual oath being explained to him, shall consent to take it, and the commissioners approve of administering it (for he may perhaps be a Christian convert), the difficulty is removed; or, if they should think proper to administer another oath, that then they shall certify to the Court what was done by them,—and afterwards will come the proper time to controvert the validity of such an oath, and to take the opinions of the Judges upon it, if the Court should have any doubt." ^b

The point was afterwards finally settled in the great case of *Omychund v. Barker*, where a similar commission to examine witnesses having issued, the Commissioners certified "that they had sworn the witnesses examined under it in the presence of a Bramin or priest of the Gentoo religion, and that each witness touched the hand of the Bramin,—this being the most solemn form in which oaths are administered to witnesses professing the Gentoo religion." Objection was made that the depositions so taken could not be read in evidence; and, on account of the magnitude of the question, the Lord Chancellor called in the assistance of the three chiefs of the common law courts.—After very long, learned, and ingenious arguments, which may be perused with pleasure, they concurred in the opinion that the depositions were admissible:—

Lord Chancellor. "As this is a case not only of great expense, but of great consequence, it will be expected that I should not decide without giving my reasons for the decision I am to pronounce. It is certified to us that these witnesses believe in the being of a God, and in his providence; and we know that they appealed to his favour or vengeance in the manner in which they considered the most solemn. The first author I shall mention is Bishop Sanderson, 'De Jurisjuramenti Obligatione.' 'Juramentum,' says he, 'est affirmatio religiosa.' All that is necessary to an oath is an appeal to the Supreme Being, as thinking him the rewarder of truth and avenger of falsehood. This is not con-

tradicted by any writer that I know of but Lord Coke, who has taken upon him to insert the word 'Christian,' and he alone has grafted this word into an oath. As to other writers, they are all concurring (vid. Puff. lib. 4, c. 2, s. 4). Dr. Tillotson, in his sermon upon the lawfulness of oaths, taking a text which applies to all nations and all men, 'an oath for confirmation is to them an end of all strife' (Heb. vi. 16), says, 'the necessity of religion to the support of human society, in nothing appears more evidently than in this, that the obligation of an oath, which is so necessary for the maintenance of peace and justice among men, depends wholly upon the sense and belief of a Deity.' The next thing I shall notice is the form of the oath. It is laid down by all writers that the outward act is not essential to the oath. Sander-son is of that opinion, and so is Tillotson in the same sermon. 'As for the ceremonies in use among us in the taking of oaths, they are not found in Scripture, for this was always matter of liberty; and several nations have used several rites and ceremonies in their oaths.' *Secondly*, whether, upon special circumstances, such evidence may be admitted according to the law of England? The Judges and sages of the law have laid it down that there is but one general rule of evidence, '*The best the nature of the case will admit.*' The first ground Judges have gone upon, in departing from strict rules, is an absolute necessity; then a presumed necessity. Writings subscribed by witnesses are to be proved by those witnesses, but, if they are all dead, the proof of one of their hands is sufficient. Where the original is lost, a copy may be admitted; if there be no copy, then the proof by witnesses who have read the deed, although the law abhors the memory of man for evidence of that which is written. Persons of the Gentoo religion must be admitted in courts of justice in their own country to prove facts and transactions within their own knowledge. One of the parties changing his domicil, and suing here, can he deprive his opponent of evidence which would have been admissible had he sued in the country where the cause of action arose? Suppose a heathen should bring an action at common law, and the defendant should file a bill for a discovery, will any body say that the plaintiff at law may not be admitted to put in an answer according to his own form of an oath? otherwise the injunction for not putting in the answer would be perpetual, and would be a manifest denial of justice. This is the view of the subject taken by Lord Stair, Puffendorf, and other jurists. It has been the wisdom of all nations to administer such oaths as are agreeable to the religious notions of the person taking them. This course does not in the slightest degree affect the conscience of the persons administering the oath, and is no adoption by them of the religion conformed to by one of its votaries. Concurring in opinion with my Lords the Judges that these depositions are admissible, I do order that the objection to them be overruled, and that they be now read as evidence."^c

Lord Hardwicke settled some important questions respecting

^c 1 Atk. 21—50; Phillpotts on Evidence, 9.

literary property. The infamous Edmund Curle had printed a volume of private letters to and from Pope, who immediately applied for an injunction. There had been hitherto no instance of a Court of Equity interfering under such circumstances, and the defendant's counsel argued that Mr. Pope had parted with all property in his own letters which he had sent to his correspondents; that he never had acquired any property in those which he had received; that there could be no property in the letters the defendant had printed, as they were not written for publication, and the statute of Anne for protecting copyright did not extend to them:—

Lord Chancellor. “As to the first objection, that where a man writes a letter, it is in the nature of a gift to the receiver, I am of opinion that the receiver only acquires a qualified interest in it. The paper on which it is written may belong to him, but the composition does not become vested in him as property, and he cannot publish it against the consent of the writer. Then, as to the objection that the statute does not apply to these letters, because ‘they are on familiar subjects, containing little more than inquiries after the health of friends, and not deserving the name of a learned work,’ I am of opinion that we cannot inquire into their nature or merits, and that the bookseller who has published them cannot avail himself of their frivolity if they were frivolous. But it is certain that no works have done more service to mankind than those which have appeared in this shape upon familiar subjects, and which, perhaps, were never intended to be published. This it is which renders them so valuable; for I must confess, for my own part, that letters which are very elaborately written, and originally intended for the press, are generally the most insignificant, and very little worth any person's reading. However, as for the letters in this volume written to Mr. Pope, I think that *he* cannot be heard to complain. They may possibly be published with the authority of the writers of them, and from copies taken before they were sent to him.”

The injunction was granted as to the one set of letters, and refused as to the other.^d

This decision seems very reasonable, but I must own, that I much question another rule he laid down with respect to literary property, although it has not yet been upset. The question arose whether, within the period for which copyright is secured to the author, an *Abridgment* of the work may be published without his consent?—

Lord Chancellor. “When books are only colourably shortened, the statute is evaded, and the law will give redress. But this must not be

^d 2 Atk. 342.

carried so far as to restrain persons from making a real and fair abridgment. An abridgment may, with great propriety, be called a new book. Not only are the paper and printing the abridger's, but in his task he may show invention, learning, and judgment. In many cases, abridgments are extremely useful, though sometimes they are prejudicial, by curtailing and mistaking the sense of the author."*

Before the passing of the Marriage Act, Lord Hardwicke had much trouble with his female wards, for their marriage without his consent was valid, and he could only April 6,
1741. punish those concerned in contriving it. Mr. Charles, a clergyman, who married Miss Sophia More, a ward of Chancery, without leave, to John Peck, and others who were present when she was married, appeared to answer the contempt of the Court. —*Lord Chancellor*. "These are mischiefs which want the correction and reformation of the legislature. John Ubank must, in the first place, stand committed, who assisted in conducting Miss More out of her guardian's house, and gave her away at the wedding. The giving away a woman as her father, though not essential, is a custom or ceremony which clergymen always require." Having dealt with others upon the consideration whether they were concerned in the marriage, knowing the infant to be a ward of Court, he comes to Mr. Charles. "Next comes the priest. It is surprising that the canons of the Church, with respect to marriage, are so little regarded by the clergy; but for a violation of them I have no right to pronounce sentence, and Mr. Charles does not seem to me to have been at all concerned in the contrivance or design of doing this wrongful act: therefore he is not guilty of a contempt of the Court; but I would recommend him to be more cautious for the future."†

On another occasion he severely punished persons concerned in clandestinely marrying a girl of fifteen with a large fortune to the son of a nobleman's steward, who was under twenty, although they were ignorant of her being a ward of Court:—

Lord Chancellor. "Lord Ossulston, by his affidavit, admits, that at the request of Pearson he procured Barry, the parson, to celebrate this marriage, and he denies knowledge of any orders of the Court. It is positively sworn by the petitioner that the match was made by the con-

* *Gyles v. Wilcock*, 2 Atk. 142; and see *Lofft*, 775; 1 Bro. C. C. 451. I confess I do not understand why an abridgment, tending to injure the reputation and to lessen the

profits of the author, should not be considered an invasion of his property.

† 2 Atk. 157.

trivance of Pearson with Lord Ossulston ; that Lord Ossulston went to London and fetched the parson from the Fleet for a fee of one hundred guineas, and that Lord Ossulston being present at the marriage gave away the lady as a father, in a room at Up Park. Barry, the parson, having been committed by a former order, let Pearson, Mary Tench the maid servant, and Lord Ossulston be now committed to the Fleet for their contempt.”^g

One of the nicest points which ever came before Lord Hardwicke, was how a widow is affected by her husband in his lifetime having pledged her paraphernalia. Lord Londonderry had given Lady Londonderry a diamond necklace, and afterwards pledged it as a collateral security for 1000*l.*, with a power to sell it for 1500*l.* After his death the question arose whether the necklace ought not to be redeemed out of his personal estate for her benefit :—

Lord Chancellor. “The necklace is not to be considered as given for the separate use of the wife. I have admitted that a husband may make such a gift, but where he expressly gives jewels to a wife to be worn as ornaments of her person, they are to be considered only as *paraphernalia* ; and it would be of bad consequence to consider them otherwise, for if they were a gift to her separate use, she might dispose of them absolutely in his lifetime, which would be contrary to his intention. But in this case it will be the same to Lady Londonderry, if she can prove that she wore the necklace as an ornament of her person on birthdays and other public occasions,—which it has been proved she did. The question arises ‘whether there was an alienation of it by the husband in his lifetime, the husband having a right to alienate his wife’s paraphernalia in his lifetime, although he cannot deprive her of them by his will?’ Here there was a pledge with a power of sale, and at the husband’s death the necklace remained unredeemed and unsold. I am of opinion that this was not an alienation, and that his personal estate being sufficient to redeem the pledge, and pay all his debts, she shall be entitled to have it redeemed and delivered to her.”^h

This decision in favour of the female sex was supposed to be overbalanced by the alleged harshness of another, whereby a lady was compelled, in answer to a bill of discovery, to disclose a fact which subjected her to a forfeiture. A husband left the whole of his personal estate to his wife, “but if she married again, his brother to have a moiety of it.” The brother filed a bill against her for an account of the moiety, and for a discovery whether she was married again. She

^g *Edes v. Brenton*, West, 348. The Marriage Act was not passed till 1753.

^h 3 Atk. 393.

demurred to the discovery, relying on the case of *Chancy v. Tahourdin*, 1 Atk. 392 :—

Lord Chancellor. “That was a forfeiture of the whole portion, the testator being a father bound by nature to provide for a child. This is to be considered a conditional limitation to the wife if she remained single, and she must show whether the condition has been performed. She must answer, whatever may be the consequence.”ⁱ

He held, with much reluctance, that a bond given for payment of an annuity to a young woman, who, living in the family of a *married man*, had been seduced by him, was void :—

Lord Chancellor. “This case is new. The Court has sustained such a bond as *premium pudicitie*, where a young woman previously of good character has been provided for by her seducer,—their cohabitation ceasing. But I know no instance occurring where the obligor was a married man. This circumstance differs the case from those in which the Court has gone great lengths to make provision for such unfortunate persons. When a young woman appearing to be modest submits to improper solicitation, she is much to blame; but if the man be single, she knows the crime is not so aggravating as adultery; she may be inclined to suppose that he will be induced to marry her; there may be such a promise which cannot be legally proved; where both parties are single, there is room for presuming such a promise: the subsequent marriage takes off from the enormity of the offence, and in most countries of Europe even legitimates the issue. At all events, under these circumstances, people are aware that they are doing that which is not of such bad consequence in families. Whereas when a man takes and keeps a mistress under the nose of his wife, who thereupon leaves him, that is such a crime as stares every one in the face. The unhappy plaintiff knew too well the situation of her seducer, and if the real consideration for the bond had been stated on the face of it, it would have been void at law. In *Lady Annandale v. Harris*, Eq. Cases Abridged, 87, the commerce was wholly after the death of the first wife, and before the second marriage. This Court ought not to sanction what would be of bad example in the case of married persons, and encourage people to enter into agreements of this kind. Had she not known that he was married, as if the wife had been at a distance, or any imposition had been practised upon her, she might be entitled to relief. But she entered into the family, the husband and wife living together, and she caused a separation between them. The Court must endeavour to preserve virtue in families. Let the bill be dismissed,—but without costs.”^k

In the great case of the *Earl of Derby v. Duke of Athol*, he

ⁱ 3 Atk. 260.

^k *Priest v. Parrot*, 2 Ves. sen. 160.

decided that the laws of England do not extend to the Isle of Man :—

Lord Chancellor. “This case concerns a very noble and ancient family, and perhaps the most honourable inheritance any subject of this kingdom can enjoy. Many things are admitted on both sides : that Man is not part of the realm of England ; parcel only of the King’s crown of England ; a distinct dominion now under the King’s grants, and so for a long time past granted ; held as a feudatory dominion by *Liege Homage* of the Kings of England. I am of opinion that the laws of England as such do not extend to it ; neither our common law, nor statute law, unless it be expressly named or clearly included in some general legislative enactment. Though the Isle of Man be granted under the Great Seal of England, English law does not necessarily prevail in it. The Great Seal of England operates in all territories subject to the crown of England, whatever their laws may be. The King can grant, under the Great Seal of England, lands in Ireland, in the plantations, and in Guernsey and Jersey, because they are all parts of his crown.”

He then enters at great length into the history of the Isle of Man, showing in a masterly manner how it was to be governed as a separate dominion, subject to the prerogative of the King, and the supreme power of parliament.^m

There are no regular reports of the decisions in the House of Lords on appeals from the Court of Session till the time of Lord Chancellor Eldon. I am enabled, however, to give a statement of the most important case which came before Lord Hardwicke from Scotland, that of “Gordon of Park,” respecting the effect of attainder for treason on the descent of entailed estates. Sir James Gordon had entailed the Barony of Park, with prohibitory, irritant, and resolute clauses, on his eldest son William and his heirs male ;—whom failing, on his second son James and his heirs male, &c. After the death of the entailer, his eldest son, Sir William Gordon, engaged in the rebellion of 1745, and escaped to France, but was attainted. The question then arose as to who was entitled to his estate, —the Crown, or his younger brother, Captain James Gordon, who had remained loyal to King George ? An act of the Scotch Parliament, passed in 1690,ⁿ had provided that attainder for treason should not affect entailed estates ; but the United Parliament had introduced the English law of treason into Scotland, and enacted that “all persons convicted or attainted of high treason in Scotland should be subject and liable to the same corruption of blood, pains, penalties, and forfeitures, as

^m 2 Ves. sen. 337—357.

ⁿ C. 33.

persons convicted or attainted of high treason in England."° The Scotch Judges unanimously held that Sir William Gordon having forfeited the estate, it should immediately, as if he had died without issue male, descend to his brother James. The Lord Advocate having appealed against this decision, Lord Hardwicke called in the assistance of the English Judges, to whom he submitted certain questions, moulding the terms of the Scottish tenures as nearly as he could to those of England. He then, in accordance with their opinion, advised a reversal, saying,—

"I am sorry to be obliged to differ from the unanimous decree of the Supreme Court in Scotland, so much entitled to our respect. But the learned senators of the College of Justice are not very familiar with our law of treason, which has been introduced into their country, and they may unconsciously be inclined to adhere to the law which they had to administer before the Union. I do not see how the attainder of the heir of tailzie in possession can be considered as equivalent to his death without issue. He is not a mere tenant for life; he is the 'far:' the fee is in him, and our doctrine of remainders and reversions does not strictly apply;—so that, on a rigid construction of the 7 Anne, c. 21, on his attainder, there is room for contending that there ought to be an absolute forfeiture to the Crown of the entailed lands, to the entire extinction of the rights of all substitutes in the entail. But the milder interpretation of the Act will be to hold that the heir of tailzie has in him, and forfeits by his attainder, the same interest as tenant in tail in England—so that upon his attainder the Crown takes the lands during his lifetime and while there exists issue who would take by descent through him,—leaving other substitutes in the entail unaffected. I would, therefore, advise your Lordships, reversing the interlocutor appealed against, to declare that the Barony of Park is forfeited to the Crown during the life of Sir William Gordon, and during the existence of issue male who through him would be inheritable thereto—but that upon his death and the extinction of such issue, the remainder in favour of the respondent Captain James Gordon will take effect."P

But I am sadly afraid that, however interesting such matters are to the juriconsult, they are very tiresome to the bulk of

° 7 Anne, c. 21.

P Morr. Dec. 1728; Kames's *Elucidations*, 371; *Saunderford on Entails*, 177. Lord Kames highly disapproved of this decision, saying, "A remainder with respect to forfeiture is introduced into our law hitherto unknown in Scotland;" and Lord Hardwicke had a sharp correspondence with him upon the subject. But I know not that a better rule could have been laid down.—A curious question subsequently arose as to the application of it. Sir

William Gordon, after his attainder, married, and had two sons born abroad. On his death, Captain James again claimed the estate, on the ground that as these children were aliens, and could not inherit, the substitution in his favour had come into effect. The Court of Session decided against him; but he succeeded on an appeal to the House of Lords; and, in the lifetime of his nephews, became "Laird of Park."

my readers, male and female; and I hasten to survey Lord Hardwicke in another sphere.

It is mortifying to consider, that although he deserves such high commendation for his upright and enlightened administration of justice, he cannot be praised for any attempt to amend our institutions by legislation. During the twenty years of his sway the act requiring legal proceedings to be carried on in the English language, passed by Lord Chancellor King, still remained the most recent improvement, and the principle was acted upon which was soon after brought forward by Blackstone in his "Commentaries," that our whole juridical system had reached absolute perfection. The only change introduced was a great addition to the severity of the penal code. Many felonies were now rendered capital, which before were only liable to be punished by transportation, and many frauds which at common law were simple misdemeanors, such as forgery of deeds and negotiable instruments, being made capital felonies, in practice were always punished with death—although this bloody code did not reach its full measure of atrocity till towards the close of the reign of George III., when it was defended and eulogised by Lord Eldon.

In pursuance of an address of the House of Commons to the Crown in the year 1732, a commission had been appointed to inquire into all fees in all the superior Courts both of Law and of Equity; and, after a period about as long as was employed in the siege of Troy, the Commissioners presented a Report, in which they point out various abuses and suggest various amendments,—with very great tenderness to existing interests. I will present, as a specimen, what they say of the practice of writing only a few scattered words on a folio sheet of paper, the fee being so much a folio—an abuse which had been denounced by Hudibras :

"To make 'twixt words and lines large gaps
Wide as meridians in maps,
To squander paper and spare ink,
Or cheat men of their words, some think."

"A great part of the expense of the suitors," says the timorous Report, "arises from the copies of the proceedings, the bills, answers, interrogatories, depositions, orders, and decrees, being often very long, and the copies of them necessary to be taken by the complainant or defendant, and sometimes by both, having but six words to a line and fifteen lines in a sheet, the expense of taking out such copies amounts to a very

great sum of money. How this great expense to the suitor may be lessened, whether by reducing the length of such proceedings, by leaving out the immaterial and unnecessary parts of them, or by inserting more words in a line or more lines in a sheet, for which there is more than sufficient room in every sheet, or by reducing the fee usually taken for such copies, or by what other ways or means, the Commissioners humbly submit to the consideration of those who may be better able to judge, and have authority to provide suitable expedients and remedies, and to establish proper regulations whereby justice may be administered to your Majesty's subjects with as much dispatch and as little expense as conveniently may be."⁹

But the prevailing abuses withstood all the long labours of the Commissioners;—"Non anni domuere decem;"—no act of parliament was passed, no orders were made, to correct them. The length of the proceedings might have been reduced; more words might have been inserted in a line and more lines in a sheet, and the fees for the copies might have been lowered. But the proceedings continued equally prolix: neither were there more words in a line or more lines in a sheet; the copy money per folio continued equally exorbitant, and no ways or means were discovered to save the suitor from being plundered. The Judge and all the officers of the Court were paid by fees, and Lord Hardwicke could not have made a vigorous effort to regulate them without some sacrifice of his own pecuniary gains, and without danger of incurring ill-will from others. Hence the sarcasm upon him by his political opponent, Henry Fox: "Touch but a cobweb of Westminster Hall, and the *old spider of the law* is out upon you with all his younger vermin at his heels."^r

That I may clear the way for following him in his political career, which must be more interesting to the general reader, I have now only to consider how he executed that most important function of a Chancellor—the appointment of Judges and law officers of the Crown,—and here he is entitled to un-mixed praise. Lee, Willes, and Parker, with able puisnes, presided satisfactorily under his auspices in the Common Law Courts, and the bar could not have furnished better men for the offices of Attorney and Solicitor-General than Ryder, Strange, and Murray. It is objected to him that "he prevented the creation of law lords whereby his power in the House of Peers he apprehended might be diminished;" "the

⁹ This Report, bearing date 8th November, 1740, is signed by Lord Hardwicke himself, who had been appointed a commissioner when at the bar. ^r Speech on the Marriage Bill.

peerage of Lee, Ryder, Willes, and even of Parker, Chief Baron," says Cooksey, "though acknowledged due to their long services of the state, were delayed or denied: thus he remained the sole law lord during the whole term of his Chancellorship."* There is here, however, considerable exaggeration. Ryder's patent was too long delayed, and he unfortunately died before the Great Seal was put to it. The others, though respectable men, had never gained great distinction in parliament or in their profession, and law peerages ought not to be (as they have sometimes been) wantonly and inconveniently multiplied.

When we view Lord Hardwicke as a magistrate, it might be supposed that he could have had no political functions to disturb him; but now that we are to view him immersed in politics, we might suppose that he had nothing to think of but how he might please the King, and not offend the heir apparent—how he might intrigue to keep up ministerial majorities—how he might assist in modelling measures to make the session come smoothly to a conclusion—how on a rupture in the cabinet he might reunite some of its scattered fragments—and how he might make all things work together for his own aggrandisement. It will be found that to advance the interests of his party and of his family he displayed great shrewdness and dexterity. His character as a statesman, about which he was very solicitous, is more doubtful. "Men are apt to mistake," says Lord Chesterfield, "or at least to seem to mistake, their own talents—in hopes, perhaps, of misleading others to allow them that which they are conscious they do not possess. Thus Lord Hardwicke valued himself more on being a great minister of state, which he certainly was not, than upon being a great magistrate, which he certainly was. All his notions were clear, but none of them were great. Good order and domestic details were his proper department: the great and shining parts of government, though not above his parts to conceive, were above his timidity to undertake."

From the disputes in the Royal Family, he had a difficult and disagreeable task assigned to him at the very moment when he received the Great Seal. George II., who had been disliked by his own father, actually hated his own son. Prince Frederick being at last permitted to come to England long after the accession of his family to the

A.D. 1737.

* Cooksey, 76.

throne, now headed a powerful party in opposition to the government, and was banished from court, without being allowed a sufficient income decently to maintain himself and his wife and children. A motion was to be made in the House of Commons by his friends, for an address to the Crown to assign him 100,000*l.* a year out of the Civil List. According to the court scheme, this was to be counteracted by a proposal to parliament to vote him 50,000*l.* a year, and at the same time he was to be reprimanded for his factious proceedings. A controversy arose with respect to the bearer of the reprimand, and the matter happened to be debated at the very cabinet at which Walpole had announced that Lord Hardwicke was to be the successor of Lord Talbot. Some one proposed that the new Chancellor should be the messenger. This was unanimously agreed to, and he was summoned to attend a council next day at twelve o'clock to receive the Great Seal. Accordingly, while he was waiting in the ante-chamber at St. James's, with the Dukes of Newcastle and Argyle, the Earl of Wilmington, and other Privy Councillors,—Sir Robert Walpole came out of the King's chamber in a great hurry, holding a paper in his hand, and read to them the draught of a message, in his own handwriting, and acquainted them that "it was the King's pleasure that the Lord Chancellor, accompanied by the Lord President, Lord Steward, and Lord Chamberlain, should immediately carry it to the Prince." Lord Hardwicke, expecting nothing but smiles and congratulations on this auspicious day, was greatly shocked at such a commencement of his cancellarian career, and wished that he had allowed Fazakerly to be made a Whig. What added to his embarrassment was, that the King was then labouring under a low fever, from which some foretold that he would not recover. To the expressions in the reprimand, "the undutiful measures which his Majesty is informed your Royal Highness intends to pursue," he positively objected; but it was replied by the minister that the King insisted on the word "undutiful," and that he had with great difficulty been dissuaded from using harsher terms. A concession was made, however, by changing "intends" into "*hath been advised to pursue.*" Still Lord Hardwicke took Walpole aside and expostulated with him on the hardship of making such a painful errand his introduction to the heir apparent. The Minister answered that he had hinted this to the King *as far as he durst venture in so nice a case*, but the King prevented all further discussion by exclaiming, "My

Chancellor shall go." To soften matters, it was agreed that the whole cabinet should attend in a body when the message was to be delivered, but Sir Robert contrived to slip away—on pretence that his presence was indispensably required in the House of Commons. Lord Hardwicke was then admitted into the King's closet, and received the Great Seal, with many gracious expressions of royal favour, but without a word respecting the reprimand. Having taken the usual oaths, he retired to make himself, as he apprehended, for ever odious to the Prince, who might in a few weeks be upon the throne. He had a wonderful escape, however, from the "forlorn hope" on which he had been put: Frederick considered it politic on this occasion to be very civil to the Chancellor, and to use dutiful language towards the King; and he was swept off to an early grave, while the Great Seal remained in the firm grasp of its present possessor.[†]

A debate on the subject arose in the House of Lords the very day that Lord Hardwicke took his place on the woollen sack as Chancellor; but he left the defence of the government to the Duke of Newcastle, and took no part in the proceedings beyond communicating the King's message to the Prince, and the Prince's answer."

The first occasion of the new Chancellor's coming forward in debate was to defend the bill to punish the citizens of Edinburgh for the murder of Captain Porteous,—by repealing the city charter, by razing the city gates, and by abolishing the city guard. This measure being furiously attacked by the Duke of Argyle, who, in answer to the threat of the Queen as Regent to turn Scotland into "a hunting-ground," had said "he must go down to prepare his hounds," Lord Hardwicke justified all its enactments, observing, in answer to the argument derived from the ancient loyalty of the citizens of Edinburgh, that "the merit of ancestors in a former age can never atone for the degeneracy of their posterity." This was considered by Macallamore a reflection on himself and his clan, and called forth from him a statement of their services in placing and retaining the present royal family on the throne. The Lord Chancellor declared "that the noble Duke had mistook his meaning; that he entertained the highest opinion of the noble Duke's candour and loyalty, as well as of his talents and gallantry, and that it never was his intention to insinuate any thing to the disadvantage of any Campbell whatsoever."

[†] Com. Walp. iii. 537.

[‡] 9 Parl. Hist. 1448.

The division was in favour of the government, but the bill was so flagrantly unjust, and was so strenuously opposed by all the Scotch members in both Houses of Parliament, and by the whole Scotch nation, that the minister prudently abandoned it, and it was turned into a bill to impose a fine of 2000*l.* on the city of Edinburgh for the benefit of Captain Porteous's widow. "All these fierce debates ended only in making the fortune of an old cookmaid, for such had Mrs. Porteous been before the Captain made her a lady." *—A melancholy event was impending, from which important consequences were apprehended.

CHAPTER CXXXII.

CONTINUATION OF THE LIFE OF LORD HARDWICKE TILL THE RESIGNATION OF SIR ROBERT WALPOLE.

IN the end of this year Lord Hardwicke was much alarmed by the death of Queen Caroline, on whose great influence with the King, notwithstanding his infidelities to her, the ministry was supposed chiefly to depend; but her dying recommendation of Walpole sunk deep into the King's mind, and, his Majesty's health being completely re-established, the opposition party melted away. Horace Walpole says, that, "on the Queen's death, Lord Chancellor Hardwicke went deep into the scheme of governing through the Princess Emily; this scheme was to be built on the ruin of Sir Robert Walpole, who had no other trouble to make it miscarry than in making the King say, *Pho!*" ^{A.D. 1737.} ^y But this is a mere imaginary plot. From the hour of Caroline's decease the King lavished greater kindness than ever on Walpole, and it was not till long afterwards that Newcastle or Hardwicke thought of his removal.

The assailants of the government in the House of Lords, although not numerous, were active and unscrupulous. When the "Mutiny Bill" was brought forward in the session of

* See "Tales of my Grandfather," and "Heart of Midlothian." I cannot justify the manner in which the Captain came to his end, but no true Scotsman can sincerely regret it.

^y Memoirs of Ten last Years of George II.

1738, Lord Carteret moved that the number of the forces to be kept on foot for the British empire should be reduced from 18,000 to 12,000 men; and he was warmly supported by Lord Chesterfield and Lord Bathurst, who, like him, declaimed against the danger to liberty from a standing army, laughed at the idea of there being longer any thing to be apprehended from the Jacobites, and contended that the best mode of allaying the prevailing discontents would be by disbanding every regiment in the service. The Duke of Newcastle made such a sorry figure in attempting to answer their sophistries, that before the debate closed the Lord Chancellor thought it proper to leave the woolsack, and he made a speech which, even from the imperfect report of it, appears to have been marked by uncommon excellence. Having pointed out the serious apprehension to be entertained from foreign invasion, and still more from internal disturbances, he thus proceeded:—

“ But, say some Lords, *‘ all the discontents we now complain of arise from your keeping up such an army: Disband but your army, or a great part of it, and the people will be satisfied.’* This, in my opinion, my Lords, would be like a man throwing away his arms in order to be reconciled with his enemy,—which I am sure no man of courage or prudence would do. The recent riots which caused such alarm in the metropolis, and all over the country, have been produced by useful acts of the legislature for the erection of turnpike gates, and to put down the beastly excesses of gin-drinking. The real danger to liberty arises from the machinations of desperate and ambitious men, who wish at all hazards to get into their own hands the supreme power of the state, under pretence of being attached to the exiled royal family, and who are ready to turn to their own account the delusions which may prevail among the people. If the noble Lords who ridicule our apprehensions feel none, my apprehensions are only the greater. My Lords, I warn you, that before long an attempt will be made to subvert our present happy establishment. Notwithstanding the uninterrupted peace and increasing prosperity which the nation has enjoyed since the accession of the present royal family, for reasons which I cannot explain, discontents with the government are now geueal and deep, and without prudence and energy on our part these discontents will soon lead to open rebellion. The violence, the oppression, the subversion of law, liberty, and religion, which made the nation for a brief space almost unanimously concur in the Revolution, are forgotten; many are now so ungrateful as to censure that glorious event; many are so silly as to think, that by recalling the exiled family they may get rid of all fancied grievances, and continue to enjoy all the securities for the church and the constitution which the Revolution has achieved. While the late King James was alive, the doctrine of ‘divine right’ could not be acted

upon without opening our arms to receive him who, by his blind bigotry, had brought us to the brink of destruction ; whereas now the scene is changed, and delusive hopes may be entertained from a young Prince who personally has inflicted no wrong, although all reflecting men are aware that his family in their exile have learned nothing and forgot nothing, and that Popery and slavery would be recalled along with them. The small army which is asked is indispensably necessary for the safety of the well-disposed. They will cherish it,—while it is hated by the seditious, because it prevents them from spreading war, bloodshed, and desolation over the face of their country.”^z

As soon as the Chancellor had resumed the woosack the House divided, when the motion was negatived by ninety-nine to thirty-five.

After this defeat the opposition made a much more skilful, though a very profligate, move. Because the Spaniards objected to our carrying on a contraband trade with their American colonies, most frightful stories were propagated of their cruelty to our countrymen, of which “the fable of Captain Jenkins’s ears” was a fair specimen ; and, under colour of taking revenge, there was an eager desire in the nation to fit out expeditions for the purpose of capturing their galleons, and seizing possession of their gold mines. Here was an opportunity to bring obloquy upon the pacific Walpole, who was represented to be “a furious mastiff to his own countrymen, but a fawning spaniel to the Spaniards.” His opponents determined to give him only the alternative of a Spanish war or resignation, and it was generally believed that, fond as he was of power, he was fonder of peace, and that his political extinction was at hand. With this view certain resolutions were moved in the House of Lords, affirming the outrageous conduct of Spain, denying the right of search which she claimed, and praying that English commerce might be protected against her aggressions. The task of combating these was cast upon the Chancellor, but he did it feebly and ineffectually, hardly venturing to go further than to point out that the resolutions were so framed as to condemn the belligerent right to search neutral vessels which might be carrying contraband of war—a right essential to the maintenance of our own naval ascendancy. Finding that he was making no impression on the House, he withdrew his opposition, and the resolutions passed unanimously.^a

In the following session the same policy was pursued by

^z 10 Parl. Hist. 555, 561.

^a Ibid. 731, 754.

the opposition leaders, whose great object was to attack a preliminary convention with Spain, by which Walpole had hoped that all differences might be adjusted, and peace might be preserved. They were now encouraged by the faithless Duke of Newcastle, who thought this a favourable opportunity for becoming prime minister; and it has been represented even that another member of the cabinet, from whom a very different line of conduct might have been expected, joined in the war cry. "The Chancellor, Lord Hardwicke," says Coxe, "a man of moderation, good sense, and candour, was of the same opinion with the Duke of Newcastle, and spoke with such vehemence in the House of Lords against the depredations, and in favour of compulsory measures, that Walpole, who stood behind the throne, exclaimed to those who were near him, '*Bravo! Colonel Yorke: Bravo!*'"^b In justice to his memory, however, I am bound to declare that the printed reports of the proceedings of the Lords do not show the slightest foundation for this charge, and, if they are to be relied upon, they effectually repel it. He could not resist the motion for hearing witnesses at the bar, so that an opportunity was given for Captain Jenkins's celebrated declaration, that, when under the hands of the torturing Spaniards, "he committed his soul to God, and his cause to his country;" but in the debates on the convention Lord Hardwicke appears to have defended it at great length, and boldly and manfully to have attempted to dispel the public delusion. He showed, that while we have a right to the free navigation of the American seas for the purpose of carrying on an unrestrained intercourse with our own colonies, according to the laws we are pleased to lay down for the regulation of their commerce, the Spaniards had a right to lay down laws to regulate the commerce of their colonies, and to prevent the carrying on of a contraband trade in violation of those laws.

"The mode in which these respective rights shall be enjoyed and enforced," said he, "is the fair subject of negotiation and treaty, and cannot be satisfactorily adjusted by an appeal to arms. For this reason, plenipotentiaries were appointed on both sides, who, if they are permitted to proceed, may be expected to bring about a settlement for the mutual honour and advantage of the two nations. We have just reason to complain of the manner in which, in some instances, the Spaniards have exercised the right which we cannot dispute they possess; but let

^b Coxe's Walpole, iv. 118; Lord Mahon, ii. 407.

us try whether we may not obtain indemnity and security without rushing headlong into a war, the result of which cannot certainly be foreseen, although the vulgar be captivated by the golden prospects which it is supposed to hold out. Having shown that no reasonable objection can be made to the treaty now before us, I must beg your Lordships to consider the present circumstances of Europe, the peculiar situation of this nation, and the relation we stand in to Spain. It must be allowed that no nation ought to enter into a war against a neighbouring nation for any object which may be attained by peaceable means. Of all nations, we ought to be the last unnecessarily and wantonly to engage in hostilities. A great part of our people subsist by trade; our landed gentlemen owe a great part of their yearly revenue to the commerce and manufactures we carry on. Not only should we, by the wished-for war, lose our intercourse with the dominions of Spain, allowed to be so profitable, but a shock would be given to our trade with the rest of the world. Considering our heavy debt and many taxes, we are in no very good condition for engaging in a dangerous, and expensive, and perhaps protracted war. The rest of Europe will not quietly look on and see us make conquests in Spanish America, if the fortune of war should at the outset be in our favour. The Spaniards would soon be assisted by France, and perhaps by other powers we little dream of at present. Then think, my Lords, of the numerous party in this country, who, I am sorry to say, are so little solicitous about the national glory, that they are ready to join an invading army, and to receive a despotic master from our natural enemies. Some of them are actuated by the hopes of making or mending their fortunes, some by malice and an unjust hatred of those employed in the administration. There are many at present disaffected to the government from principle, but their number is decreasing every day. The rising generation see the absurdity and ridiculousness of the prejudices in which their parents were bred, and in a few years we may expect to witness a general concurrence in the principles on which the change of dynasty was found necessary, and a general attachment to good order, and to the cause of civil and religious liberty. Prudence will, by-and-by, dictate submission even to the unprincipled, when they no longer see well-meaning men whom they can hope to make the tools of their wicked designs.”^c

I must, therefore, absolve Lord Hardwicke from the charge of contributing to that madness which, a few months after, took possession of the nation, when Walpole, rather than quit office, agreed to a declaration of war against Spain,—when the heir apparent to the throne headed the mob in the streets of London, drinking “*Success to the War!*”—when, the treasures of Potosi being grasped in anticipation, and the golden dreams of the South Sea again deluding the public mind, there were greater rejoicings than followed the victories of Blenheim or

^c 10 Parl. Hist. 1048, 1147.

of Waterloo,—and when the conscience-stricken minister exclaimed, “They are now *ringing their bells*; before long they will be *wringing their hands*.” With that minister rests, I think, the greatest share of the disgrace of commencing this war—the most unprovoked and unjustifiable in our annals. Walpole’s opponents were deeply to blame, and still more were his colleagues, who wished, by making him unpopular, to supplant him; but with him the responsibility rested, and, rather than part with power, even for a time, he consented to involve the country in hostilities which he knew to be unjust, and which he expected to be disastrous. Had he honestly resisted, the nation would speedily have been restored to reason, and he would have been restored to power. By tardily yielding to the public delusion, he did not recover the popularity he had lost by resistance, and he was, ere long, forced into permanent retreat. Fit punishment, likewise, fell upon the nation; for, during the contest, although the heavy calamities which several times seemed impending were averted, the military enterprises which were undertaken produced disappointment and disgrace; we were indebted to chance, and the blunders of our enemies, that our shores were not trod by invading armies; a Stuart prince, being recognised by all Scotland, was within a few days’ march of the English metropolis, where there were many friends to receive him; and we were finally obliged to agree to a treaty of peace, by which Spain did not make a single concession on the points which had been the pretence for hostilities.^d

When Lord Hardwicke had exerted himself to the utmost to avoid a rupture with Spain, and had delivered a speech which ought to have called forth the exclamation, “Well done, Grotius!”—although he cannot be much censured for remaining in office, as his resignation would only have made way for some more pliant lawyer,—I must confess that I think he would have done better by remaining quiet in parliament and watching a favourable opportunity for the restoration of peace. But Sir Robert having for the present out-manceuvred his

^d This is a case in which, as the lawyers say, we have “*confitentes reos*”—all the accused parties pleading *guilty*. Walpole at the time, with his usual openness, admitted that he was doing wrong. “Some years after,” says Burke, “it was my fortune to converse with many of the principal actors against that minister, and with those who

principally excited that clamour. None of them, no, not one, did in the least defend the measure, or attempt to justify their conduct. They condemned it as freely as they would have done in commenting upon any proceeding in history in which they were totally unconcerned.”—*Regicide Peace*.

opponents by going over to the war party, the now blustering Chancellor strenuously defended a subsidy to Denmark, that she might assist us in the quarrel, and he exclaimed,—"Whatever others may say who advocate forbearance, I am for instantly entering upon action."^e He had for some time been regarded as the organ of the government in the House of Lords, no weight being attached to what fell from the Duke of Newcastle, who was ostensibly at the head of it. His Grace himself seems to have been aware of his own insignificance there, and thus writes to the Chancellor:—"It is no disagreeable circumstance in the high station in which your Lordship is, that every man in the House of Lords now knows that yours is the sense of the King's administration, and that their interest goes with their inclinations when they follow your Lordship."^f

During the Spanish war a discussion arose on a subject of more permanent interest—the Liberty of the Press,—when Lord Hardwicke delivered a speech with which he had taken great pains, and which is peculiarly interesting as coming from one who had been ten years Attorney-General, and was so long afterwards at the head of the law. With a view, as it was thought, of intimidating Pope, who had cruelly lampooned Lord Hervey^g and other peers, and kept the whole House in a state of apprehension, a complaint was made against^h a very inferior poet, Paul Whitehead, who had recently published a satire called "MANNER," reflecting upon several peers, and whose commitment to Newgate would not have excited much public sympathy. The author absconded; but Dodsley, his publisher, appearing at the bar, a motion was made that he should be taken into the custody of the Usher of the Black Rod, which was opposed by Lord Carteret and Lord Abingdon, on the ground that such a proceeding was contrary to the liberty of the Press.

The Lord Chancellor. "My Lords, the liberty of the press ought to be sacred with every Englishman, and, I dare answer for it, will ever be so with your Lordships. But I am afraid that there is nothing less

^e 10 Parl. Hist. 1373, 1385, 1412, 1420.

^f The Duke of Newcastle to Lord Hardwicke, 1739.

^g "Let Sporus tremble! What? that thing of silk,
Sporus, that mere white curd of ass's milk," &c.

^h It is said that Pope really was frightened by the "brave orts at the pridge," and he certainly was more cautious afterwards in meddling with high names, although his malignity to Grub Street continued to increase.

understood than the nature of that liberty. I have often, my Lords, desired an opportunity of delivering to your Lordships my sentiments upon this subject, and I may be excused if I embrace the present. It is said that the liberty of the press is about to be invaded. I know, my Lords, that the liberty of the press is generally taken for a liberty to publish every indecency against the most respectable persons either in public or in private life; and so strongly does this notion prevail, that I have never known an instance of a libeller being prosecuted without a loud cry of *oppression*, he being considered an impersonation of the liberty of the press. But has there been introduced into the law of England since the invention of printing, a right of publishing to the world any defamatory matter to the prejudice of superior, inferior, or equal? Before the art of printing was known in Europe, learning was confined to a very few. At that time the copiers of books were a separate body of men, and were under particular regulations in different countries. When printing was introduced these regulations necessarily fell to the ground, and every one for a while could communicate his thoughts to the world on any subject, till printing under new regulations became an affair of state. Thence, my Lords, arose the expression of **THE LIBERTY OF THE PRESS**. But, my Lords, in England the mode of publication made no change in the law of defamatory libel. The press acquired no liberty which was not known in the most remote times. If any body, my Lords, is of opinion that authors acquired any new privileges when printing was discovered, he ought to prove either that the old laws on that subject were repealed, or that new ones were made in favour of typographical slander. Character must be protected as much as property, and an invasion of either demands an award of compensation, and punishment for the sake of public example. It is true, my Lords, that in bad reigns very great severities have been inflicted on authors and printers for publishing what was harmless or useful; but this only proves that the law was abused by power. The law of treason, allowed in this country to be wise and merciful, was abused much more; but for that reason a man may not imagine the King's death, or levy war against him with impunity. I am very sensible, my Lords, of how much use the press was at the time of the Revolution, but the authors who then espoused the side of liberty advanced nothing that was not agreeable to the constitution; they were warranted by law for what they wrote, and they had the sense of the nation on their side. I must add that the authors who are so justly praised for supporting the Revolution communicated their sentiments with the greatest deference to the persons and characters of their adversaries, without any mixture of malice or calumny. Let not modern libellers, when called to account in a legal manner, compare the present government to that of Charles II. or of James II., till they prove that they write with as much caution and as much decency as those who then lawfully availed themselves of the liberty of the press to defend the constitution of their country. The libel we are now considering is of the more virulent quality, as the noble Lords libelled could not have given any just cause of offence to

the author, probably not knowing him by sight, and never having heard of his name till it was impudently affixed to this infamous publication. I therefore think it deserves all the severity of your Lordships' censure."

Lord Talbot (son of the Chancellor) pithily answered:—"My Lords, if this be so, in Heaven's name let those aggrieved by this libel have recourse to the inferior courts of justice, and do not let such a charge lie against us as that we are judges, jury, prosecutors, and parties in the same suit."

On a division the motion was carried by 72 to 32, and I am only surprised that the minority was so large, or that any noble Lord had the courage to divide the House on such a question. Paul Whitehead's dull poems had nothing to do with the proceedings of their Lordships as a branch of the legislature, while he made free with the manners of individual Peers. But at this period no one ever thought of questioning any decision of the Lords upon privilege, and the standing order passed unanimously, of which I was obliged to move the repeal before I could venture to offer to the world my "Lives of the Chancellors,"—"that no one presume to publish the Lives of any Lords spiritual or temporal, deceased, without the permission of their heirs and executors."ⁱ The reckless perversion of privilege to the punishment of private injuries, which marked the eighteenth century, is very much to be condemned; but perhaps the other extreme into which we are inclined to run may be more injurious—a refusal to enforce privilege in cases where it is essentially necessary to enable the two Houses of Parliament to exercise the legislative and inquisitorial functions vested in them for the public good.

Parliament being called together in November to vote supplies for the Spanish war, the Chancellor had a very troublesome session. Walpole's enemies now complained of the manner in which the war had been commenced, and the manner in which it had been conducted; and they were particularly fierce against a passage in the King's speech respecting "the heats and animosities prevailing throughout the kingdom," which was construed into a reflection on "his Majesty's opposition," who declared themselves to be the only true friends of loyalty and order. Newcastle, Hervey, Cholmondeley, and Devonshire were no match in debate for Carteret, Chesterfield, Bedford, Sandwich, and Argyle; and the Chancellor was frequently obliged to leave the woolsack.

ⁱ Standing Orders, No. 113.

and to talk on subjects with which he was by no means familiar. In the debate on the address, the defence of the government rested chiefly upon his shoulders, and he contended with some success that his Majesty, as the father of his people, had a right to exhort all classes to cultivate mutual love and harmony — insinuating at the same time pretty broadly, that the noble Lords, whom no measures would content which they did not themselves originate and guide as ministers, were ready, for their own selfish ends, to endanger the internal tranquillity of the country and the national honour.^k

But they had their revenge of him soon after, when the Feb. 23, 1740. government having by inadvertence sent a message to the House of Commons, respecting supplies for carrying on the war, without any similar message being sent to the House of Lords, and the omission being there taken up as a breach of privilege, the Chancellor, in a very elaborate speech, contended that “the message was in the nature of an estimate which was exclusively to be submitted to the Lower House:” but he was unmercifully dealt with by Chesterfield and Carteret, who ridiculed with much pleasantry this piece of special-pleading sophistry. The ministers did not venture on an attempt directly to negative the vote of censure moved upon them—but carried the previous question.^m

The Chancellor was again “turned out for a day’s sport” when he had to defend the manner in which Admiral Vernon’s expedition had been equipped for the attack on Porto Bello, and the whole conduct of the war. The Duke of Argyle characterised his speech as “a toying with words,” and the learned Lord does seem to have treated the subject as if he had been in the Court of Chancery overruling objections to the Master’s report. The minority rose to 40 against 62.

At last came the delightful task of declaring in the King’s name that parliament was prorogued. Still the Chancellor had not the calm which he expected: for the King being gone to Germany, there were violent altercations among the Lords of the regency, and it was with the greatest difficulty that he could prevent Walpole and Newcastle from coming to an open rupture.

In the ensuing session of Parliament, he was called upon A.D. 1740—1741. repeatedly to speak respecting the conduct of the war, the amount of the forces to be kept on foot, the reinforcements supplied to Admiral Vernon, and the instruc-

^k 11 Parl. Hist. 11, 60, 79.

^m *Ibid.* 449—480.

tions sent to Admiral Haddock; " but I do not think that his speeches, from the briefs delivered to him on these subjects, are of any interest, and I at once proceed to a great crisis in his history—the dismissal of Sir Robert.

Horace Walpole imputes treachery to him on this occasion, and considers that the ruin of the minister was brought about by his two colleagues, the Chancellor and the Duke of Newcastle. After describing their supposed attempt to turn him out on the death of the Queen, he says: " Their next plot was deeper laid, and had more effect; by a conspiracy with the chiefs of the opposition they overturned Sir Robert Walpole, and in a little time the few of their associates that they had admitted to share the spoil."^o—Although it is quite certain that against such powerful opponents, and such a load of public obloquy, the Premier, having completed his twenty years of absolute sway, could not have stood much longer, I think there is some foundation for the charge against Newcastle, who, willing to submit to any indignity rather than not possess office at all, was ever ready to sacrifice every thing (good faith included) for the chance of increasing his power. " His name," said Sir Robert, " is *Perfidy*." " It would have been strange indeed," writes Macaulay, " if his Grace had been idle when treason was hatching."^p

"Ch' l' ho de' traditor' sempre sospetto,
E Gan fu traditor prima che nato."

However, as far as Hardwicke is concerned, the statement is not only unsupported by any proof, but is contrary to all probability. He had nothing to gain by a disruption of the ministry, and, although he had the good luck to survive it, he must have foreseen the danger that, if Pulteney and Carteret were to triumph, they would insist on naming a new Chancellor. On the only occasion when the subject was brought forward in the House of Lords, in February, 1741, when Lord Carteret made his celebrated motion for an address to the King, praying him " to dismiss Sir Robert Walpole from his presence and councils for ever," Lord Hardwicke defended his chief with much ability, and, seemingly, with zeal and sincerity. We have his speech, as reported by Dr. Johnson for the " Gentleman's Magazine," and though a few epithets may have been added, to give additional point to an antithesis

^o 11 Parl. Hist. 615, 629, 700, 756, 760, 773, 813, 901, 918, 1000, 1016, 1027.

^o " Ten last Years of George II.," p. 139.
^p Essays, ii. 131.

or to round a period, I make no doubt that the report is substantially correct. Notwithstanding what has been said about "Johnson's Debates" being the invention of his own brain, it now appears, by comparing them with contemporary notes, particularly Archbishop Secker's, that they contain accurately the sentiments, and often the very words, of the different speakers, so that they must have been prepared from genuine information, or (what is more probable still) from the notes or recollection of the compiler, who may have been actually present when they were delivered. On this memorable occasion Lord Hardwicke spoke in answer to the Duke of Argyll, who had gone over the whole of the foreign and domestic policy of the government, pointing out how the autocrat had engrossed all the power of the state into his own hands, and, acting tyrannically at home and feebly abroad, had sacrificed the constitution and the national honour to his own personal aggrandisement. We care little now about the treaty of Hanover, the treaty of Vienna, or the conduct of the Spanish war; and I will not even quote the Chancellor's ingenious comparison between a campaign and "an equity suit, in which the client takes great delight till the solicitor brings in his bill." He seems to have been most happy on the vague charge, much dwelt upon, of Sir Robert having made himself "sole minister." This he likened to the old common-law high treason, called "accroachment," or assumption of the royal authority, for which, till treasons were defined by the statute of Edward III., every great man obnoxious to the ruling faction was prosecuted and beheaded. The weakest part of his case was Sir Robert's practice (which would not now be endured) of cashiering military officers who were in parliament—from generals down to cornets—if they voted against the government:—^a

"I shall grant, my Lords, that it is a right maxim for the King not to notice a gentleman's behaviour in parliament with respect to the distribution of those favours which the Crown has to bestow. But even this maxim may admit of some exceptions. We know there is in this kingdom a party of professed Jacobites; we know there is, likewise, a party of professed Republicans. I do not say there are any of either of these parties now in parliament; but if they should get into parliament, if they should there pursue Jacobite or republican schemes, I believe it will not be said that the King ought to wink at such conduct, or that

^a *e. g.* The Duke of Bolton and Lord Cobham deprived of their regiments, and Cornet Pitt dismissed from the Blues.

it would be any invasion of our constitution should he turn such officers out of his service. I am far from applying this to any case that has lately happened; nor do I think that his present Majesty ever dismissed any one from his service on account of his behaviour in parliament, for he may have many other reasons for dismissing any officer, civil or military; and if an officer, who otherwise deserves to be dismissed, happens to have a seat in parliament, is he therefore dispunishable? But whatever reasons his Majesty may, at any time, have to make use of his prerogative to dismiss an officer from his service, I am convinced he will not allow any minister to advise him to make use of this prerogative for preventing a member's declaring his sentiments freely about any measure of government, *provided he does it with that decency which is due to the Crown, and without any factious or seditious manner of expressing himself upon the subject under debate.*"

So the opponents of Sir Robert Walpole must be Jacobites or Republicans;—and the Chancellor sanctions the doctrine of the Judges in the time of Charles I., that "Parliament men are not to be questioned before the Council for what they say in Parliament, *provided it is said in a parliamentary way.*" Sir Robert had a majority of 108 to 59,^r and all the hope of upsetting him was from proceedings in the Lower House after the dissolution of Parliament, which was now impending.

These discussions had a powerful effect to weaken the minister out of doors; the elections went against him—particularly in Scotland, where it used to be supposed, by their "second sight," they could see the shadow of a coming change; and when the House of Commons met, the appointment of "Chairman of Ways and Means" being carried against him, it was plainly seen that his official end was rapidly approaching. The old statesman made a gallant struggle; but the divisions on election petitions, then thought Feb. 2,
1742. fair opportunities for a trial of party strength, continuing to go with the opposition,^s he saw that he must soon be in a minority on all questions, and his colleagues, and his own family, telling him that he could stand out no longer, he announced his determination to resign.

^r 12 Parl. Hist. 1047—1223.

^s The last of these was the Chippenham case, in which there was a majority against him of 16,—241 to 225. Nothing shows so strikingly how these were considered party questions, as the anecdote of Walpole's demeanour while the tellers were ascertaining the numbers. "Anticipating his fate, but bearing it with his usual fortitude and good

humour, he beckoned to the opposition member for Chippenham, whom he had attempted to eject, to sit by him, spoke to him with great complacency, animadverted on the ingratitude of several individuals who *were voting against the government*, although he had conferred great favours upon them, and declared that he would never again sit in that House."—*Coze's Walpole.*

CHAPTER CXXXIII.

CONTINUATION OF THE LIFE OF LORD HARDWICKE TILL THE BREAKING
OUT OF THE REBELLION OF 1745.

LORD HARDWICKE was for some time in a state of much anxiety. He dreaded that the termination of his official career had arrived, and he regretted that he had ever left the secure position of Chief Justice of the King's Bench. Whatever Newcastle's expectations might be, he certainly had not made terms with the opposition leaders, and the probability was that he and those most intimately connected with him must share Walpole's fate. Strange to say, the victors had formed no plan to improve the victory for which they had so eagerly fought, and which they had for some time anticipated. Meanwhile, the nation was in a state of unexampled ferment. All classes had been taught to look forward to the fall of Walpole as the cure for the evils of which they complained, and as the certain means of gaining their own favourite measure for reforming and governing the State. The counties and great cities sent instructions to their representatives all equally peremptory, but of very different import,—some insisting that the Septennial Act should be repealed, and that parliaments should be triennial or annual,—some that all placemen, as well as pensioners, should be excluded from sitting in the House of Commons,—some that all offices should be in the gift of the House of Commons,—more, that Walpole's head should now answer for his misconduct,—but most of all, that the decay of trade and other national calamities might be immediately remedied by an act to forbid the exportation of wool! The King and his private advisers, of whom the retiring minister, now Earl of Orford, was one, saw that the only chance of preserving the semblance of government or order in the country was to call in Pulteney, though personally so odious at Court that he had not been there for many years,[†] and to allow him, according to his own fancy, to form a new administration, of which it was of course

[†] His name had been struck out of the list of the Privy Council, and he had been denied the commission of the peace.

supposed that he would himself be the head. The Duke of Newcastle and Lord Hardwicke were appointed to be the bearers to him of the keys of the royal cabinet. They opened the conference by saying, that “the King, convinced that Sir Robert Walpole was no longer supported by a majority of the House of Commons, had commanded them to offer the places held by that minister to Mr. Pulteney, with the power of forming his own administration—on the sole condition that Sir Robert Walpole should not be prosecuted.” Pulteney refused this condition, saying, that “even if he himself had been inclined to agree to it, it might not be in his power to fulfil his engagement, *the heads of parties being like the heads of snakes, carried on by their tails.*” The confusion increasing, the Chancellor and the Duke, at a subsequent meeting, declared that they were commissioned by the King to repeat the former offers, without urging the condition of not prosecuting the fallen minister, and his Majesty only requested that if any prosecution was commenced against Sir Robert, Mr. Pulteney, if he did not choose to oppose it, would at least do nothing to inflame it. Pulteney answered, that “he was not a man of blood, and that, in all his expressions of pursuing the minister to destruction, he had meant only the destruction of his *power*, but not of his *person*; though he was free to own that he thought some parliamentary censure at least ought to be inflicted for so many years of mal-administration.” Then, to the infinite relief and delight of the messengers, he declared that “although he demanded an alteration of men and measures, and that the strong forts of government should be delivered into the hands of his party, viz., a majority in the cabinet, the nomination of the boards of Treasury and Admiralty, with the restoration of the office of Secretary of State for Scotland,—he did not require an entire sweep of all who held place under the Crown, and that he would beg the two noble Lords, who had so courteously borne to him the gracious pleasure of the King, to retain their respective situations of Chancellor and Secretary of State.” To their utter amazement, he added: “As the disposition of places is in my hands, I will accept none myself: I have so repeatedly declared my resolution on that point, that I will not now contradict myself.” He then named the Earl of Wilmington First Lord of the Treasury, Sandys Chancellor of the Exchequer, Carteret Secretary of State, and the Marquis of Tweeddale the new Secretary for Scotland; while for himself he required an earl-

dom, and a seat in the cabinet. On this footing the new administration was patched up. The Chancellor had the sagacity to see that it could not last long, but exulted in reflecting that he had not only escaped a great peril, but that among such colleagues his personal influence must be greatly increased, and that future changes might be under his own control. Pulteney, become "Earl of Bath," soon discovered the error he had committed, and, meeting in the House of Lords his former great rival, become "Earl of Orford," exclaimed to him, "We are now the two most insignificant fellows in all England!" He made an effort to regain his position, but he found that his reputation and his power had perished irrecoverably.

The first occasion of the Chancellor coming forward in public, as the organ of the new administration, was in opposing the bill to indemnify witnesses who should give evidence upon the inquiry into the conduct of Sir Robert Walpole. The proceedings against him in the House of Commons had been immediately checked by the objection of those who were examined, that "they were not bound to criminate themselves;" and a bill was introduced, in very general and sweeping terms, enacting "that all persons who, being examined before either House of Parliament, or any committee of either House, respecting the charges against Robert Earl of Orford, should make any discoveries respecting his misapplication of public money, or his improper disposition of offices or other misconduct of the said Earl, while a minister of the Crown, should be freed and discharged from all forfeitures, penalties, punishments, disabilities, and incapacities, to which they might be liable for or by reason or means of any matter or thing which, being examined as aforesaid, they should faithfully and truly discover, disclose, and make known." The bill rapidly passed the House of Commons, and, although not only the members of the late administration, but those now in office who had so often cried out for "*Walpole's head*," disliked it, no show of opposition could there be offered to it: but when it came before the Upper House, Lord Hardwicke resolutely attacked it in the finest speech which distinguished his parliamentary career. Having shown how it violated all the rules of evidence established for the protection of innocence, and the danger of offering rewards for convictions, lately testified by a club of miscreants going about from assizes to assizes to invent crimes and to accuse the innocent

for the sake of "*blood-money*,"—he pointed out the unprecedented atrocity of the measure in offering a reward for evidence to implicate a particular individual, without the proof or even assertion of any *corpus delicti*. In conclusion, he indignantly exclaimed:—

"The promoters of this bill, like the tyrant Nebuchadnezzar, require first to know 'what was their dream; and, secondly, what is the interpretation thereof.'" But, says a noble Lord,^x '*if we have not here a corpus delicti, we have what is sufficient for the purpose, a CORPUS SUSPICIONIS;*' a new expression and a new invention—the *body of a shadow*—and on this foundation he calls upon you to build his new superstructure of injustice! In my opinion, my Lords, it is a bill calculated to make defence impossible, to deprive innocence of its guard, and to let loose oppression and injustice upon the world. It is a bill to dazzle the wicked with a prospect of security, and by impunity for one crime to incite them to the perpetration of another. It is a bill to confound the distinctions of right and wrong, to violate the essence of our constitution, to leave us without any rule for our actions, or any protection for our property, our lives, or our good fame. So iniquitous is the law, my Lords, that I would sooner suffer by it than vote for it."^y

The bill was thrown out by a majority of 109 to 57. This decision, though made the subject of a violent protest in the Lords, and some inflammatory resolutions of the Commons, was approved of by the public, who began to think that the reports of the secret committees appointed to inquire into the misconduct of Sir Robert Walpole, disappointed all their expectations by disclosing nothing, *because there was little to be dis-*

^u Daniel, ch. ii.

^x The Earl of Chesterfield.

^y This pithy conclusion, which we know to be genuine, from the MS. notes of Archbishop Secker taken at the moment, is thus expanded and spoiled by Dr. Johnson:—"So clearly do I now see the danger and injustice of a law like this, that although I do not imagine myself endued with any peculiar degree of heroism, I believe that, if I were condemned to a choice so disagreeable, I should more willingly suffer by such a bill passed in my own case than consent to pass it in that of another." A comparison of the two reports, however, will clearly prove that Johnson had either been present at the debate, or had been furnished with very full and accurate notes of the speeches.—12 Parl. Hist. 637—38, 643—711. When Cave was examined at the bar of the House of Lords as to the Reports which appeared in the "Gentleman's Maga-

zine," he certainly *lied* by representing that he had prepared them himself from his own notes,—with the exception of some speeches sent to him by members. He said "he got into the House and heard them, and made use of a black lead pencil, and only took notes of some remarkable passages, and from his memory he put them together himself." Being asked "Whether he printed no speeches but such as were so put together by himself from his own notes," he answered, "Sometimes he has had speeches sent him by very eminent persons; that he has had speeches sent him by the members themselves." Being asked "If he ever had any person whom he kept in pay to make speeches for him?" he said "he never had."—14 Parl. Hist. 60. This seems to have been an attempt to get at JOHNSON, whom he considered himself bound at all hazards to screen.

covered, and who were now ready to point all their indignation against those who, having pledged themselves to bring him to the block, were treading in his footsteps.

Lord Hardwicke's importance (as he had expected) rose considerably in the new government. The Earl of Wilmington, the nominal chief, was a mere cipher. Lord Carteret had great influence, particularly in foreign affairs, but domestic measures were left chiefly to the Chancellor, and he was called upon to defend in debate the treaties that were entered into, and the arrangements which were made for the prosecution of the war and for the defence of the kingdom. The grand object of attack with the Jacobites, Tories, and disappointed Whigs, was the measure of taking 10,000 Hanoverian troops into British pay,—which was so unpopular that many who pretended to be well-wishers to the Protestant succession joined in the cry of “no Hanoverian King!”

In the spring of 1743 this subject was brought forward in

A.D. 1743.

the House of Lords, in a very offensive manner, by Earl Stanhope (the son of the Minister), who moved an address to the King, praying “that his Majesty, out of compassion to his English subjects, would exonerate them from those mercenaries who had been taken into pay without the consent of parliament.” A furious debate was closed with a very able pleading by the Chancellor, which was much applauded at the time, although it has now nearly lost all its interest. One passage of it might have really called forth the exclamation,—“Well done, Colonel Yorke!” In answer to the observation that, under the present administration, the nation was reduced to poverty and had lost all its spirit, he replied,—“If our wealth is diminished, it is time to ruin the commerce of that nation which has driven us from the markets of the Continent,—by sweeping the seas of their ships and by blockading their ports. Our courage is depressed—not by any change in the nature of the inhabitants of this island, but by a long course of inglorious compliance with the demands, and of mean submission to the insults, of other nations. Let us put forth all the strength we can command, and we are secure. The complaint is, that we have the aid of a friendly state. My Lords, we had auxiliaries in our pay at Blenheim and at Ramillies, and by the same means equal victories may still be won.” He then, as a lawyer, combated the objection that this arrangement with Hanover should have been the subject of a treaty,—contending that such a mode of proceeding was

impracticable:—"It is well known that no power in this kingdom can enter into a treaty with a foreign state except the King, and it is equally certain that with regard to Hanover the same right is limited to the Elector. This proposed treaty, my Lords, is therefore a treaty of the same person with himself—a treaty of which the two counterparts are to receive their ratification from being signed by the same person, and exchanged by being conveyed from his left hand to his right, and reciprocally from his right hand to his left." He insisted that if Hanover had been governed by another Sovereign wholly unconnected with the present royal family of England, the arrangement would have been highly advantageous to English interests, and would have met with general applause. This speech made Lord Hardwicke ever after a special favourite with George II., who had a high opinion of his own skill in the art of war, and was now burning to eclipse the glories of Marlborough,—a wish which he soon after thought he had actually accomplished at Dettingen,—although the French claimed the victory, and his undutiful nephew, Frederick of Prussia, represented him as "standing all the day with his drawn sword in his hand, in the attitude of a fencing-master who is about to make a lunge in *carte*."

The Chancellor, amidst the plaudits bestowed upon his great Hanoverian speech, was this summer in some anxiety about ministerial arrangements. The Earl of Wilmington was dying, and Pulteney Earl of Bath, finding too late that he could not have influence without office and patronage, made a vigorous effort to succeed him. Such a proposal was highly alarming to Lord Hardwicke, for their cordiality had been fleeting, and their ancient enmity had lately burst out afresh. He therefore stirred up Henry Pelham, brother of his patron, the Duke of Newcastle, to claim the office, although this quiet, judicious man, with characteristic timidity, shrunk from the dangerous eminence. He farther prevailed upon the fallen minister, who, in his retreat at Houghton, still had much influence over the royal mind, to back the application. On Wilmington's death, the King, who was abroad, sent a despatch announcing his decision in favour of Pelham. Lord Hardwicke was of course asked to continue Chancellor. The Duke of Newcastle then wrote to him, giving a hint, in a very amusing manner, about his over-caution: "My brother has all the prudence, knowledge, experience, and good intention that I can wish or hope in man; but it will or may be difficult for us

to stem alone that which, with your great weight, authority, and character, would not be twice mentioned. Besides, my brother and I may differ in opinion, in which case I am sure yours would determine both. There has been for many years a unity of thought and action between you and me; and if I have ever regretted any thing, it has been (forgive me for saying it) too much caution in the execution, which I have sometimes observed has rather produced than avoided the mischief apprehended."

For many years afterwards Lord Hardwicke held the Great Seal as securely as his fee-simple estate at Wimpole.

A.D. 1743—1744. All divisions in the Cabinet were obviated by the dismissal of Carteret, become Earl Granville, the most accomplished, but the most fantastical, politician of that age. The opposition was soon after weakened by the death of Lord Hervey and the Duke of Argyle, and by Lord Chesterfield's acceptance of the vice-royalty of Ireland. Horace Walpole considers that from this time the Chancellor was Prime Minister, saying, "When Yorke had left none but his friends in the Ministry, he was easily the most eminent for abilities."²

Yet great difficulty was sometimes experienced in managing the King, who long remained sulky for the loss of Carteret, and was not at all reconciled to the English notion of "parliamentary government." Lord Hardwicke, in his Diary, has left us a very amusing account of a royal audience which he had demanded (January 5th, 1744-5):—

Chancellor.—"Sir, I have forborne for some time to intrude upon your Majesty, because I know that of late your time has been extremely taken up; but as the Parliament is to meet again in a few days, I was desirous of an opportunity of waiting on your Majesty, to know if you had any commands for me. [Pause for above a minute; the King stands silent.] Sir, from some appearances which I have observed of late, I have been under very uneasy apprehensions that I may have incurred your Majesty's displeasure; and though I am not conscious to myself of having deserved it, yet nothing ever did, or ever can, give me so great concern and so sensible a mortification in my whole life. [Another pause of above a minute; the King still quite silent.] I beg your Majesty will have the goodness and condescension to hear from me a few words upon the motives of my own conduct, the nature of your present situation, and the manner in which I think it may be improved for your service." [A long discourse follows, which was listened to without interruption, till a remark was made about measures taken for

² "Ten last Years of George II." p. 139.

the defence of Hanover.] *King*.—"I can call home my troops for the defence of my own dominions." *Chancellor*.—"I mention it as part of the general system of carrying on the war, and as an instance of the readiness of your ministers to get over their old prejudices. But, sir, there still remains something very material behind." *King*.—"I have done all you asked of me. I have put all power into your hands, and I suppose you will make the most of it." *Chancellor*.—"This disposition of places is not enough if your Majesty takes pains to show to the world that you disapprove of your own work." *King*.—"My work! I was forced; I was threatened." *Chancellor*.—"I am sorry to hear your Majesty use these expressions. I know of no force; I know of no threats. No means were used but what have been used in all times—the humble advice of your servants, supported by such reasons as convinced them that the measure was necessary for your service." *King*.—"The changes might have been made by bringing in proper persons, and not those who had most notoriously distinguished themselves by a constant opposition to my government." *Chancellor*.—"If changes were to be made in order to gain strength, such persons must be brought in as could bring that strength along with them. On that account it was necessary to take in the leaders; and, if your Majesty looks round the House of Commons, you will find no man of business, or even of weight, capable of heading or conducting an opposition. [Pause. *King* silent.] Sir, permit me to say, the advantage of such a situation is a real advantage gained to the Crown. Your ministers, sir, are only your instruments of government." *King* [*smiles*].—"Ministers are the King in this country." *Chancellor*.—"Sir, I ask your Majesty's pardon for troubling you so long, but I thought it my duty to lay my poor thoughts before you."

According to this representation, it must be admitted that the Sovereign does not appear to so much advantage as the Keeper of his Conscience.

CHAPTER CXXXIV.

CONTINUATION OF THE LIFE OF LORD HARDWICKE TILL THE DEATH OF
FREDERICK PRINCE OF WALES.

WE now approach the rebellion of 1745, with respect to which we shall find Lord Hardwicke acting an important part in the measures to suppress it,—in the trial of the rebel Lords,—and in the new laws framed to introduce order and subordination into the country in which it ori-

ginated. On the 15th of February, 1744, he brought down a message from the King, stating that "his Majesty had received undoubted intelligence that the eldest son of the Pretender, having arrived in France, was making active preparations to invade the kingdom, in concert with disaffected persons here." Both Houses joined in an address of thanks and assurance of support. This had been drawn by the Lord Chancellor, and concluded in the following eloquent and touching terms:—

"Loyalty, duty, and affection to your Majesty; concern for ourselves and our posterity; every interest and every motive that can warm or engage the hearts of Britons and Protestants, call upon us on this important occasion to exert our utmost endeavours, that, by the blessing of God, your enemies may be put to confusion; and we do all sincerely and earnestly assure your Majesty, that we will with zeal and unanimity take the most effectual measures to enable your Majesty to frustrate so desperate and insolent an attempt, and to secure and preserve your royal person and government, and the religion, laws, and liberties of these kingdoms."

However, a general supineness prevailed, and in about ten days afterwards a rebuke was administered to the Chancellor and his colleagues by the Earl of Orford, who had never before opened his mouth in the House of Lords. By command of his Majesty, they had laid some papers before the House containing information on oath of the arrival of Prince Charles Edward at Dunkirk, and of the equipment of a fleet, and the assembling of an army there, for the invasion of England. No motion being made, except "that the papers should lie on the table," the ex-Premier said:—

"I little expected that any thing would happen to make it necessary for me to offer my sentiments in this assembly, but I feel that I cannot continue silent without a crime. Little did I expect that the common forms of decency would have been violated by this august assembly. It is with the greatest surprise and emotion that I see such a neglect of duty. When his Majesty has communicated to you intelligence of the highest importance, is he to receive no answer from the House? As such treatment, my Lords, has never been deserved by his Majesty, so it has never before been practised. And sure, my Lords, if his hereditary council should select for such an instance of disrespect a time of distraction and confusion, a time when the greatest power in Europe is setting up a Pretender to his throne, and when only the winds have hindered an attempt to invade his dominions,—it may give our enemies occasion to imagine and report that we have lost all veneration for the person of our Sovereign. It cannot be thought consistent with the

wisdom of your Lordships to be employed in determining rights of private property, when so weighty a case as the title to the Crown ought to engross all your attention.^a [Here he looked hard at the Chancellor.] At this instant the enemy may have set foot upon our coasts,—may be ravaging the country with fire and sword, and may be openly threatening us with extirpation or servitude. If this attempt succeed, we shall be ruled over by a viceroy of the French King, and your Lordships, who sit in this House with a dignity envied by every class of nobility in the world, will be no better than the slaves of a slave to an ambitious and arbitrary tyrant. Permit me to rouse you from this lethargy. Let the noble and learned Lord on the woolsack submit to the sacrifice of postponing for a little while the calling in of counsel to argue about costs, while we show so much regard for the great, the universal, the national interest, as to concert a proper form of address to his Majesty, that he may not appear labouring for our safety, while we neglect what is due to our Sovereign and to ourselves.”^b

An apology being offered, on the ground that, after what had lately passed, no further declaration of their Lordships' sentiments upon the present state of affairs was deemed necessary, the Chancellor moved an address “to give his Majesty the strongest assurances that this House will, at the hazard of their lives and fortunes, stand by and support his Majesty against France, and any other power whatsoever, that shall presume to assist or countenance the Pretender, or any of his descendants or adherents, or to invade or commit any hostilities against his Majesty's kingdoms,”—which was unanimously agreed to. The government, so little prepared for defence as not to have in all England an army of more than 7000 men, and only a few invalids in Scotland, escaped present danger by the dreadful storm which dispersed the French squadron, and wrecked many of their transports. “AFFLAVIT DEUS ET DISSIPANTUR.” But it was ascertained that while there was in the

^a On reference to the Journals it appears that one of the only three decrees of Lord Hardwicke ever appealed against was this day heard and affirmed.—*Countess of Warwick v. Earl of Cholmondeley.*

^b As this is probably the last time I shall have to mention Walpole, whom I have had occasion to introduce from time to time ever since the impeachment of Lord Somers, I may be allowed to observe, that, after much unjust abuse heaped upon him, there seems now to be a great disposition to bestow upon him unqualified praise. He was probably the most dexterous party leader we have ever had,—equally skilled to win royal favour, to govern the House of Commons, and to in-

fluence or be influenced by public opinion. He likewise well understood the *material* interests of the country, and, as far as was consistent with his own retention of power, he was desirous of pursuing them. But, that he might run no personal risk, he would make no attempt to improve our institutions; he was regardless of distant dangers; he plunged into a war which he admitted to be unjust and impolitic—and, by his utter neglect of literature and literary men, in spite of the example set him by his immediate predecessors, Whig and Tory, he gave to official life in England that aristocratic feeling, and vulgar business-like tone, which it has ever since retained.

country a powerful, zealous, and active party for the Pretender, great indifference was manifested by almost all other classes. "I apprehend," said old Horace Walpole, "that the people may perhaps look on and cry, *Fight dog! fight bear!* if they do no worse."

Lord Hardwicke, much alarmed by the aspect of affairs, had recourse to an expedient which I cannot think a very wise one;—he resolved to render more stringent the laws against high treason—instead of trying, by reforms, to make the government more popular. Accordingly he caused a bill to be introduced in the House of Commons to attain the sons of the Pretender, if they should land, or attempt to land, in Great Britain or Ireland; and when the bill came up to the Lords, he added clauses to make it high treason to correspond with the sons of the Pretender, and to postpone till their death the mitigation of the English law of treason, agreed to on the union with Scotland, by which, after the death of the Pretender, corruption of blood in all cases of treason was to be done away with, so that innocent children might not be punished for the crime of their parents.

These clauses were most strenuously opposed, particularly by John Duke of Bedford, who made a very fine speech against them, in which he alluded, with much pathos, to the fate of his grandfather, Lord Russell; and observed, that if it had not been for the circumstance of his great-grandfather still surviving at that time, all the property of his family would have been confiscated, and his name would have been extinct. Lord Hardwicke, in answer, delivered an elaborate harangue, which, however, was a mere repetition of a very ingenious pamphlet lately written by his son, the Honourable Charles Yorke, entitled "Considerations on the Law of Treason."° His most difficult point was to reconcile the postponement of the stipulated mitigation to the compact entered into with Scotland, whereby the English law of treason was admitted into that country, on an express condition which was to be now violated, and he was obliged to resort to such quibbles as, that

° I have myself known several instances of a pamphlet being converted into a speech. One of the most remarkable of these was in a debate on the Catholic question, when, there appearing a great coincidence of sentiment and language between a speech delivered by Sir John Copley and a pamphlet recently published by Dr. Philpotts, the present Bishop

of Exeter, the old song was very happily quoted:—

"Good Sirs, this brown jug that now foams
with mild ale,
In which we now drink to sweet Nan of
the vale,
Was once TOBY PHILPOTTS."

“it was not then foreseen that the Pretender would have sons;” that “as he was in a green old age, and likely to live as long as them, the postponement was inconsiderable;” and that “if *they* had sons, a further postponement would be unnecessary, as, in a few years, the title of the reigning family would be universally recognised.”^d The Chancellor had large majorities, but I doubt whether he added to the security of the existing government by any of his enactments. The general feeling upon the subject was expressed by the oft-repeated exclamation,

“See, Hardwicke’s quibbles voted into law!”^e

Cameron, of Lochiel, cared little for acts of parliament when he said, “I will share the fate of my Prince, whatever it be, and so shall every man over whom nature or fortune has given me any power!” The dread of attainder had no influence on the movements of Charles Edward, and if he had been captured he must have been treated as a prisoner of war, for the voice of the whole world would have been raised against the meditated deed of executing him as a traitor. And the very fact of James III. being then a healthy man, little turned of fifty, showed that, by the proposed violation of the compact respecting the law of treason, odium was wantonly brought upon the reigning dynasty.

During the session of parliament which began on the 24th of November, 1744, and was closed on the 2nd of May, 1745, there was the lull before the tempest; no business of any importance seems to have been transacted, and there has not been handed down to us the fragment of any debate in the House of Lords, from the opening of it till the prorogation.^f The King, as usual, then went abroad, and Lord Hardwicke, as a Lord Justice, was left at the head of the regency.

In a most difficult situation was he placed. First came the news of the battle of Fontenoy, which not being con-
 nected with his administration of the government, May 11,
1745.

^d 13 Parl. Hist. 704—854.

^e “What help from Jekyll’s opiates canst thou draw?
Or Hardwicke’s quibbles voted into law?”

Pope’s Fragment, 1740.

^f It is a curious fact, that towards the middle of the last century, the public interest in parliamentary proceedings, instead of increasing, seems almost entirely to have died away, for the prohibition against publishing de-

bates would have had little effect if there had been any demand for them. Of the laborious and useful compilation entitled “The Parliamentary History,” there is only one volume between 1743 and 1747; one between 1747 and 1753; and one between 1753 and 1765. After Dr. Johnson ceased to report for the “Gentleman’s Magazine,” it contains few debates worth reading; and the “London Magazine,” which rivalled it, falls off in the same proportion.

and bringing no disgrace on the national character, though unfortunate, did not probably give him much concern: but in the course of a few weeks he was thrown into deep consternation by hearing of the landing of Prince Charles Edward in the Highlands of Scotland, of his erecting the royal standard in Glenfinnan, with the motto TANDEM TRIUMPHANS,—of the gathering of the Highland clans around him,—of his march to Edinburgh,—of his enthusiastic reception in that metropolis,—of his festivals in Holyrood House,—of his victory over Cope at Prestonpans,—of the flight of the English troops to Berwick,—and of the preparations of the rebel army to cross the border. No blame was to be imputed to the Lords of the Regency. A requisition was sent to the Dutch for the six thousand auxiliaries they were bound by treaty to furnish in case of invasion; several regiments were recalled from Flanders; the militia of the northern counties was called out; Marshal Wade was directed to collect at Newcastle all the troops of every sort that could be mustered; and all suspected persons were taken up and confined in prison by virtue of a suspension of the *Habeas Corpus* Act. But there was an entire apathy in the public mind, and the “fight-dog—fight-bear” prophecy seemed about to be fulfilled. Thus writes a colleague of Lord Hardwicke well affected to the government, and not of a desponding turn of mind: “England, Wade says, and I believe, is for the first comer; and if you can tell whether the six thousand Dutch and ten battalions of English, or five thousand French or Spaniards, will be here first, you know our fate.”^s “The French are not come, God be thanked! But had five thousand landed in any part of this island a week ago, I verily believe the entire conquest of it would not have cost them a battle.”^h

The King returned in a hurry from Hanover, on the 31st of August, but although thereby Lord Hardwicke’s personal responsibility was relieved, his anxiety was rather increased; for his Majesty could not be made aware of his danger, and it was considered contrary to court etiquette to say that the Stuarts had any adherents. “Lord Granville and his faction,” says Horace Walpole, “persist in persuading the King that it is an affair of no consequence; and for the Duke of Newcastle, he is glad when the rebels make any progress, in order to confute Lord Granville’s assertions. His Majesty uses his ministers as ill as possible, and discourages every body that would

^s Henry Fox to Sir C. H. Williams.

^h Same to same.

risk their lives and fortunes with him.”ⁱ Lord Hardwicke, at the request of the cabinet, and in the name of the whole of them, presented another strong remonstrance to his Majesty on his want of confidence in his servants, but it was heard, like the preceding, with silence and disgust. Their object now was, by language of kindness, and by measures of conciliation, to rouse some spirit in defence of the present establishment, and to try to impress upon the public mind a sense of the benefits obtained, and the evils avoided, by calling in the family which the nation, in their folly, appeared desirous of seeing ejected.

Parliament met on the 18th of October, when the King was persuaded to deliver a well-conceived speech, written by the Chancellor, containing the following stirring appeal:—

“I have throughout the whole course of my reign made the laws of the land the rule of my government, and the preservation of the constitution in church and state, and the rights of my people, the main end and aim of all my actions: it is, therefore, the more astonishing that any of my Protestant subjects who have known and enjoyed the benefits resulting from thence, and have heard of the imminent dangers these kingdoms were wonderfully delivered from by the happy Revolution, should, by any arts and management, be deluded into measures that must at once destroy their religion and liberties, introduce Popery and arbitrary power, and subject them to a foreign yoke. I am confident you will act like men who consider that every thing dear and valuable to them is attacked, and I question not, but, by the blessing of God, we shall in a short time see this rebellion end, not only in restoring the tranquillity of my government, but in procuring greater strength to that excellent constitution which it was designed to subvert. The maxims of this constitution shall ever be the rules of my conduct. The interest of me and my people is always the same, and inseparable. In this common interest let us unite, and all those who shall heartily and vigorously exert themselves in this just and national cause, may always depend upon my protection and favour.”^k

His Majesty's gracious speech was generally circulated

ⁱ To Sir H. Mann, 20th September, 1745.

^k 13 Parl. Hist. 1311. In the Earl of Marchmont's Diary, under date October 7, 1745, it is said that “the Chancellor, starting as from a lethargy, remarked, that he had thought lightly of the Highlands, but now saw they made a third of the island in the map.” It is very possible that he might have made this geographical observation; but there is no pretence for saying that he had been blind to the danger which now threatened

the government. On the contrary, he had long observed and lamented the growing activity of the Jacobites, and the growing indifference of the rest of the nation; and, from the landing of Prince Charles, was an *alarmist* as well as Newcastle, of whom the characteristic story was invented, that “for a whole day he shut himself up, considering how he might best make terms with the Pretender.”

throughout the nation, while lower, and perhaps more effectual, arts were used to rouse the people to the belief that they had an interest in the quarrel. Thus the butchers were specially apostrophised—on the ground that Papists abstain from eating meat in Lent,—and hand-bills were hawked through the streets, representing that the tartaned Highlanders not only violated virgins, but ate young children for supper. A little reflection only was wanting to convince all reasoning men that they ought to stand by the present establishment. Setting aside the doctrine of indefeasible hereditary right, which had now few adherents in England, there was, unquestionably, a better prospect of constitutional and wise government under the House of Hanover than under the recalled Stuarts. The two Georges, though not destitute of some respectable qualities, certainly were not very interesting or amiable characters; their utter contempt for literature and the arts placed them disagreeably in contrast with the two Charleses,^m and some ground existed for the charge that substantial British interests had been sacrificed to the object of procuring petty additions to the Electorate. But, upon the whole, the change of dynasty had answered well. During the half century which had elapsed since the expulsion of James II.,—notwithstanding the blind rage of contending factions, there had been, with slight interruptions, profound tranquillity in the country; the nation had made rapid and steady progress in wealth and power, and Britons had enjoyed civil and religious liberty to a degree hitherto unknown in the world. What could be expected from a RESTORATION pronounced by Mr. Fox to be “the worst of revolutions,” and which, in this instance, must have been fatal to our free constitution, from the arbitrary principles on which it was to be defended? The objection was most forcible, that the family claiming the throne were of a different religion from the great majority of the people, and, looking to their personal qualities, it could not be overlooked that the Old Pretender, calling himself James III., was a narrow-minded bigot, while Prince Charles, notwithstanding his romantic adventures, and the attempts to exalt him into a hero, being, in reality, a very ill-educated and very silly young man, had shown a mixture of rashness and obstinacy which,

^m I have often been at a loss to understand how all the good songs, all the good tunes (with the exception of “The Campbells are coming”), all the poetry, and all the wit, were on the side of the Jacobites. Is it to be ac-

counted for by the apprehension, that the heads of the House of Brunswick would not endure to have their cause supported by the effusions of genius and taste?

combined with his hereditary notions of prerogative, rendered him wholly unfit to rule over a free people.

The King himself became apprehensive, when news arrived of the Rebels having crossed the border—having captured Carlisle—having been kindly welcomed at Manchester—and having advanced to Derby, within little more than 100 miles of the capital. Lord Hardwicke and the Duke of Newcastle were for the time in favour with him, and he heartily co-operated with them in marching the Guards to Finchley,ⁿ and taking the most vigorous measures for the public safety. But when the danger seemed to have passed away by Prince Charles's retreat,^o his disaster at Clifton, and the recapture of Carlisle by the Duke of Cumberland, his Majesty's dislike of the Duke of Newcastle again broke out in the saying, that it was *hard he should have for his minister a man hardly fit to be a Chamberlain in a petty German court*; and he formed a new ministry under Lord Granville, which lasted exactly forty-eight hours. It was said, when the crisis was over, ^{Feb. 1746.} that Lord Hardwicke was ready to have resigned with his colleagues; but he warily abstained from doing so, recollecting that it is easy for a minister to go out, and often very difficult to get back again.

A little temporary dismay, with mutual recriminations, arose from the news of the fight at Falkirk, but exultation and complacency were diffused by the victory of Culloden. Now Lord Hardwicke had the satisfaction of reading an address of congratulation unanimously voted by the Lords, in which he had dexterously introduced the following sentence, most soothing to the royal ear:—"It is with the greatest pleasure and admiration we behold in how eminent a manner this signal victory has been owing to the valour and conduct of his Royal Highness the Duke; if any thing could add to our joy on such an event, it is to see a prince of your Majesty's blood, *formed by your example, and imitating your virtues*, the

ⁿ See Hogarth.

^o The most recent and the most able historian of those times says, that "had Charles marched onwards from Derby, he would have gained the British throne" (3 Lord Mahon, 415); but, without a rising in his favour in England, his little army must have been extinguished at Finchley: the English Jacobites, who had been lavish of promises, faltered when it came to the push; and, after all, their numbers were not

sufficient to have effected any thing without the general assistance of the squires and the clergy, who again began to have the same fear for the Protestant religion by which they were actuated in 1688. The general apathy arose a good deal from too great a contempt of the danger. If Charles had advanced to take London, his attempt would have more resembled Louis Bonaparte's attack on Boulogne than Napoleon's triumphant entrance into Paris from Elba.

glorious instrument of it; and happy should we be in any opportunity of testifying the high sense we have of such illustrious merit." ^P

Next followed the painful but necessary task of trying the rebel Lords. The victory of Culloden was followed by wanton severities on the vulgar, which justly gave its hero an appellation immortalised by Byron; but, for the good order of society, the leaders of an attempt to subvert an established government must make it at the peril of their own lives, and they are bound to consider not only the justice of their cause, but the probabilities of success or failure. Against the Earls of Kilmarnock and Cromarty, and Lord Balmerino, bills of indictment were found by a grand jury for the part they had taken in the siege of Carlisle; and these being removed by certiorari before the House of Lords, the trials were ordered to take place in Westminster Hall. Lord Hardwicke was appointed Lord High Steward.

On this occasion he is bitterly censured by Horace Walpole, who says, "Though a most comely personage, with a fine voice, his behaviour was mean, curiously searching for occasion to bow to the prime minister, that is no peer; and not even ready at the ceremonial. To the prisoners he was peevish; and instead of keeping up to the humane dignity of the law of England, whose character it is to point out favour to the criminal, he crossed them, and almost scolded at any offer they made towards defence."^q "He lost the character for humanity he had before tried to establish, when he sat as Lord High Steward at the trials of the Scotch Lords, the meanness of his birth breaking out in insolent acrimony."^r This censure is greatly overcharged, but I cannot defend the propriety and good taste of all his Grace's observations to the noble prisoners; and he forgot that—although their attempt, not having prospered, was called *treason*, and the law required that they should be sentenced to death—they were not guilty of any moral offence, and that if they had succeeded in placing

^P 13 Parl. Hist. 1405.

^q *Letter to Sir H. Mann.*—He afterwards goes on to tell the following amusing anecdote of Lord Mansfield, which is a gross misrepresentation, as Mr. Solicitor's conduct to all the prisoners during the trial was most courteous. "While the Lords were withdrawn, the Solicitor-General Murray (brother of the Pretender's minister) officiously and inso-

lently went up to Lord Balmerino, and asked him how he could give the Lords so much trouble. Balmerino asked the bystanders who this person was? and being told, he said, "Oh, Mr. Murray, I am extremely glad to see you; I have been with several of your relations: the good lady, your mother, was of great use to us at Perth."

^r *Memoirs of Ten last Years of George II.*

Charles Edward on the throne of his grandfather they would have been celebrated for their loyalty in all future ages. When they had been marched to the bar, the gentleman gaoler standing by their side, holding the axe, the edge still turned from them, he addressed a preliminary speech to them, which thus began:—

“William, Earl of Kilmarnock, George, Earl of Cromarty, Arthur, Lord Balmerino, your Lordships are brought before the most august judicature in this kingdom, in order to receive your several trials upon different charges of high treason. As the crimes whereof you stand accused are of the most heinous nature, so the accusations against you are grounded on no slight foundations. But though your charge is thus weighty and solemn, it is but a charge, and open to all such defences as the circumstances of your several cases and the rules of law and justice will admit. The law is the solid basis and support of the King’s throne: it is the great bulwark of the property, the liberty, and life of every subject, and it is the security of the privileges and honours of the Peerage. By this measure, which is uniform and equal to every member of the community, your actions which are now called in question are this day to be examined and judged. If your Lordships are innocent, this will be one ground of a reasonable confidence in your present unhappy circumstances. But to this consideration your own thoughts cannot fail to add another; I mean that the rules of this law are to be expounded and disclosed to you by this illustrious assembly, the whole body of the Peers of Great Britain, in whose noble and discerning minds nothing can have weight but evidence and justice. Guilt alone can endanger you, and innocence alone can acquit you.”

He then sarcastically told them of their felicity in being tried under the law made to regulate the trial of high treason since the Revolution. “However injuriously that Revolution has been traduced,” said he,—“whatever attempts have been made to subvert this happy establishment founded upon it, your Lordships will now have the benefit of that law in its full extent.”—Lords Kilmarnock and Cromarty pleaded *guilty*, but Lord Balmerino pleaded *not guilty*—only, however, to show the stoutness of his heart, and that he might glory in what he had done, for he had been taken with arms in his hands, and he attempted no legal defence beyond objecting that he was improperly described in the indictment as being “late of Carlisle,” and that on the particular day laid in the indictment on which he was charged with assaulting that city he was more than twenty miles off; but the Lord High Steward told him that his description was an immaterial form, and that, according to English procedure, the overt act of treason might

be alleged on one day, and proved on another.* Of course he was unanimously found guilty,—a verdict which he heard undismayed, being resolved on the scaffold, in response to the prayer “God bless King George,” to say “God bless King James!”† The Lord High Steward now proceeded to pronounce sentence on all the three :—

“By this conviction it is now finally determined that your Lordships are guilty of that crime which not only the laws of Great Britain, but of all other countries, for the wisest reasons, adjudge to be the highest. As it gives the deepest concern to every one of my Lords, your peers, to find persons of your birth and quality stained with so foul an offence, so it must give them some satisfaction that all of you, in effect, have confessed it. Charity makes one hope that this is an indication of some disposition to that repentance which your guilt so loudly calls for. To attempt to aggravate crimes of so deep a dye, and in themselves so incapable of aggravation, against persons in your unhappy circumstances, would be a vain as well as a most disagreeable task. And yet the duty of that place in which I have the honour to sit requires that I should offer some things to your consideration, to explain more fully the necessity of that justice which is this day to be administered, and to awaken in your minds a due sense of your own condition.” [Having then, at most unjustifiable length, given a partial view of the campaign, and of the motives and objects of the opposite sides, he thus concludes:] “If from any unforeseen accidents, not uncommon in military operations, delusive hopes were for some time kept alive, it seems to have been judicially designed by Providence to render the more signal that vengeance which was reserved for them at the battle of Culloden. How much was owing, on that memorable day, to the bravery and discipline of his Majesty’s troops, to the animating example, the intrepid valour, and the wise conduct of a Prince descended from him who is so deeply engraven on the heart of every member of this great assembly, that I could only repeat what their own grateful minds have already suggested to themselves, and represented to the throne! Then was experienced how much that courage which virtue, true loyalty, and the love of our country inspire, is superior to the rashness and false fire of rebellion, accompanied by the terrors of guilt. I will add no more. It has been his Majesty’s justice to bring your Lordships to a legal trial; and it has been his wisdom to show that, as a small part of his national forces was sufficient to subdue the rebel army in

* The last Duke of Queensberry (old Q.), whom I knew on my first coming to London, used to complain of the shameful manner in which he had once been used, by losing a great cause simply for not doing what those who required it knew to be impossible. “When the trial was nearly over,” said he, “proclamation was made that I, who was the

plaintiff, should come forth; and because I did not come forth, I was nonsuited and cast, although Judge, jury, and counsel, all were well aware that I was not then attending the Kingston Assizes, but was shooting grouse in the highlands of Scotland.”

† From him Walter Scott has taken the exit of Fergus MacIvor.

the field, so the ordinary course of his laws is strong enough to bring even their chiefs to justice. What remains for me is a very painful, though a necessary part. It is to pronounce that sentence which the law has appointed for crimes of this magnitude; a sentence full of horror! such as the wisdom of our ancestors has ordained as one guard about the sacred person of the King, and as a fence about this excellent constitution, to be a terror to evil-doers, and a security to them that do well. The judgment of the law is, and this High Court doth award,—”

And so he went through the drawing, hanging, cutting down alive, burning their bowels before their faces, and the other particulars which he had eulogised as necessary for the protection of the King and constitution.” Cromarty was pardoned out of compassion to his wife. The other two were beheaded, the rest of their sentence being remitted.

Without imputing blame in this instance to the government, their tragical end excited much commiseration :—

“ Pited by gentle minds, Kilmarnock died,
The brave, Balmerino, were on thy side.”

The next victim, notwithstanding the courage he displayed, fell unlamented :—

“ But Lovat's fate indifferently we view,
True to no King, to no religion true ;
No Tory pities, thinking what he was,
No Whig compassions, for he left the cause.
The brave regret not, for he was not brave,
The bonest mourn not, knowing him a knave.”

As he had committed no overt act of treason in England,—to bring his case before the House of Lords, it was necessary to proceed against him by impeachment. ^{March, 1747.} Articles being presented at the bar, the Chancellor was again appointed Lord High Steward, and the trial took place in Westminster Hall.

Lord Hardwicke on this occasion cannot be accused of any departure from the rules of law or justice; but he was too solicitous to praise the existing government, and he betrayed, under assumed moderation of tone, great internal exultation at finding such a victim in his power. All parties knowing that there was the certainty of a conviction on the clearest evidence, in his preliminary address to the prisoner when placed at the bar, he said :—

“The weight of this accusation, the solemn manner of exhibiting and prosecuting it, and the awfulness of this supreme judicature, the most illustrious in the world, are circumstances that may naturally strike your mind with anxious and alarming apprehensions. Reasonable and well-grounded must those apprehensions be if they proceed from that greatest of all terrors, a consciousness of guilt. But if your Lordship is innocent, if you have really preserved yourself untainted with the heinous crimes laid to your charge, these very awful circumstances, when duly considered, ought to have a contrary effect, and to afford you support and consolation.”

After the verdict of guilty came a speech of culpable length and virulence; for the punishment provided by the law in cases of high treason did not include torturing and mangling while still alive by the Judge as well as by the hangman. Having described how Lord Lovat had forced out his clan to fight for the Pretender, he thus introduced a dissertation on clanship, much fitter for a debate in the House when sitting as a legislative assembly:—

“Permit me to stop here a little and lament the condition of part of this united kingdom; happily united in interests, both civil and religious; happily united under the same gracious monarch and the same public policy. Yet the common people, in some of the remote northern counties, are kept in a state of bondage to certain of their fellow-subjects, who, contrary to all law and every true principle of government, have erected themselves into petty tyrants over them, and arrogate to themselves the right of compelling them into rebellion against their lawful sovereign, under the peril of fire and sword. Astonishing it is that such a remain of barbarism should have subsisted so long in any quarter of this civilised, well-governed island. But let it be accounted one good fruit of this inquiry, that it has been so clearly made manifest. Such a knowledge of the disease points out the remedy. This usurped power was audaciously made use of over your clan. It is true your Lordship’s activity in exercising it rose and fell in proportion to the appearance of the good or had success of the Pretender’s cause; but after the advantage gained by the rebels at Preston Pans, which you vainly called *a victory not to be paralleled in history*, you thought it right to throw off the mask, and openly to espouse a party which you then hoped might be espoused with impunity.”

After a history of the rebellion, and many other topics, political, economical, military, and religious, at last came the sentence, which, though frightful, it must have been a relief to hear. Lovat died bravely, exclaiming “*Dulce et decorum est pro patriâ mori!*” but his treachery and cruelty were so notorious, that a savage shout of exultation was raised when he laid his head on the block.

About this time another execution took place, which was universally condemned, and which I think reflects great disgrace upon Lord Hardwicke. As the legal adviser of the Crown, he was chiefly answerable for it, although he did not ostensibly take any part in the proceeding. Charles Radcliffe, when quite a boy, had been engaged in the rebellion of 1715, and, being attainted, had escaped from Newgate. His elder brother, the Earl of Derwentwater, had then been beheaded, all the possessions of his family had been confiscated, their blood had been corrupted, he had lost all the rights of citizenship in his native land, and he had chosen another country in which, for thirty years, he had lived quietly and respectably. During the insurrection in Scotland, having been captured on board a French vessel bound for that country, it was resolved that he should be arraigned on his original sentence, which had slumbered so long. The only trial now conceded to him was confined to his identity, and, although there was no doubt of the fact, I do not think that it was satisfactorily established by legal evidence.* For such a course there was no precedent, except in the case of Sir Walter Raleigh, which had brought shame upon the reign of James I. The constancy of this unfortunate gentleman to his cause, and the calmness of his demeanour, powerfully excited the public sympathy in his favour :

“ Radcliffe, unhappy in his crimes of youth,
Steady in what he still mistook for truth;
Beheld his death, so decently unmoved,
The *soft* lamented, and the *brave* approved.”

The general opinion was, and is, that, with more opportunity for clemency, there was at this time greater severity than on the suppression of the rebellion of 1715;† and although the blame of it is laid upon the Duke of Cumberland, who personally ordered the military executions which rendered his name so odious in Scotland, Lord Hardwicke ought to be held responsible for what was done judicially in England.‡

* 18 St. Tr. 430—442.

† Hall. Const. Hist. iii. 312.

‡ The subsequent execution of Dr. Alexander Cameron, in 1753, I regard as a wacon atrocity. He was a man of literature and science, who, having studied surgery, had accompanied his brother, the famous Lochiel, into the field in 1745, that he might take care of him when wounded; and had escaped with Prince Charles after the battle of Culloden.

His name was included in the act of attainder, and he was appointed surgeon to a regiment in the French service. Some years after, in a time of profound tranquillity, when all real danger of Jacobitism had passed away, he visited his native country to arrange his private affairs; and, being betrayed, he was sent to London, arraigned on the act of attainder, and, without trial, executed as a traitor at Tyburn; displaying the highest

However, I am glad to be able again to praise him, in stating his admirable measure for abolishing heritable jurisdictions in Scotland, by which that country was more benefited than by any legislative measure ever passed. The feudal system had been there pushed to more oppressive lengths than in any part of Europe. The relation of lord and vassal, which elsewhere is consistent with personal and civil freedom, among the Caledonians approached that of master and slave. Almost every manor or barony was a little independent state, subject to the most arbitrary laws—or rather to no law except the will of the little tyrant called the *laird* or *chief*. He had power of life and death under a grant of “*fossa et furca*,” or “pit and gallows;” and, for lack of evidence to convict a prisoner of theft, it was enough to urge that “the young laird had not yet seen a man hanged.” In the larger jurisdictions the forms of justice were more regularly observed; but it sometimes happened that the judge was a Highland chieftain, that the prosecutor and the jury were all of the same name and blood, and that the accused was of a rival clan at mortal enmity with them—from mutual depredations and acts of vengeance reciprocally inflicted for many generations.* The interference of the King’s regular Courts was prohibited, and the only control that could be exercised over these judicial enormities was by the Scottish Privy Council, the most cruel, remorseless, and arbitrary tribunal ever established in any country,—compared to which the English Star Chamber was mild, compas-

qualities of a philosopher and a Christian. Although Lord Hardwicke’s name is not mentioned in this affair, he must have been consulted about it; and he must have been present in council when the death warrant was signed.—See 19 St. Tr. 733—746. A beautiful marble monument has lately been erected in the chapel of the Savoy, with the consent of the Chancellor and Council of the Duchy of Lancaster, to the memory of the unfortunate Alexander Cameron.

^a I am sorry to say, that in one of the most noted instances of this sort the judge was the Duke of Argyll, the jury were all Campbells, and a poor Stewart was tried for the murder of a Campbell. The clannish spirit which prevailed may be guessed from the boast of an old Campbell when taunted with this affair, and told that Stewart was innocent:—“It was — to be shure! That’s the very thing! Ony body can get a man hanget that’s guilty; but it’s only Callumore

can hang a man wha’s no guilty ava.”

Note to 4th Edition, 1857.—I have since received from an eminent Scottish Judge the following account of this trial, which may be implicitly relied upon:—“The trial alluded to did not occur till 1752, five years after the abolition of the heritable jurisdictions; and the Duke presided at it, not as Baron of his own Court, but (contrary to all precedent) as Lord Justice General in a *Circuit* Court of Justiciary. The name of the accused was *Stewart* (a clan then in open hostility to the Campbells), not *Macdonald*; and the Lord Advocate (Grant of Prestongrange) attended the trial, a thing also without precedent at a circuit. The Jury were not *all* Campbells, but 11 out of 15 were, and of the other four none was a *Stewart*. The trial was that of James Stewart in Aucham for the murder of Colin Campbell of Gleoure. It was a very bad case—one of the grossest instances on record of a judicial murder.”

sionate, and regardful of law and justice. One striking consequence of the system was, that the mass of the population were almost unconscious of the general government of the country, and looked only to the will of the superior to whose rule they were subjected, and under his banner they were equally ready to fight for King James or King George. This consideration led to the abolition of heritable jurisdictions in Scotland, without much regard being paid to the private oppression which they generated. The evils of the system had been long lamented, but, from the whole aristocracy being interested in perpetuating them in a country where there was no middle class and the people had no voice, a remedy for them was considered hopeless. James I., in his *BASILICON DORON*, addressed to Prince Henry, had observed:—"Sed nihil est, quod legum usum magis impediatur, quam juris regalis hæreditariæ apud quosdam nobiles potestas; vera totius regni calamitas. Nihil mihi in presentia consilii hic succurrit, nisi ut severissimam à singulis exigas officii rationem, et quantum leges permiserint, cessantium castiges ignaviam. Et si quis potestatem hanc suo vitio amiserit, nemini post illum hæreditario jure eam concesseris. Verum ad laudabilem Angliæ consuetudinem omnia hæc paulatim aptare studebis."^b At the time of the Union in the reign of Queen Anne, there was an express stipulation without which that measure could not have been carried,—“That all heritable offices, superiorities, heritable jurisdictions, and offices for life, should be reserved to the owners thereof as rights of property, in the same manner as they were then enjoyed by the laws of Scotland.”^c

But Lord Hardwicke, like a true statesman, seeing that it was for the manifest advantage of Scotland, and of the whole empire, that they should be abolished, seized Aug. 5,
1746. the favourable opportunity of the suppression of the rebellion to effect this great reform. Immediately after the trial of Lords Kilmarnock, Cromarty, and Balmerino, he opened the subject in the House of Peers, and procured an order to be made on the Lords of Session to prepare the draught of “a bill for remedying the inconveniences arising from heritable jurisdictions in Scotland, and for making more effectual provision for the regular administration of justice throughout that part of the United Kingdom by the King’s courts and judges there,” and that they should inquire into and make a report upon the nature and extent of those jurisdictions. The Scotch

^b Opera Jacobi Regis, p. 150.^c Art. 19.

Judges, at that time all landed proprietors, who for little emolument contentedly filled the judicial office in consideration of the power and influence it conferred, resolved to thwart the English Chancellor in this salutary measure. They presented a report in which, on frivolous excuses, such as that some records were damaged, and others were locked up with the Scottish regalia, they pretended that they could not prepare the draught of the required bill, nor give an accurate account of the nature and extent of the heritable jurisdictions; and they remonstrated against the abolition of these jurisdictions as a measure contrary to the articles of Union, and wholly impracticable.^d

Lord Hardwicke, nothing daunted, caused a bill to effect Feb. 17, his object to be prepared under his own superintend-
1747. ence in London, and this he introduced at the commencement of the following session in a most lucid and argumentative speech, of which we have an authentic report edited by himself. In this he animadverts with decency, but with the most cutting severity, on the conduct of the Scotch Judges, saying, amongst other things equally bitter, "The interference of the legislature is now proved to be indispensable, for after the discovery made by the Lords of Session to all the world, that there is no record by which the nature and extent of these heritable jurisdictions can be ascertained, they may be claimed and stretched by all who think fit, and the poor people who are oppressed are told by those to whom they might fly for refuge that there is no redress for oppression in its worst form." His chief difficulty was to combat the argument arising from the treaty of Union. After some rather sophistical criticisms upon the language of the different articles, he assumes a manly tone, and boldly contends that the parliament of the United Kingdom had in it all the powers which belonged to the parliament of Scotland, and could now legislate on the subject as that parliament might have done,—insisting, that if the measure was clearly required by existing circumstances, and must be for the general good of Scotland, it ought to be adopted were it forbidden by the articles of Union in terms the most express and peremptory. He showed that an attempt to fetter the supreme legislative power in any

^d It was soon after this that a Lord of Session spoke so contemptuously of Cromwell's Judges, who he could not deny had administered justice impartially and satisfactorily, but whom he deprived of all merit because they were free from local and party connections, saying, "No thanks to them, KITHLESS LOONS!"

state is a contradiction in terms. "In all countries," he said, "the legislative power must, to a general intent, be absolute; and therefore, upon treaties of this nature, strict and rigid constructions ought not to be made, and may prove dangerous. If they should too easily be given way to, incorporating Unions would become impracticable or mischievous."* Out of policy, I presume, but not very sincerely, he declared that he was not moved to bring forward this measure by the rebellion, or by the supposed disaffection of Scotland, or by a belief that the present possessors of these heritable jurisdictions were not fit to be intrusted with such powers, there being before his eyes Scottish chiefs of distinguished loyalty, as well as high birth, worthy to be trusted with any powers which it is proper for the Crown to confer upon a subject.

"My Lords," said he, "my true reasons are drawn from known and allowed maxims of policy. I think that the parcelling out in this manner the power of jurisdiction originally lodged in the Crown, was an erroneous and a dangerous model of government. I look upon the administration of justice as the principal and essential part of all government. The people know and judge of it by little else. The effects of this are felt every day by the meanest in the business and affairs of common life. Statesmen look abroad into foreign countries, and consider our remote interests and connections with other nations. But of what utility are those views, however great and just, unless they be referred back to our domestic peace and good order? The chief object of the social compact is to secure to us the regular course of law and justice. When the King, therefore, grants away jurisdiction, he parts with so much of his government; it is giving away so many jewels of his crown. It is certainly putting so much of the protection of his people into other hands; and this tends directly to dissolve the bond of allegiance and affection between

* This, however, is perhaps, by a fallacy, begging the question. There may be a legislature with limited powers, like the American Congress,—and it is possible that after an incorporating union the power of the united legislature may be made to be limited by the conditions of the treaty of union declaring that any law to infringe these conditions is void, and by erecting a tribunal like the Supreme Court of the United States to decide whether any law is contrary to these conditions—or, in a rougher manner, by providing that an infraction of these conditions shall work a dissolution of the union. However, I entertain no doubt that by the just construction of the treaty of Union with Scot-

land, and of the treaty of Union with Ireland, the united legislature was to be vested with supreme and absolute power over the whole empire. The fact that a proposed law repeals or alters any article of the Union is a very strong but not a conclusive objection to it. On this doctrine I acted when I supported the entire abolition of the Court of Admiralty and the substantial abolition of the Court of Exchequer in Scotland, both declared by the articles of Union to be for ever established in that country; and by this doctrine I should be guided if any law were proposed for modifying the Protestant Episcopal Church in Ireland.—See the opinion of Mr. Burke, *Works*, vol. x. 6.

King and people: whilst the subjects do not see the King either in the benefits they enjoy, or the punishments they undergo. Hence arises a dangerous and unconstitutional dependence. The people will follow those who have the power to help or to hurt them; and this dependence will operate most strongly in the uncivilised part of any country remote from the seat of government. The ill effects of it in Scotland were felt long since, and will continue to be felt till the appropriate remedy is applied."

He then stated the details of the measure, by which the whole of the heritable jurisdictions in Scotland were at once to be swept away, root and branch, and the King's judges were to make circuits twice a year for the trial of all offenders.

Lord Hardwicke concluded by laying his bill upon the table, and moving that it be read a first time; but, as compensation was to be given, he stated on a subsequent day that it must commence in the House of Commons. There it was brought in by the Attorney-General, Sir Dudley Ryder, and passed with little opposition. When it came up to the Lords it was strongly opposed by the Duke of Beaufort, and other Jacobitically inclined peers; but the Chancellor left the defence of it to the Duke of Argyle, without again entering into its merits. The opponents of the bill did not venture to divide the House upon it, and satisfied themselves with a violent protest.^f It certainly does high honour to its author. From the time that it came into full operation, and not from the Union, commences the prosperity of Scotland, which, having been the idlest, poorest, and most turbulent country in Europe, has become one of the most industrious, the most improving, and the most orderly.

But such is the imperfection of human wisdom, such a mixture of praise and censure is meted out to the most clear-seeing legislators, that I am obliged immediately to record another Scottish measure of Lord Hardwicke, which greatly endangered and considerably retarded the good effects of that which I have so cordially applauded. Provision being made for the due administration of justice, conciliation was now the obvious policy to reclaim the Highlands; but because a deep resentment was manifested against the barbarities of the Duke of Cumberland, and there were enthusiastic rejoicings at the escape of the young Chevalier after all the perils to which he had been exposed, and because there had been a not unnatural

^f 14 Parl. Hist. 1—57.

combination to oppose the abolition of the heritable jurisdictions between the Lords to be restrained, and the vassals to be protected by it, who all cried out with equal violence that it was an encroachment on the ancient rights and privileges of Scotsmen,—Lord Hardwicke, instead of affording a little time for those feelings to subside, in the ensuing session introduced a "Coercion Bill," which added insult to injury, for it not only contained clauses for universally disarming the Highlanders, but forbade them to use the *tartan*, which they said and believed had distinguished their ancestors since the time of Ossian, and long before. Instead of plaids and philibegs, and trews, they were, henceforth, to be clothed in coats and in waistcoats, and (worst of all) in BREECHES!!! This unpopular bill was strongly opposed in both Houses, but was carried by large majorities, for there was then a strong prejudice against the Highlanders. People had not forgotten the alarm and consternation into which a small band of them had thrown all England; most unfounded stories were propagated respecting atrocities imputed to them in their march to Derby, and it was highly popular in the South by acts of parliament to heap upon them all sorts of indignity. Unfortunately the debates upon the bill are lost, except respecting one insignificant clause about preventing priests from officiating in Scotland who were ordained by nonjuring bishops. This the English bishops assailed as an attack on the spiritual jurisdiction of Christ's church, and they rejected it in the committee,[§] but, on the report, Lord Hardwicke made a strong speech in its favour. In reference to Charles's landing at Moidart, he said,—

"Rebellion may take its rise in one of the remotest,—one of the smallest and least populous corners of this island:—

' Mobilitate viget, viresque acquirit eundo :
Parva metu primo ; mox sese attollit in auras,
... et magnas territat urbes.†

I am astonished, my Lords, to hear any regulation called *cruelty* that may tend towards preventing such a rebellion for the future. What is the form of ordination among those who call themselves nonjuring bishops, or what confessions, promises, or vows, they exact from the persons they ordain, I do not certainly know; but I believe that no man will be ordained by one of them who is not a Jacobite in his heart; and an exclusion of all such from the exercise of their function

§ 32, including 20 Bishops, against 29 lay Lords.

in any part of his Majesty's dominions is, I think, absolutely necessary for the public safety. As to the encroachment made by this clause upon the rights or privileges of the Christian church, I do not pretend to be so good a judge as the Right Reverend Prelates; but, as far as I am master of the subject, I cannot conceive what the rights and privileges of the Christian church have to do in this question. We do not by this clause pretend to annul the holy orders granted by a nonjuring bishop, nor do we pretend that the civil magistrate has any power to determine whether a priest has been regularly ordained, or a bishop duly consecrated; but, surely, the supreme legislature in every state has power to determine who shall be allowed to exercise the office of priest or bishop within its territory."

The clause was restored.^h To the enactments for the universal seizure of arms, the most captivating objection was, that they made no distinction between Jacobites and Georgites. The loyal clans murmured "that, after having defended the King upon the throne, they were forbidden for the future to defend themselves, and that the sword was forfeited which had been legally employed." I believe such measures are powerless to put down disaffection, and rather excite irritation than cripple the means of annoying the established government. The Highlanders were first reconciled to the House of Hanover by the great Lord Chatham, who pursued towards them a policy very different from that of Lord Hardwicke's "Coercion Bill," for he put arms into their hands and called upon them, with confidence, to fight against the enemies of their country.ⁱ It is amusing to find Dr. Johnson ascribing the tranquillity he observed in the Highlands, in the year 1773, to an act which, having prolonged agitation for a while, had soon become a dead letter,—the very memory of it having been blotted out by a more generous and wiser policy. "The last law," says he, "by which the Highlanders are deprived of their arms, has operated with efficacy beyond expectation." His remarks are more amusing, and therefore more valuable, on the clauses respecting the tartan garb. "In the Islands the plaid is rarely worn. The law by which the Highlanders have been obliged to change the form of their dress has, in all the places that we have visited, been universally obeyed. I have seen only one gentleman completely clothed in the an-

^h 37 to 32.

ⁱ "I remember how I employed the very rebels in the service and defence of their country. They were reclaimed by this means; they fought our battles; they cheerfully bled

in defence of those liberties which they had attempted to overthrow but a few years before."—*Lord Chatham's Speech in the House of Lords*, 2nd Dec. 1777.

cient habit, and by him it was worn only occasionally and wantonly. The common people do not think themselves under any legal necessity of having coats; for they say that the law against plaids was made by Lord Chancellor Hardwicke, and was in force only for his life; but the same poverty that made it then difficult for them to change their clothing hinders them now from changing it again." Instead of breaking the spirit of the clans, this tyrannical law only helped to keep up clanish distinctions and customs. In Lord Hardwicke's lifetime it was evaded by Highlandmen carrying a pair of breeches, suspended by a stick, over their shoulders; for the Highlanders wearing a short petticoat like the Romans,—thought, like the Romans, with contempt of all to whom the line of Ovid might be applied,—

————— "*laxis arcent mala frigora braccis.*"^k

Jacobitism was not completely extinguished in the Highlands till Lord Hardwicke's obnoxious act was repealed on the motion of the late Duke of Montrose, who showed himself a wiser man than the Chancellor, and who, for his patriotism, was thus celebrated in the *Rolliad* :

"Thee, Graham! thee the frozen chieftains bless,
Who feel thy bounties through their fav'rite dress;
By thee they view their rescued country clad
In the bleak honours of their long-lost plaid;
Thy patriot zeal has har'd their parts behind
To the keen whistlings of the wintry wind.
While lairds the dirk, while lasses bagpipes prize,
And oatmeal cake the want of bread supplies;
The scurvy skin white scaly scabs enrich,
While contact gives, and brimstone cures, the itch;
Each breeze that blows upon these brawny parts
Shall wake thy lov'd remembrance in their hearts;
And while they freshen from the northern blast,
So long thy honour, name, and praise shall last."

Lord Hardwicke, after these exertions, talked so much of his fatigue, and desire of ease, as actually to create a belief among those who did not know him well, that he was going to give up his office for one less laborious: "We talk much,"

^k *Trist.* v. 7. Pronouncing the *c* before *i*, as the Italians do, and the Romans probably did, it is wonderful with how little change of sound this word has descended to us from our Scythian ancestors.—See *Luc.* i. 430.

The etymon is equally apparent, whether we take the Scotch or English name for this

garment,—"*breeks*" being an abbreviation of "*breeches*," as "*steeks*" of "*stitches*."

"Wha made your *breeks*?
He that sewed the *steels*.
Wha sewed the *steeks*?
He that made the *breeks*."

writes Horace Walpole to his correspondent at Florence, "of the Chancellor resigning the Seals from weariness of the fatigue,—and being made President of the Council—with other consequent changes; but as this has already been a discourse of six months, I don't give it you for certain."^m Had the Chancellor been suddenly required to resign, he would have felt like the old man when Death actually appeared to him to relieve him of his burthen.

For several succeeding years his political career becomes obscure, partly from the quietness of the times, and partly from the growing deficiency of our parliamentary records. The treaty of Aix-la-Chapelle excited no discussion in the Lords, and, notwithstanding the machinations of the Prince of Wales and his party, the Chancellor, sitting on the wool-sack, seems to have enjoyed nearly a sinecure. Mr. Pelham, with his unostentatious virtues, enjoyed the confidence both of the Sovereign and of the people, and, while he lived, faction was stilled almost into silence. The Chancellor in those halcyon days only came forward on occasions of ceremony, such as the choice of a Speaker, and, to keep his name before the public, he then tried to say something smart, which he would not have thought of had he been taking part in a debate on which the fate of the ministry depended.ⁿ Compliments to Speaker Onslow, and such commonplaces, however prettily turned, have lost all their interest.^o

The Mutiny Bill, which now passes as quietly as any road bill, still continued an annual occasion for patriots ^{A.D. 1749.} to declaim against a standing army. In 1749, the Lord Chancellor found it necessary to reply to them in a speech curious for the view it gives of the state of public feeling which prevailed while Prince Charles was advancing to Derby, and of the danger to which the government was then exposed:

"When the late Rebellion broke out, I believe most men were convinced that, if the rebels had succeeded, popery as well as slavery would have been the certain consequence; and yet what a faint resistance did the people make in any part of the kingdom!—so faint, that had we not been so lucky as to procure a number of regular troops from abroad time enough to oppose their approach,

^m Letter to Sir H. Mann, 2nd Dec. 1748.

ⁿ 14 Parl. Hist. 93; 15 Parl. Hist. 328.

^o About this time Lord Hardwicke was elected High Steward of the University

of Cambridge, an honour which he held for his life, and which was long enjoyed by his posterity.

they might have got possession of our capital without any opposition, except from the few soldiers we had in London, and the fate of the kingdom would have depended upon a battle fought within a few miles of this city. Whilst the people therefore remain in their present unarmed and undisciplined condition, let the consequence be what it will, we must keep up a standing force, and no one ever heard of an army being long kept up in any country in the world without military laws and courtmartial for holding the officers and soldiers to their duty. But these officers and soldiers are still our fellow-citizens, actuated by the same feelings with ourselves, and, while they preserve internal quiet and defend us from foreign aggression, they would join us to preserve the constitution instead of combining against us to overturn it." ^p

After a few patriotic sallies on the subversion of liberty by military violence, the bill was carried, and dulness again overspread the House—till a great excitement was produced by a melancholy event which changed the succession to the throne.

CHAPTER CXXXV.

CONTINUATION OF THE LIFE OF LORD HARDWICKE TILL HE RESIGNED THE GREAT SEAL.

THE sudden death of Frederick, Prince of Wales, in the flower of his age, which was little regretted at Court, placed Lord Hardwicke in a situation of considerable em-^{March, 1751.} barrasment, but he extricated himself from it with his usual prudence. The present heir-apparent, afterwards George III., being no more than twelve years old, and George II. being sixty-seven, it was indispensably necessary that provision should be made for the exercise of the royal authority on a demise of the Crown. The King wished much that the Regent to be named should be his favourite son, the Duke of Cumberland, who was himself strongly of opinion that the distinction was due to his station as first Prince of the blood, and to his services as the victor of Culloden; but this Prince, notwithstanding some high qualities which belonged to him, was now so unpopular, that when his brother's death was announced, the general cry was,—“*Oh! that it were the Butcher!*”

and his appointment as Regent would only have been satisfactory to the Jacobites. Lord Hardwicke suggested to Pelham and the Duke of Newcastle, that preference should be given to the Dowager Princess of Wales, who had been obnoxious to the Court during her husband's life, but on his death had behaved with such great propriety that no personal objection could be started to her. The King reluctantly acquiesced, on the condition that she should be controlled by a Council of Regency, of which the Duke should be president. The difficulty now was to announce the plan to his Royal Highness; and this task was assigned to the Chancellor, who accordingly waited upon him, and in the most respectful manner showed him the heads of the proposed Regency Bill, enlarging on the weight which he would have in the council. Deeply disappointed at not grasping the whole royal power as Regent, he said sternly,—“Return my thanks to the King for the plan of the Regency. As to the part allotted to me, I shall submit because he commands it!” The bill passed both Houses with little difficulty, and Lord Hardwicke still preserved his ascendancy.

This year he deserves the credit, which I am sorry to say does not always belong to Chancellors, of supporting a useful measure proposed by a political opponent. Lord Chesterfield, dismissed from his offices, embraced every opportunity of annoying the government, and then brought forward, with the assistance of Lord Macclesfield, son of the Chancellor, his famous bill for the reformation of the Calendar, according to the Gregorian computation of time, by making the year commence, for all purposes, on the 1st of January, instead of the 25th of March, by suppressing in September, 1752, the eleven days the old style had fallen behind, so that the day following the 2nd of that month should be called the 14th, and by inserting certain intercalary days in time to come.⁹ During some Chancellorships, I am afraid the noble and learned president of the assembly, disliking trouble and responsibility,—perhaps grudging a little credit to a rival,—perhaps meaning to bring in the same bill himself at a future time,—would have left the woosack, and, with faint compliments to the good intentions of the mover, would have pointed out the danger of innovation,—the disturbance of contracts which the change would occasion,—the height of prosperity and happiness which the nation had reached under the old computation of time,—and the

⁹ 24 Geo. 2, c. 23.

degradation of copying the example of the French, our natural enemies, and the Pope, the foe of our holy reformed faith. Had Lord Hardwicke followed this course, he might easily have defeated the opposition leaders, and we might still have been adhering, like the Muscovites, to the old Calendar, exploded by all civilised nations. But he candidly supported the bill, and, with his countenance, it passed so easily that people were astonished the reformation had been so long delayed.^f

In 1752, the only public measure in which Lord Hardwicke took an ostensible part was a bill for annexing the ^{A.D. 1752-}forfeited estates in Scotland to the Crown, and en- ^{1753.}couraging Englishmen and lowland Scotsmen to settle upon them. This measure, in the result, operated favourably, by preserving the estates for the families of the individuals who had been attainted; but I cannot commend it, for it was meant as a measure of severity against them. Lord Hardwicke defended it on the ground that, if the estates were sold, they would be purchased at a low price for the former owners, and that there were fictitious charges upon them which would run away with the whole of the purchase-money—censuring, but in a manner not very mortifying to them, the whole Scottish nation, whom he seems to have considered “aliens in blood, language, and religion.” “The noble Duke,” said he, “is so sanguine as to hope that all these fraudulent claims may be detected; but, from experience, I am inclined to entertain no such hopes. The people of that country are so faithful to one another, in every case in which they think their honour concerned, that no reward can tempt them, no terror can frighten them, to betray their trust: they will take any oath you can frame rather than discover what they think their honour obliges them to conceal, and this fidelity reaches even to the very lowest of the people. Their contempt of rewards is proved by the escape of the young Pretender, and their disregard of threats by the impunity of the murder of Captain Porteous.”^g

The year 1753 is memorable in the life of Lord Hardwicke

^f 14 Parl. Hist. 979; Lord Chesterfield's Letters to his Son; Dr. Matty's Life of Lord Chesterfield. Had Lord Hardwicke been inclined to crush the measure, he had an ample pretext in the manner in which it was first received by the Duke of Newcastle, the ostensible head of the government in the House of

Lords. Says Chesterfield: “His Grace was alarmed at so bold an undertaking, and entertained me not to stir matters that had been long quiet; adding, that he did not love new fangled things.”

^g 14 St. Tr. 1237, 1248.

by his JEW BILL and his MARRIAGE BILL, for both of which I think he deserves credit. From the fatuous fears and furious cries which the former occasioned, it has generally been represented as "a bill by its own vigour at once to confer all the rights of natural-born British subjects on all foreign Jews who might set foot on English ground;" whereas it merely allowed bills to be brought in for naturalizing Jews without their having taken the sacrament of the Lord's supper according to the rites of the Church of England, or, in other words, to allow that a Jew might be naturalized by act of parliament. After some sharp debates, the bill passed both Houses, and received the royal assent; but, from there being then no reports of parliamentary proceedings printed, its nature was so grossly misrepresented, that great odium was cast upon the Chancellor as its author; and the Bishop of Norwich, who voted for it, soon after, holding a confirmation, was called upon by the mob "to administer the rite of circumcision," and a paper was affixed to the church doors, stating that "next day being Saturday, his Lordship would confirm the Jews, and on the day following the Christians." Such was the ferment in the nation that ministers became alarmed—particularly as a general election was approaching,—and in a very dastardly manner they agreed to abandon this measure, which, if persisted in, might have introduced, upon reflection, a more liberal feeling into the public mind, and accelerated by a century the religious freedom which we now enjoy.*

Lord Hardwicke's Marriage Act, with considerable modifications and improvements, remains in force, and regulates in England the most important of all contracts,—upon which civil society itself depends. Hitherto the old canon law had prevailed, according to which a valid marriage was constituted either by the mere consent of the parties, or by the presence of a priest in orders, at any time or place, without the sanction of parents or guardians, although one or both of the parties might be under age,—and without any registration or public act affording the means of knowing whether such a marriage had been contracted. This does seem to me a very defective

* 14 Parl. Hist. 1365—1442; 15 Parl. Hist. 91—163. By way of apology, Lord Hardwicke said—"However much the people may be misled, yet in a free country I do not think an unpopular measure ought to be obstinately persisted in. We should treat the people as a skilful and humane physician

would treat his patient; if they nauseate the salutary draught we have prescribed, we should think of some other remedy, or we should delay administering the prescription till time or change of circumstances has removed the nausea."

state of the law, although it exists in the northern part of the island, and is there defended by sensible men. It is of importance for the protection of minors that they should not be permitted to enter into this contract by their own mere fantasy, when they are wholly incapacitated to enter into others of the most trifling nature; and it is important to society in general, that a form—simple and notorious—should be specified, which shall be essential, and which shall be sufficient, for constituting the contract, and the evidence of which shall be open to all mankind. Although we reject the Roman Catholic doctrine that marriage is a sacrament, it is highly desirable that a religious service should accompany the celebration of it, to create a deep sense of the solemnity of the obligation thereby contracted; but as some may object to such a service, and all should be permitted to marry, it ought not to be considered indispensable.

Various striking instances of the inconveniences and hardships resulting from the then existing law had recently occurred. Young heirs and heiresses, scarcely grown out of infancy, had been inveigled into mercenary and disgraceful matches; and persons living together as husband and wife for many years, and become the parents of a numerous offspring, were pronounced to be in a state of concubinage, their children being bastardised, because the father had formerly entangled himself in some promise which amounted to a pre-contract, and rendered his subsequent marriage a nullity. In the public prisons—particularly in the Fleet—there were degraded and profligate parsons ready, for a small fee, to marry all persons at all hours there, or to go when sent for to perform the ceremony in taverns or in brothels. The public attention had been particularly drawn to the subject by a case of very flagrant oppression which had appeared on the hearing of an appeal before the House of Lords, and the Judges were ordered to prepare a bill to remedy the evils complained of. Their bill did not please the Chancellor, who himself undertook the task with great earnestness. His own performance did not deserve applause. He declared null all marriages which were not celebrated by a priest in orders, either under banns or licence, declaring in the case of minors the licence void without the consent of parents or guardians—the banns to be for three successive Sundays in the parish church—and the granting of ordinary and special licences to be subject to certain regulations—the ceremony to be performed by a priest according to

the liturgy of the Church of England. The first great blot upon the measure was, that it required Roman Catholics, Dissenters, and others who might have serious scruples of conscience against being married according to the prescribed service (the least felicitous in the English liturgy) to submit to it,—or debarred them from matrimony altogether. Another serious defect was, that no provision was made by it respecting the marriage out of England of persons domiciled in England, so as to prevent the easy evasion of it by a trip to Gretna Green. The measure was likewise highly objectionable in making no provision for the marriage of illegitimate children—who had no parents recognised by law, and could only have guardians by an application to the Court of Chancery,—and in declaring marriages which were irregular by reason of unintentional mistakes in banns or licences absolutely void, although the parties might live long together as man and wife, having a numerous issue considered legitimate until the discovery of the irregularity.

Lord Hardwicke laid the bill on the table, and explained its provisions at the commencement of the session. On the second reading, the Duke of Bedford made a speech against it; but it passed easily through the Lords. In the Commons, however, it experienced the most furious opposition, particularly from Henry Fox, who was supposed to feel very deeply on the subject, because he himself had run off with Lady Caroline Lennox, eldest daughter of the Duke of Richmond, and married her without the consent of her family.

I cannot compliment him, or the other opposers of the bill, on the topics they employed. Instead of pointing out its real defects, which in practice were found oppressive and mischievous, they absurdly denied the right of Parliament to legislate upon the subject; they dwelt upon the aristocratic tendency of the bill; they denounced it as leading to vice and immorality; they prophesied that it would thin our population, and endanger our existence as a nation. Fox, who kept the bill in committee many nights, became so heated by his own opposition to it against Murray, the Solicitor-General, and other lawyers who defended it, that he inveighed bitterly against all lawyers and their jargon. He even indulged in a personal attack upon its author, whom he designated “the great MUFTI,” whom he accused of pride and arrogance, and whose motives in bringing it forward he described as selfish

and sordid." On a subsequent evening he made an apology for these expressions, and declared his high respect for the learning and integrity of the noble and learned Lord he was supposed to have alluded to.

The bill at last passed the Commons by a majority of 125 to 56, and was sent back to the Lords. When the amendments were to be considered, the MUFTI resolved to have his revenge; and as the parliament was to be prorogued the following day, he knew that he was safe from a rejoinder. In a most unusual manner, he read his observations from a paper which he held in his hand, as if he were afraid to trust himself to express his excited feelings; and he commented, with much warmth and asperity, on the conduct of Fox, whom he designated as "a dark, gloomy, and insidious genius, an engine of personality and faction;"—thus concluding his philippic: "I despise the invective, and I despise the retractation; I despise the scurrility, and I despise the adulation."* Fox, who had that evening attended some ladies to Vauxhall, being soon told by a good-natured friend how he had been abused in the House of Lords, gathered some young members of parliament round him, and told them, with great eagerness, that he wished the session had lasted a little longer, as, in that case, "he would have paid off the Lord Chancellor with interest."†

About this time Lord Hardwicke was elected High Steward of the University of Cambridge. In his address to the Vice-Chancellor and Senate on this occasion, he said, "Though I had not the happiness to receive my education among you, yet my high sense of and value for this university have manifestly appeared by committing so many of my sons to your care."‡

† I suppose it was from this vituperation that the vulgar said out of doors that the Chancellor was afraid his own children would form some low connection in marriage—whereas they were all already married into the first families.

* According to Cooksey, in the warmth of his invective he called his antagonist "that bad, black man."—*Cooks.* 103.

† 15 St. Tr. 84—86. It is curious how this hatred of Lord Hardwicke's Marriage Bill descended to Henry Fox's posterity. His son, the celebrated Charles James, several times abused it in the House of Commons; and I myself have frequently heard his grandson, the late Lord Hollaod, in private, express

high disapprobation of it—still adhering to the old doctrine, that marriage should be contracted when and where and how the parties please—and therefore still censuring the last Marriage Bill, which I had the honour to assist in framing, and which I consider quite perfect. I excuse a churchman who says that the Church aloe ought to lay down regulations for marriages, and judge of their validity; but I cannot understand how a statesman who allows it to be a civil contract can deny that the manner of entering into it may be regulated by law as much as the manner of entering into a contract to purchase goods or to let land.

‡ 15th June, 1753.

The session of 1754 passed over without a single debate in the House of Lords; but, in the midst of the profoundest quiet, a storm of short duration was suddenly raised by the death of the prime minister, Mr. Pelham. Till his brother could decently appear, Lord Hardwicke was called into council by the King, and, according to his own account, he was for some days prime minister. A letter which he then wrote to Archbishop Herring shows that the arrangement was left entirely to him, "so that he did not recommend any person who had flown in the King's face" (meaning Mr. Fox); and discloses his intrigues with the leaders of different parties.^a Soon after, he wrote an interesting account of this crisis to Mr. Pitt. After apologising for not sooner replying to a communication he had received from that statesman, he proceeds:—

"Besides this, I have lived in such continual hurry ever since the day of our great misfortune, Mr. Pelham's death,—

— Ille dies, quem semper acerbum,
Semper honoratum (sic Dii voluistis) habebo,

that I have no time for correspondence.

"The general confusion called upon somebody to step forth; and the Duke of Newcastle's overwhelming affliction and necessary confinement threw it upon me. I was a kind of minister *ab aratro*, I mean the Chancery plough, and am not displeased to be returned to it, laborious as it is to hold. I never saw the King under such deep concern since the Queen's death. His Majesty seemed to be unresolved; professed to have no favourite for the important employment vacant, and declared that he would be advised by his cabinet council, with the *Duke of Devonshire added to them.*"^b

In a few days the Duke of Newcastle was placed at the head of the Treasury, and Lord Hardwicke was again secure in his office of Chancellor, and, if possible, with more influence.

^a March 14, 1754.

^b The writer proceeds at great length to try to persuade Mr. Pitt that he had been labouring to bring him into office; and having stated the opposing difficulties, he thus concludes:—"I agree that this falls short of the mark, but it gives encouragement. It is more than a *colour for acquiescence* in the eyes of the world; it is a demonstration of fact. No ground arises from hence to think of retirement rather than of courts and business. We have all of us our hours wherein we wish

for those *otia tuta*; and I have mine frequently: but I have that opinion of your wisdom, of your concern for the public, of your regard and affection for your friends, that I will not suffer myself to doubt that you will continue to take an active part. There never was a fairer field in the House of Commons for such abilities, and I flatter myself that the execution of them will complete what is now left imperfect."—*Lord Hardwicke to Mr. Pitt, 2nd April, 1754.*

Now he was created Earl of Hardwicke and Viscount Royston.^c It is said that he might sooner have enjoyed this elevation, as far as the King was concerned, had not a superior power interposed. One of his biographers, in giving an account of his two daughters and of his wife, thus explains the delay:—

“Both these young ladies my informer has often seen at Powis House (his town residence) opening the door of their mother’s apartment (where he had the honour of attending her during the settling her domestic accounts, on Monday mornings), and, with the most graceful deference, asking what company was expected, and in what manuer they should dress for the day? Having received her Ladyship’s directions, they courtesied and withdrew. On this she observed, that the Lord Chancellor was in a hurry to be made an Earl, which the King would make him any day he chose it, but I delay it as much as I can. These girls you see submitting, with so much humility and observance, to consult me even in the little article of dress, would perhaps, by the acquisition of titles, be transformed into fine ladies, and abate in their respects to me. Their fortune, too, on marriage must be doubled. Ten thousand pounds, which would be deemed a sufficient fortune for a Miss Yorke, must be made twenty to a Lady Elizabeth and Lady Margaret.”^d

These young ladies had been recently married, the one to the celebrated navigator Lord Anson, and the other to Sir Gilbert Heathcote.

In the year 1755 the political horizon began to blacken. Domestic politics were much perplexed by the machinations of Leicester House, and by the Duke of Newcastle’s doubts whether he should ally himself with Pitt or with Fox; while hostilities being ready to break out on the Continent, the King, for the protection of Hanover, had entered into subsidiary treaties with Russia and Hesse Cassel, which were exceedingly unpopular. On the meeting of parliament these treaties were furiously assailed in the House of Lords, and the defence of them rested chiefly on the Chancellor; for the new Prime Minister, although he had considerable volubility of gabble, was quite incapable of reasoning,

^c A rumour being spread that he had selected the title of Earl of Clarendon, then dormant, Lady Charlotte Hyde, descended from the great Lord Chancellor Clarendon, remonstrated with him, and received from him an answer, in which he said—“Permit me to assure you that there is not one syllable of

truth in the story of the title which they have forged for me, and that your Ladyship might have been excused from taking so much pains to dissuade me from a thing which never entered into my thoughts.”

^d Cooksey, 38.

and was only listened to that he might be laughed at. There is no tolerable report of Lord Hardwicke's speech on this occasion, but we have what must be considered more curious and more valuable—the notes which he made for it, in his own handwriting, showing the immense pains which he still took to prepare himself, notwithstanding all his experience and all the authority which he possessed.^o

The last speech which Lord Hardwicke ever delivered in May 24, the House of Peers, as Chancellor, was at the close 1756. of the session of 1756, when the disagreeable task was assigned to him of throwing out the Militia Bill. Hostilities with France had now commenced: the Duke of Richelieu had sailed on his expedition against Minorca; serious apprehensions were entertained of invasion; some German mercenaries were in English pay; there was still a strong prejudice in the country against any considerable increase of the regular army; and the rage was for a national militia, in which all should be liable to serve for a limited period, which should be officered by country gentlemen, and which should not be sent out of the kingdom. A bill for establishing such a force, being introduced into the Commons and supported by Pitt, was so popular that the Government did not venture to oppose it there; but it was highly disagreeable to George II., as he thought it would interfere with his plan for hiring some additional Hanoverian regiments,—and the Duke of Newcastle was in too tottering a state to venture to thwart the King's wishes. The bill was therefore doomed to meet its fate in the Upper House. When it had been ably supported by Earl Stanhope and the Duke of Bedford, the Lord Chancellor left the woolsack, and delivered a very ingenious pleading against it, of which we have a full report corrected and circulated by himself. He first tried to show that the bill was unconstitutional, and dangerous to the just prerogative of the Crown; comparing it with the Militia Bill proposed, and at last carried without the royal assent, in the Long Parliament. “The scale of power,” said he, “in this government has long been growing heavier on the democratical side. I think that this would throw a great deal of weight into it. What I contend for is, to preserve the limited monarchy entire, and nothing can do that but to preserve the counterpoise.” He next attached very undue weight to the omission of a clause to take away a writ of *certiorari*, to remove into the King's

^o See 15 Parl. Hist. 643.

Bench proceedings against persons employed in the militia, whereby “the Judges of that Court would be made inspectors-general of this army.” But he afterwards boldly and forcibly contended that it was much better that a state should be defended by a certain portion of the population, who should permanently take to arms as a profession, than that all the citizens in rotation should embrace a military life. “For my own part,” said he, “I never was more convinced of any proposition than of this,—that a nation of merchants, manufacturers, artisans, and husbandmen, defended by an army, is vastly preferable to a nation of soldiers. It is a self-evident proposition, that being educated and trained to arms must give a distaste for all civil occupations. Amongst the common people it introduces a love of idleness, of sports, and at last of plunder. Consider, my Lords, the case of the northern parts of Scotland, and what you have been doing there for several years past. The practice and habit of arms made that people idle, averse to the labours of agriculture as well as the confinement of a factory,—followers of sports,—next of thieving,—and last, of rebellion, as *a more extensive source of plunder*. I say *a more extensive source of plunder*, because I have always been of opinion that the love of thieving and rapine has been one main ingredient in the Highland insurrections as well as Jacobitism and clanship. In order to cure this mischief, and to lead or compel them to be industrious, you have been obliged to disarm them by law. After having pursued these maxims, of which you are beginning to feel the benefit, will your Lordships now, by a new law, endeavour to introduce the same disposition and habit into the common people of England, hitherto remarkable for their love of industry and their love of order?”^f He likewise very strenuously opposed a clause in the bill, which, though petitioned against by the Dissenters, had passed without disapprobation from the Established clergy, enacting, after the example of Switzerland and other Protestant states on the Continent, that the militia should be exercised on Sundays after divine service. “If this institution,” said he, “be established among us by a law, I will venture to foretel that, notwithstanding the injunction to go to church, there will be a constant fair and scene of jollity in the several parishes where those exercises are kept, and the face of religion will soon be abolished in this country.”

The bill was rejected by a majority of 59 to 23, but its rejection materially contributed to the overthrow of the administration,—now at hand.

Parliament being prorogued in a few days, Newcastle tried to strengthen himself by fresh negotiations with borough proprietors and with popular leaders, but news arrived of the retreat of Admiral Byng without an effort to relieve Port St. Philip's, and of the entire loss of Minorca. The nation was in a greater ferment than at the time of the Excise Bill. Not without reason, the loss and disgrace so deplored were ascribed to the inefficiency of the present head of the government; and although he was strong in numbers in the House of Commons, and could do what he chose in the House of Lords, no one would join him.^g

The immediate cause of the change of ministry was the sudden death of Sir Dudley Ryder, Lord Chief Justice of the Court of King's Bench. Pitt was at this time in hot opposition, and, with such a theme as the disgrace of our flag, was ready on the meeting of parliament actually to crush the trembling Premier. The only person in the House of Commons who "had courage even to look him in the face,"^h was Murray, the Attorney-General, who indeed had fought many a stout battle with him, and who, if so inclined, might still have entered the lists against him as the champion of the Government, but who now peremptorily insisted on his right to the vacant chiefship. He was not only, after Pitt, the best speaker in the House of Commons, but he was decidedly the greatest lawyer at the English bar; he had served many years as a law officer of the Crown with the highest distinction, and, having gallantly and faithfully exerted himself in the conflict while there was a chance of victory, now that a general defeat was inevitable, he considered that he might honourably act upon the principle '*sauve qui peut.*' Newcastle, eager to retain him in the House of Commons, as a forlorn hope, plied him

^g When the defects of the Reform Bill are considered, the working of the old system should not be forgotten,—a striking instance of which is, that it imposed upon the King and the nation for several years, as prime minister, the Duke of Newcastle, a man disliked and despised by both. I suppose this was the weakest administration that ever was entrusted with power in a free country. Lord Hardwicke was the only man of any capacity for business in the cabinet; and, after

all, he was more of a lawyer than a statesman. Lord Waldegrave gives us a lively picture of one of their deliberations, when the subject was what orders should be sent out to Admiral Hawke:—"The Chancellor had more courage than the Duke of Newcastle; but, agreeable to the common practice of the law, was against bringing the cause to an immediate decision."—*Lord Waldegrave's Mem.* p. 46.

^h *Ibid.* p. 82.

with various proposals,—a Tellership of the Exchequer, or the Duchy of Lancaster for life, or a pension of 2000*l.* a year for life, in addition to the profits of his office as Attorney-General. Nay, the bidding rose to 6000*l.* a year of pension: but Murray was inexorable; nor would he even on any terms agree to remain in the House of Commons, only one session longer, or one month, or one day to support the address. He declared, in plain terms, that if they did not choose to make him Lord Chief Justice he was determined to resign the office of Attorney-General, and that they must fight their own battles in the House of Commons, as he never again would enter that assembly. This spirited conduct had its proper effect; he was made Chief Justice, and a Peer, by the title of Baron Mansfield. On the day when he took his seat in the Court of King's Bench, the Duke of Newcastle, not daring to face parliament, resigned.

Lord Hardwicke, who had prompted him in all his negotiations,ⁱ finding that they had all failed, expressed a resolution to share his fate, and publicly intimated that he only retained the Great Seal for a few days to enable him to dispose of some causes which he had heard argued in the Court of Chancery. He was strongly urged to continue Chancellor, with a view to strengthen the feeble administration now forming under that very honourable—not very able—man, the fourth Duke of Devonshire; but he peremptorily refused. It is generally said that, from age, and apprehended decline of faculties, he was anxious to retire. There is not the smallest foundation for this statement. His health and strength remained unimpaired, and his mind was as active, his perception as quick, and his judgment as sound, as when he served under Walpole;^k and although his

ⁱ "My Lord Chancellor, with whom I do every thing, and without whom I do nothing, has had a most material hand in all these arrangements. He sees and knows the truth of what I write; and he judges as I do, that no other method but this could have been followed with any prospect of success."—*Duke of Newcastle to Mr. Pitt*, 2nd April, 1754. Lord Waldegrave gives a curious account of Lord Hardwicke's demeanour; when, as one expedient for strengthening the government, it was proposed to bring in Lord Bute, then supposed to be not only the leader of Leicester House, but the lover of the Princess of Wales:—"The Chancellor, with his usual gravity, declared that for his

own part he had no particular objection to the Earl of Bute's promotion; neither would he give credit to some very extraordinary reports; but that many sober and respectable persons would think it indecent, for which reason he could never advise his Majesty to give his consent."—*Lord Waldegrave*, 67.

^k One is surprised to find such nonsense written by so clever a man as Jeremy Bentham: "At length perceiving, or imagining he perceived, his faculties growing rather impaired, he thought proper to resign the Seals, and accordingly waited upon the King, and delivered them into his Majesty's own hands," as if his resignation had been wholly unconnected with any political crisis.

"Dreading

fortune was now enormous, his passion for increasing it, by all lawful means, had grown in the same proportion. Others say (and they may be right) that he did not consider it honourable to continue in office after his great patron and friend had been obliged to resign; but the new ministry was still a Whig one, and no material change of policy was announced, either domestic or foreign, although the men now coming in had clamoured for the "Militia Bill," and against the employment of Hanoverian troops. He more probably resigned because he knew that the ministry was very weak, and must be short-lived—perhaps anticipating that Newcastle, from his genius as a place-hunter, though contemptible in every thing else, might soon extricate himself from his present difficulties, and that they might return to office together, with a fair prospect of being able to carry on the government.^m Whatever his reasoning or his motives might be,—at a Council held at St. James's on the 19th of November, 1756, he actually did resign the Great Seal into the hands of the King, who received it from him with many expressions of respect and regret. After noticing the event in his Diary, he adds,—

"Jam mihi parta quies, omnisque in limine portus."

But I suspect that his own mind dwelt more upon the preceding line,—

"Frangimur heu fatis, inquit, ferimurque procella."

"Dreading the loud cry of the people for impeachments and inquiries," writes another, "into the authors of those counsels which had brought the nation into such a calamitous and desperate situation, he wisely shrunk from the storm he thought he saw bursting on his head, and in 1756 resigned the Seals."—*Cooksey*, 81. Historians and biographers make sad mistakes when they begin to assign motives—which, however, they often do as peremptorily as if they had lived in familiar confidence with those whose actions they narrate.

^m The following letter shows that the Duke most earnestly urged his resignation, and was under great apprehensions that he might remain in office :—

"Newcastle House, Nov. 2, 1756.

"My dearest, dearest Lord,—You know—you see—how cruelly I am treated, and indeed persecuted, by all those who now surround the King. The only comfort I have is in the continuance of your Lordship's most cordial friendship and good opinion. The great and honourable part which you are resolved to take will be my honour, glory, and security, and upon which I can and do singly rely. I despise testimonies from others, who, for their own sakes as well as mine, I should desire not to give any of that kind at this time. But, my dearest Lord, it would hurt me extremely if yours should be long delayed. I submit the particular time entirely to you, —grateful for it whenever it shall happen."

CHAPTER CXXXVI.

CONTINUATION OF THE LIFE OF LORD HARDWICKE TILL THE DEATH OF
GEORGE II.

LORD HARDWICKE, after his resignation, continued to possess in a high degree the respect of all classes and of all parties. Lord Waldegrave, rather disposed to depreciate him, says that “he resigned the Great Seal much to the regret of all dispassionate men, and indeed of the whole nation. He had been Chancellor near twenty years, and was inferior to few who had gone before him, having executed that high office with integrity, diligence, and uncommon abilities. The statesman might, perhaps, in some particular be the reverse of the judge; yet even in that capacity he had been the chief support of the Duke of Newcastle’s administration.”^a

He had no retired allowance, but, besides his own immense fortune, not only his sons, but all his kith, kin, and dependants, were saturated with places, pensions, and reversions. If he had been required to sacrifice the patronage which enabled him to confer such appanages upon them, he would have looked with contempt upon the retired allowance of a modern Chancellor.

It is a curious fact, that—although George II. had taken leave of him very tenderly, and had pressed him to come frequently to Court—when he presented himself a few days after at the levee, in a plain suit of black velvet with a bag and sword, he was allowed to make his bow in the crowd without the slightest mark of royal recognition. But as he was retreating, surprised and mortified, he was called back by the lord in waiting: the King apologised for not having known him when he first appeared without his full bottom, his robes, and the purse with the Great Seal in his hand, and renewed to him the assurance that his great services to the Crown were well known and remembered.^o

^a Lord Wald. Mem. 1756, p. 84.

^o Cooksey’s Memoirs. Another account

says, Lord Hardwicke was much diverted with the King’s looking at him the first time

His conduct as an ex-Chancellor deserves commendation.

A.D. 1757. He now resided more than he had formerly been permitted to do at Wimpole, but, instead of torpidly wasting his days there, he tried to find pleasure in literature; he took a lively interest in public affairs, and he carried on a frequent correspondence with his political friends. Always when parliament was sitting, and at other times when his presence in London could be serviceable to his party or the public, he was to be found at his town house in Grosvenor Square. He attended as sedulously as ever to the judicial business of the House of Lords, where the judgments were moved and dictated by himself, his successor not being a Peer, and being sometimes obliged to put the question for reversing his own decrees without being at liberty to say a word in their defence. Lord Hardwicke also diligently attended at the Council Board when juridical cases came before that tribunal. Although the common opinion is that he considered himself as having bid a final adieu to office, I cannot but suspect that he contemplated the chance of his being again Chancellor, and that with this view he was anxious to keep himself before the public, and from time to time to burnish up his legal armour.

The first occasion of his taking any open part in politics after his resignation, was respecting the condemnation of Admiral Byng. A bill had passed the House of Commons to release the members of the court-martial, who had sentenced him to death, from their oath of secrecy, so that they might disclose the consultations which took place among themselves when deliberating upon his sentence.^p In the House of Lords its fate depended entirely upon Lord Hardwicke, and he opposed it. For its rejection he was very severely blamed, and a cry was raised that "he wished Admiral Byng to be shot to screen the late administration,"—the multitude being misled by the unfeeling words blurted out by

he went to the levee after giving up the Seal, and knowing him no more in a common coat, and without the Chancellor's wig, than if he had never seen him. The lord in waiting, observing this, told his Majesty Lord Hardwicke was there; but this was a name the King did not know the sound of, and it only brought out the usual cold question, "How long has your Lordship been in town?"—*Miss Catherine Talbot's Correspondence.*

Had he worn such a uniform as that in-

vented by George IV. for ex-Chancellors (very much like a Field Marshal's), he could not have been mistaken for a common man.

^p No one contended that Parliament, like the Pope, might dispense with oaths. The statute for the discipline of the navy required the members of naval courts-martial to take an oath "not to disclose or discover the vote or opinion of any particular member, unless thereunto required by act of parliament."

the Duke of Newcastle, when a deputation waited upon him from the City, complaining that Minorca had been abandoned: "It is the fault of the Admiral; he shall be tried immediately, he shall be hanged directly." The sentence of death upon Byng was erroneous,—the Court, acquitting him of treachery and cowardice, having only found that "he had not done his utmost to relieve St. Philip's Castle, or to defeat the French fleet, *from mistake of judgment*;" and the Government was highly to be censured for carrying it into effect,—particularly after the unanimous recommendation to mercy from the members of the court-martial. Nevertheless, I think that the bill rested on no principle, and that Lord Hardwicke would have been liable to severe censure if he had assisted in establishing a dangerous precedent by sanctioning it. In the course he took, he was warmly supported by Lord Mansfield, who now began to show the rare example of a lawyer having great success in both Houses of Parliament, and who was destined to contest the palm of eloquence with the Earl of Chatham, as he had done with Mr. W. Pitt. They treated the subject with judicial accuracy and precision, showing that criminal justice could not be administered satisfactorily by any tribunal in the world if there were to be a public disclosure of the reasonings and observations of those who are to pronounce the verdict or judgment while they are consulting together. They therefore framed two questions to be put to the members of the court-martial, all of whom were examined at the bar while the bill was pending. 1. "Do you know any matter that passed previous to the sentence upon Admiral Byng which may show that sentence to have been unjust?" 2. "Do you know any matter that passed previous to the said sentence which may show that sentence to have been given through any undue practice or motive?" All (including Captain Keppel, at whose request the bill had been introduced) answered both questions in the negative. Lord Hardwicke then animadverted in a tone of the highest scorn upon the haste and heedlessness with which the bill had passed in the House of Commons, and on his motion it was rejected without a division.⁹

As every one had foreseen, the administration formed in the autumn of 1756 soon crumbled to pieces; and, after the dis-

⁹ 15 Parl. Hist. 803—822; Hor. Walp. Mem. Geo. II., vol. ii. 687. The House of Lords, in this instance, instead of forbidding the publication of their proceedings, themselves very wisely made an order "that all

the proceedings on the bill, with the evidence of the witnesses, should be printed and published under the authority of the House.'—*Lords' Journ.* 1757.

missal of Pitt and Lord Temple, for nearly three months the country was without a government, although a foreign war was raging, and dangerous discontent began to be engendered among the people. But, in the midst of disgrace and despondency, the nation was on the point of seeing the most glorious period of its annals; for now, instead of a single victory in a European campaign, the flag of England was to ride triumphant on every sea, and territories to which the island of Great Britain was a mere speck on the globe were to be added to her dominion. This state of things was brought about by a coalition between the greatest and the meanest of statesmen, Pitt and the Duke of Newcastle, which was arranged chiefly under the auspices of Lord Hardwicke.* The first personal interview was brought about by the following letter from him to Mr. Pitt:—

“ Wednesday, May 25, 1757.

“ Sir,

“ I have seen the Duke of Newcastle this morning, who is extremely willing and desirous to have a conference with you, and thinks it may be most useful to have a meeting first with yourself, before that which he will also be proud of having with my Lord Bute. He therefore proposes that his Grace and you should meet this evening at Lord Royston's, in St. James's Square, where I may attend you. The family is out of town, and that place will be better than any of our houses, and you (if you approve it) may come so far in your chair without hazard. I should think between eight and nine o'clock would be a proper time, unless you have any objection to it—and then any other hour you shall name.—I beg you will send me notice to Powis House as soon as you can.”

In a subsequent stage of the negotiation we find that, while Leicester House was still a party to it, Lord Hardwicke thus addressed Mr. Pitt:—

“ Powis House, 16th June, 1757.

“ Sir,

“ I am to desire, in the Duke of Newcastle's name as well as my own, that we may have the honour of meeting you and my Lord Bute at your house this evening a little before nine. I have in like manner sent notice to Lord Bute. I found the Duke of Newcastle pleased, in the highest degree, with your visit and conversation this forenoon.”

The great difficulty in the way of a satisfactory settlement was the disposal of the Great Seal. The Duke of Newcastle

* Lord Mansfield had previously tried his hand at mediating between the parties, but in vain.

was naturally eager to see Lord Hardwicke again Chancellor, that he might have his powerful support in that office; and Lord Hardwicke himself, professing to be tired of public life, would not have been unwilling to resume his labours, with the prospect now opening of a powerful government. They felt their way by at first proposing that he should have a seat in the cabinet, but conditions were annexed even to this concession, which showed the main object to be utterly impracticable. The fact was, that "the Great Commoner" and the ex-Premier, in the midst of much politeness and courtesy, thoroughly knew each other. The former determined to have all the power in his own hands, that he might pursue unchecked his vast plans for the nation's pre-eminence and glory:—while he was willing to throw to others all jobbing patronage, he could not bear the thought of seeing in high office a man of character and weight, who, from ancient associations, would be disposed to stand by the sordid and meddling Duke.—Lord Hardwicke behaved exceedingly well upon this occasion. He did not allow his disappointment to be known to the world, and although he plainly saw that he could gain nothing for himself,—out of regard to his old patron, and (let us believe) out of regard to his country, then in imminent peril, he exerted himself to smooth away all difficulties. On the 22nd of June thus he writes to Mr. Pitt:—

“Since I had the honour of seeing you last, I have talked, by way of sounding, in the best manner I could, to all the three persons who can now come under consideration in the disposition of the Great Seal. I think I see clearly the way of thinking and inclination of them all, which differs very little from the conjectures which we had formed concerning them. It is now so late, that, if I should have any chance of finding you at home, I should only put you in danger of being out of time for the levee. . . . I am very desirous that we should meet this evening, for precious moments are lost, and not innocently wasted, but to the detriment of that great and useful system which we are labouring to establish. I am most sincere and zealous in my endeavours to bring about what you so much wish for, a present arrangement of the Great Seal; but I see vast difficulties attending it.”

Willes, the Chief Justice of the Common Pleas, and now First Commissioner of the Great Seal,—a good lawyer, and no politician,—was expected for some time to be the successful candidate, but he haggled for a peerage, to which the King would not consent. A charge of treachery towards Willes in this affair has been brought against Lord Hardwicke, but it is

not supported by any evidence, nor, as he had given up all thoughts of the Great Seal himself, by any probability." At last Pitt fixed upon a man who could not be formidable to him, who was ready to accept the office on very moderate terms, and who might be expected to perform decently well its judicial duties,—Sir Robert Henley, the Attorney-General,—and urged that his appointment was a stipulation that had been made by Leicester House to reward a man who had long and faithfully adhered to that party.

The following letter from Lord Hardwicke to Mr. Pitt throws great light on these intrigues :—

“ Powis House, June 25, 1757, Saturday night.

“ Dear Sir,

“ However improper for a private man, yet *majora effugiens opprobria culpæ*, I did, in compliance with your commands, and those of our other friends who met on Thursday night, attend the King to-day, in order to know if he had any orders for me relating to the disposition of the Great Seal. I found his Majesty very grave and thoughtful on the news which came last night,⁴ but calm. He soon entered into matter ; and it is unnecessary, as well as hardly possible, to give you the detail of my audience in writing. His Majesty expressed his desire to settle his administration on the plan fixed, but thought there was no necessity of making a hasty disposition of so important an office as the Great Seal an immediate part of it. However, the result was, that he absolutely refused to give a peerage with it,⁵ which, I think, puts my Lord Chief Justice Willes out of the case ; for his Lordship not only told me before, but has since repeated, that peerage is with him a condition *sine qua non*. I see the King inclines more to Mr. Attorney-General ; and when I stated to his Majesty what I collected or conjectured to be his views, he hearkened, and at last bade me talk to Sir Robert Henley, reduce his terms as low as I could, and bring them to him in writing on Monday.

“ Since I saw my Lord Chief Justice Willes, I have seen Sir Robert Henley, who talks very reasonably and honourably. His proposals are :—First, a reversionary grant of the office of one of the tellers of the Exchequer to his son for life ; second, a pension of 1500*l.* per annum on the Irish establishment to himself for life, to commence and become payable upon his being removed from the office of Lord Keeper, and not before, but to be determinable and absolutely void upon the office of teller coming into possession to his son. My present opinion is, that the King may be induced to agree to this on Monday ; for when I hinted in my discourse at a pension upon Ireland, though his Majesty

⁴ See Cooksey, 82 ; and Life of Lord Northington, *post*.

⁵ Defeat of the King of Prussia at Kolló.

⁵ I suspect that Lord Hardwicke did not much combat this resolution, still wishing to have no more law lords in the House.

treated it pretty severely at first, yet when I stated the several contingencies in which it might in this case never become any real charge upon the revenue, he said of himself, that made the case different.

"I found to-night by my Lord Chief Justice Willes, that he is to go to Kensington on Monday, to get some warrants signed, and thinks that either the King may speak to him, or that he may say something to his Majesty on this subject; but I am persuaded that will have no effect, unless he gives up the peerage, which I am of opinion he never will.

"If the affair of the Great Seal should be settled on Monday, in the person of Sir Robert Henley, as I conjecture it will, I see nothing that can distrust your beginning to kiss hands on Tuesday. For God's sake, Sir, accelerate that, and don't let any minutiae stand in the way of so great and necessary a work. I long to see this scheme executed for the King's honour and repose, the harmony of his royal family, and the stability of his government. I have laboured in it zealously and disinterestedly, though without any pretence to such a degree of merit as your politeness and partiality ascribes to me. I see, with you, that attempts are flying about to tarnish it; but if it is forthwith executed on this foot, those will all be dissipated in the region of vanity, and, instead of a *mutilated, enfeebled, half-formed* system, I am persuaded it will come out a complete, strong, and well-cemented one, to which your wisdom, temper, and perfect union with the Duke of Newcastle will give durability. In all events, I shall ever retain the most lively impressions of your great candour and obliging behaviour towards me, and continue to be, with the utmost respect,

"Dear Sir,

"Your most obedient and

"Most humble Servant,

"HARDWICKE."

From the same quarter conciliatory advice was likewise given to the Duke of Newcastle,—and Mr. Pitt's famous administration was formed, which carried so high the renown of the English name, but in which I cannot boast that the lawyers played any very distinguished part. Lord Hardwicke had nominally a seat in the cabinet, but he seems to have been very little consulted by the autocratic Prime Minister.

Though now without the chance of office except through some very remote contingency, he still attended regularly in the House of Lords.* All opposition ceasing, insomuch that, for a whole session together, there was not a single division

* As soon as Lord Hardwicke resigned the Great Seal, a commission appointed Lord Sandys Speaker of the House of Lords; and he acted in this capacity from 2nd December,

1756, till 4th July, 1757, when Sir Robert Henley took his place on the woolsack as Lord Keeper.—*Lords' Journals*.

and hardly a debate, the hearing of appeals and writs of error was his chief labour.

Occasionally he was called upon to deliver his opinion upon measures concerning the administration of justice. A.D. 1758. In the session of 1758 there were various discussions, in which he took the principal share, upon a bill to amend the Habeas Corpus Act, by authorising a single judge in all cases to issue a writ of *habeas corpus* in vacation, and by allowing the truth of the return to be controverted by affidavit. Conceding the defective state of the law, he opposed the bill as ill-framed, and, on his motion, certain questions were referred to the Judges, with instructions to prepare another bill to be submitted to the House at the commencement of the following session of parliament.^y I am sorry to say that, when the next session arrived, nothing was thought of except the taking of Quebec, and the subject was not again resumed till the very close of the reign of George III., when Serjeant Onslow's Act passed, most materially advancing the remedy by Habeas Corpus for the protection of personal liberty,—the great glory of English jurisprudence.^z

In praising Lord Hardwicke as an ex-Chancellor, a deduction should be made in respect of his having done so little to improve the laws and institutions of the country, when he had abundant leisure to prepare measures for this purpose, and, one would have supposed, sufficient influence to carry them through. From his long experience at the bar and as a Judge in courts of law and equity, many points must have presented themselves to him, wanting “the amending hand.” His own emoluments no longer in any degree depended upon the continuation of abuses, and he might surely have discovered some which might have been corrected without materially affecting the offices and reversions held by his family. Yet he suffered six years of health and mental vigour, allotted to him after his resignation, to pass away unmarked by a single attempt to extend his fame as a legislator. It is possible that he could get no one to second him effectually, and that if he had carried very useful bills through the House of which he was a member, they would have been neglected or thrown out “elsewhere.”^a For several sessions, parliament

^y 15 St. Tr. 897—923.

^z Stat. 56 Geo. 3, c. 100.

^a I can say, of my own knowledge, that this state of things has since actually existed.

At different periods of our history, it has been very difficult to draw the notice of the representatives of the people to measures for the amendment of the law.

only met to vote thanks and supplies; and the whole of the proceedings of the two Houses as reported, from the King's opening to his proroguing speech, would not fill more than a few columns of a modern newspaper.

I can find no farther trace of Lord Hardwicke for the rest of this reign. During the warlike triumphs which ^{A.D. 1757-} now dazzled the nation, he seems almost completely ^{1760.} to have sunk from public notice, and it was hardly known that he had a seat in the cabinet.^b Indeed, unless when it happened that those who had favours to ask of the government were obliged to look to the Duke of Newcastle as the head of the Treasury, Mr. Pitt was regarded at home and abroad as the sole minister of the Crown. George II., though advanced in years, retained his health and his strength, and the existing state of affairs seemed likely to have a long continuance; but

^b He still continued to compose the royal speeches delivered at the commencement and close of every session of Parliament: but, judging from the two following letters on the taking of Quebec, there seems to have been very little familiarity between him and the "Great Commoner:"—

"Wimple, Octo^r 18, 1759.

"Dear Sir,—With the greatest pleasure I lay hold on this first opportunity to thank you for the honour of your very obliging note, which I received by yesterday's post.

"As a dutiful subject to the King, and a lover of my country, and a sincere friend to this administration, I do, upon the happy event of the conquest of Quebec, most cordially congratulate you in a particular manner. This important and, at the instant it came, unexpected success has crowned the campaign on the part of England in the most glorious manner. God grant that it may lead to what we all wish,—an honourable and lasting peace. The King has now great materials in his hands for this good work; and I make no doubt but his Majesty and his Ministers will make the wisest and the most advantageous use of them.

"I have nothing to add but my best wishes for your health, and the sincerest assurances of that perfect respect and esteem with which I am,

"Dear Sir,

"Your most obedient and
"most humble Servant,
"HARDWICKE."

"My Lord,—I am too sensible to the

honour of your Lordship's very obliging attention, in answer to the short bulletin from my office, to defer expressing my best thanks for such a favour. The defeat of the French army, and the reduction of Quebec, are indeed matters for the warmest congratulations between all faithful servants of the King and lovers of their country. In the many and remote prosperities which have been given to His Majesty's arms, the hand of Providence is visible, and I devoutly wish that the hand of human wisdom and of sound policy may be conspicuous in the great work of negotiation, whenever this complicated and extensive war is to be wound up in an honourable and advantageous peace. Perhaps it is not too much to say, that sustaining this war, arduous as it has been and still is, may not be more difficult than properly and happily closing it. The materials in His Majesty's hands are certainly very many and great, and it is to be hoped that in works^s them up in the great edifice of a solid and general pacification of Europe, there may be no confusion of languages, but that the workmen may understand one another. Accept my sincere wishes for your Lordship's health, and the assurances of the perfect respect and esteem with which I have the honour to remain

"Your Lordship's most obedient

"and most humble Servant,

"W. PITT.

"May I here beg to present my best compliments to Lord Royston, if with your Lordship?

"Hayes, Octob^r y^e 20th, 1759."

his sudden death brought about a party revolution, and soon placed all power in the hands of the Tories—who had been nearly banished from Court since the accession of the House of Brunswick.

CHAPTER CXXXVII.

CONCLUSION OF THE LIFE OF LORD HARDWICKE.

As soon as Lord Hardwicke heard of the decease of George II.,
Oct. 25, he hurried to Carlton House, where the new Sove-
1760. reign was to hold his first council. Here he was re-
 sworn a privy councillor, and was treated with great consi-
 deration. When parliament was assembled, to him was still
 committed the task which he had performed ever since the
 Great Seal was first delivered to him, of preparing the speech
 from the throne. On the present occasion it was looked for
 with much anxiety. He drew it in a vague, commonplace
 style, making the young King lament the death of his grand-
 father, and express high regard for the civil and religious rights
 of his loving subjects. Now, for the first time, appeared
 alarming evidence of the influence of Lord Bute. He returned
 the draught of the speech with the following sentence, in the
 King's own handwriting, to be inserted in it:—"Born and
 educated in this country, I glory in the name of Briton; and
 the particular happiness of my life will ever consist in pro-
 moting the welfare of a people whose loyalty and warm
 affection to me I consider as the greatest and most permanent
 security of my throne." The Duke of Newcastle, writing to
 inform Lord Hardwicke of the interpolation, said, "I make
 no observation, but this method of proceeding can't last. We
 must now (I suppose) submit. You will think '*Briton*' re-
 markable: it denotes the author to all the world." Lord
 Hardwicke was more seriously offended, and considered the
 favourite's words to be meant as an insult to the memory of
 the old King. But he was prevailed upon to acquiesce, and
 even to furnish this courtly response, which, he says, "I
 thought of upon my pillow:"—"We are penetrated with the
 condescending and endearing manner in which your Majesty
 has expressed your satisfaction in having received your birth

and education among us. What a lustre does it cast upon the name of 'Briton' when you, Sir, are pleased to esteem it among your glories!" The ex-Chancellor was actually supposed to be intriguing for court favour, and his son, Colonel Yorke, wrote to a friend,—“ Lord Hardwicke has been much caressed by the King, and continues to give his helping hand without place or pension.”

When the King's union with the Princess Charlotte of Mecklenburg Strelitz approached, Lord Hardwicke wrote to his son, “ I thought to have excused myself from the crowd on the wedding night, but I fear I must be an old beau at that ceremony.” He not only attended the ceremony, but presented himself at the crowded levee which was held at St. James's next day. Horace Walpole records the dialogue between George III. and his venerable minister on this occasion, which evinces how universally popular a topic of conversation, from the highest to the lowest, is the weather. *King*: “ It is a very fine day, my Lord.” *Lord Hardwicke*: “ Yes, Sir, and it was a very fine night.”

A royal message being delivered, recommending that the Judges should not be removable on a demise of the Crown, Lord Hardwicke moved the address of thanks, and he delivered a very courtly speech, most extravagantly over-praising that measure, and creating the delusion which still prevails that till then the Judges held during pleasure. In truth, by the Act of Settlement,^c their commissions were “ *quamdiu se bene gesserint* ;” and although, by a misconstruction of that act contrary to the maxim that “ the King never dies,” the appointment was held only during the natural life of the reigning sovereign, only one Judge was removed on the death of George I., not one on the death of George II., and no minister at any time coming would have ventured to remove a competent Judge on the commencement of a new reign. At any rate, this boon from his Majesty was entirely at the expense of his successor. Nevertheless, Lord Hardwicke repre-

^c 12 & 13 Will. 3, c. 2. The opinion of that great and upright magistrate, Sir Michael Foster, was clear, that after the Judges were required by the legislature to be appointed “ during good behaviour,” and it was provided that they should only be removable on the joint address of the two Houses of Parliament, they could not be removed on a demise of the Crown. “ I think the last precedent

was a precipitate proceeding, against the plain scope and intent of the Act of Settlement, and derogatory to the honour, dignity, and constitutional independence of the Judges, and of the Crown itself. I found myself only on the Act of Settlement, and the reason of things.”—Sir Michael Foster to Lord Chief Justice Wilmot, *Life of Wilmot*, 31.

sented the measure as of infinite importance to the impartial administration of justice, and to the rights and liberties of the people. "For doing this," said he, "his Majesty has laid his reasons before you. They are such as might have become, as they are truly worthy, the most renowned legislators of antiquity." After praising our judicial system, subject to the capital defect that *quamdiu se bene gesserit* means "during the natural life of the King," he proceeds:—"This, which is the only defect remaining, his Majesty, voluntarily and of his mere motion, invites you to cure. Reflect upon the histories of former times—with what difficulties such acts have been obtained, I was going to say extorted, from the Crown by your ancestors—after many struggles—sometimes after more than one negative from the throne. Accept it now with thanks. Every one of your Lordships must feel that gratitude in your own breasts which I have imperfectly attempted to express in the address which I have now the honour to propose for your adoption."^d

Lord Hardwicke continued steadily to support the government even after the resignation of Mr. Pitt, when, being overruled in the Cabinet respecting a declaration of war against Spain, that haughty minister refused "to be responsible for measures he was no longer allowed to guide." As a reward he had an offer of office, which he thus records in his Diary:—"16th November, 1761. Lord Bute, by his Majesty's command, offered me the Privy Seal lately resigned by Earl Temple, but I declined it with great duty to the King, and strong professions of zeal for his service, wishing it might be disposed of in such manner as might best promote that service in this difficult and critical conjuncture. This his Majesty was pleased to acknowledge to me the same day in his closet as a very disinterested instance of my zeal for his service, and to enlarge much on his esteem for me, and his protection and favour to me and my family. The Privy Seal was given to the Duke of Bedford."

However, there was a growing coldness between Lord Bute and the Duke of Newcastle, and rumours were afloat that the ex-Chancellor was caballing to overthrow the government. Thus he wrote to his son, Lord Royston: "You may possibly have read in the newspapers of my having what is called an

^d 15 Parl. Hist. 1011, where will be seen the notes still extant in Lord Hardwicke's hand writing, which show that he continued the practice of writing out his speeches, almost at full length, before he delivered them.

—With regard to this capital improvement, if he thought it of such importance, he might have explained why he did not himself propose it during the preceding reign.

‘*Opposition Dinner.*’ There is no truth in it, for I had only half-a dozen particular friends. After having been Attorney-General ten years, Chief Justice between three and four years, and Chancellor almost twenty, I shall not now contradict all the principles and all the rules of law and order which I have been maintaining all my life.”

Nevertheless, Lord Bute, impatient himself to be at the head of the Treasury, that he might have all patronage as well as power in his own hands, having resolved to force out the Duke of Newcastle, the ex-Chancellor suddenly saw things in a very different light, and declared that the policy of the new minister was about to tarnish and render un-availing all the victories won by his predecessor. This changed state of mind was produced by a letter from the Duke, giving an account of an interview with a favourite, in which his Grace had threatened, as he had often before *effectually* done, to resign unless some job were conceded to him, and in which, to his great mortification, he had been taken at his word. Thus piteously complained the ousted place-man to his confidant:—“He answered me dryly that, if I resigned, the peace might be retarded, but he never requested me to continue in office, nor said a civil thing to me afterwards while we remained together.” Newcastle felt so wretched out of place, that a few weeks after he opened a negotiation for his return, upon the basis that he should freely renounce the Treasury, and be contented with the Privy Seal—an office without patronage—so that, at the same time, his friend the Earl of Hardwicke might be made President of the Council. Such was his Borough interest that Lord Bute listened to the proposal, till, upon consulting with the Secretary to the Treasury, and examining the probable votes in both Houses, it was thought the approaching treaty of peace was sure to be approved of by large majorities. Being finally thrown aside, the Duke went headlong into opposition, took part with Mr. Pitt, caballed in the City, anticipated nothing but disgrace from the pending negotiation with France, and resolved to storm the Treasury. Lord Hardwicke would not desert him, and, as far as was consistent with the decorum of his own character, vigorously assisted him in this enterprise.^f

^e Duke of Newcastle to Lord Hardwicke, May, 1762. Adolph. i. 69. The ostensible dispute was about continuing the subsidy to the King of Prussia.

^f It is curious that, in writing to the Lord President of the Court of Session on the 12th June, 1763, he represents that he was turned out of the Cabinet, and he tries to mitigate

Parliament meeting on the 25th of November, the preliminary articles of peace, concluded at Fontainebleau on the 3rd of the same month, were laid before both Houses, and on the 9th of December were debated in the House of Lords.⁵ After rhetorical orations from the mover and seconder of an address of thanks to his Majesty, Lord Bute spoke with much more than his usual ability, entering at length into the whole course of the negotiations for peace, dwelling upon the terms that had been offered by Mr. Pitt, and contending that those actually concluded were, under all the circumstances, as favourable, and ought to be considered satisfactory by the country. He was answered by Lord Hardwicke in a speech which, considering the difficulties of his situation, displays great talent and dexterity. The criticisms on the several articles have ceased to be interesting, the public, without minute inquiry, having acquiesced in the conclusion that the peace was not a bad one, although, if hostilities had been commenced at the proper time against Spain, the House of Bourbon might have been more effectually humbled, and might have been disabled from taking part against us in our impending disputes with our colonies. I shall, therefore, give only a few extracts from his speech which touch on more general topics:—

“I was in hopes that, after so successful a war, and particularly the great advantages gained over the enemy during the present year, a plan of peace would have been produced which would have been satisfactory

his factiousness:—“As to myself, no great part could be taken from me, because I had none; but that seat which I had been permitted to retain in the King's Council I was excluded from just before the last session of parliament. Your Lordship has undoubtedly heard of me as an opposer. It is true that, in conjunction with several of your Lordship's and my old friends, I have opposed certain particular measures. When I have done so, it has been according to my judgment and conscience, with the greatest duty to the King, and a sincere zeal for his service and that of the public; and I am not ashamed of it.”

⁵ It may be amusing to present to the reader a specimen of the parliamentary reporting of that day. This debate in the Lords being one of the most important and interesting which ever took place in that House, the following is the fullest account of

it published in any journal or periodical work:—“The preliminary articles being read, Lord Wycombe moved an address of thanks to his Majesty. Many objections were made, and some severe reflections thrown out against the Earl of Bute, with appearances of heat and animosity. That nobleman defended his own conduct, with temper and decorum, in a well connected speech, delivered with great propriety to the surprise of many, who did not think him so well qualified in the art of elocution. He gave a detail of the negotiation, and not only avowed himself a warm promoter of the peace, but even expressed a desire that his having contributed to the cessation of hostilities should be engraved on his tomb. He was seconded by the Earl of Halifax, and supported by a great majority.”—15 *Parl. Hist.* 1252. Fortunately we have a sketch of the debate in the handwriting of Lord Hardwicke, which I have made use of.

to all lovers of their country: but rashness and precipitation have marked the negotiation on our part; we have proclaimed that we would have peace at any price or sacrifice; our opponents were made aware that this object was necessary to the party now in power, and the result can only give pleasure to those who regret our victories and envy our greatness. There is one part of the address in which I can most heartily concur—the dutiful professions and assurances given to his Majesty—convinced, from the bottom of my heart, that no prince ever ascended the throne with more virtuous and public-spirited disposition, with greater love for his people and zeal for their happiness, with greater purity of mind and uprightness of heart, untainted even with a wish for any hurtful power, nay, filled with a detestation of it.”

He was most successful in his complaint of the preliminary articles being laid before Parliament, that an opinion might be asked upon them; whereas, he contended that, according to precedent and constitutional propriety, the Crown ought to act upon the responsibility of its ministers till a definitive treaty of peace is concluded:—

“Is the Parliament,” he said, “to judge of these preliminaries, article by article, and to propose variations and additions? God forbid! ’Tis the prerogative of the Crown to make war and peace. The ministers of the Crown are to act in such matters at their peril. But in this instance the Crown has not yet executed that prerogative. No definitive treaty is made,—consequently no peace is made. We have only the heads, minutes, or notes, of a proposed arrangement between the two nations, by which neither party is bound. In this state of things Parliament ought not to be called upon to interpose. It may be said, that the strong approbation and applause which ministers ask by this address will strengthen their hands in making the definitive treaty. But I assert the direct contrary. I do not say so affectedly, and to maintain the proposition of a day; but I am really and seriously of opinion, that by this course of proceeding you disable them from doing that right to the King and to the nation for which, I make no doubt, they are solicitous. All Courts know that an English ministry treats with them under the inspection and animadversion of Parliament. This is a shield of defence to our negotiators against many demands,—a weapon in their hands to enforce others. If they are able to say, ‘*We cannot do this or that; the Parliament will not support us,*’ a power that wants a peace from you, which is now the case of France, will give submissive attention to that argument. Many material stipulations require to be ascertained, explained, extended, added, or altered, before these preliminaries assume the form of a national compact. But if Parliament sanctions all in the gross, can you expect to succeed in any point which you have to make? It will be well known on the other side of the Channel, that Parliament cannot retract its approbation without stultifying itself, and without upsetting the administration.

The noble and skilful person at present his Majesty's ambassador at Paris,^g when any difference now arises, will talk to the winds. The French minister will laugh in your face, and tell you that 'you are not in earnest, for Parliament has approved of these articles; you must rest contented with them as they now stand, and with our interpretation of them.'

Lord Granville, who had chiefly directed the negotiation, and was expected to take the lead in defending the preliminaries, was recently dead, and there was no one to answer these arguments; but whether they influenced any noble Lord's opinion, it was quite certain that they would influence no vote, and Lord Hardwicke found himself so weak in numbers that he did not venture to divide the House, or even^h to enter upon the Journals a protest against the address

A.D. 1763. No material inconvenience arose in this case from the parliamentary discussion of the preliminaries; the definitive treaty of Paris was satisfactorily concluded on the footing of them,—and, notwithstanding Lord Hardwicke's objections, the same course of proceeding has since been adopted on similar occasions. Indeed, he was guilty of a fallacy in representing a preliminary treaty of peace as a mere *projet* from which either side may draw back, for it terminates hostilities, and, by the law of nations, as far as it goes, it is binding on the parties, although there be certain points between them which remain to be adjusted.

I discover no trace of any debate in the House of Lords on the Definitive Treaty, and the only other speech which we know of Lord Hardwicke having delivered there, was on the 28th day of March, 1763, against the very obnoxious bill for levying a duty on cider in the hands of the maker. We have here again a proof of his indefatigable industry on all occasions which (be it ever remembered) was the great cause of his extraordinary success in life. There are extant, in his own handwriting, notes for a very elaborate *philippic* against this tax. I shall give a few extracts, which I think are more interesting than a finished oration:—

"Shall go upon two great lines of this bill:

1. I look upon it as an extension and application of the excise laws to improper objects.
2. I look upon it as an additional land-tax upon the cider counties.

^g The Duke of Bedford.

^h In the other House, after Mr. Pitt's famous *sitting* speech of three hours and a half, although he was obliged to go away from ill-

ness, the opponents of the peace were more adventurous; but they could only muster 65 against 319.

First Point.

All former laws ; the plan of the Excise—confined to some particular trades or occupations.—Do not extend to any subject who may happen to do a particular act in the course of his family affairs.

Such persons give their names ; voluntarily subject themselves to such laws as are or shall be, &c.

Such dealers have shops, warehouses, outhouses, &c. distinct.

In this case every person who makes any quantity of cider above, &c. is subjected.

This arises from laying the tax upon the maker, and not on the first buyer or retailer ; and in this the present bill departs from the principle on which excises were admitted, &c.”ⁱ

He still goes on with his first point at considerably greater length, and then takes up the second of “the land tax on the cider counties,” with equal minuteness, bringing forward statistical facts, and trying to show, on principle, that such taxes fall upon the producer—not upon the consumer. We can only judge of the actual speech by the effect it produced, for it was attacked by the *heavy artillery* of Lord Bute. He rose to reply, and his delivery on this occasion was so particularly slow and solemn that Charles Townsend, standing on the steps of the throne, called out in an audible whisper, “*Minute guns!*”^k These might be considered as announcing the funeral of Lord Bute’s ministry. The Cider Bill passed, but it added so much to the unpopularity accumulated upon him, and upon his countrymen, by the dismissal of Mr. Pitt, by the inglorious peace, by the royal favouritism on which his administration rested, by Churchill’s “*Prophecy of Famine,*” by Wilkes’s “*Dedication to the new Edition of the Fall of Mortimer,*” and by the same unscrupulous writer’s “*North Briton,*” which had now reached the fortieth number, that the Premier suddenly resigned, and was succeeded by George Grenville. The nation believed that he long continued secretly to direct all the measures of the Court. This suspicion was carried to an extravagant length ; but, although he pretended that, having gained all the objects of his ambition,

ⁱ Lord Hardwicke seems to have furnished one of the topics for the celebrated No. XLV. of the “*North Briton,*” published soon after,—which, commenting on the King’s speech recommending a “*spirit of concord,*” thus inveighs against the cider tax : “*Is the spirit of concord to go hand in hand with the peace and excise through this nation? Is it to be expected between an insolent exciseman and a peer, gentleman, freeholder, or farmer, whose private houses are now made liable to be entered and searched at pleasure? Gloucestershire, Herefordshire, and in general all the*

cider counties, are not surely the several counties which are alluded to in the speech. The spirit of concord has not gone forth among them, but the spirit of liberty has, and a noble opposition has been given to the wicked instruments of oppression.”

^k Charles was very impartial between him and the Duke of Newcastle, who were both his near relations, saying, “*Silly fellow, silly fellow ! I think it is as well to be governed by my uncle with the blue riband, or my cousin with a green one.*”

he had betaken himself to "the domestic and literary retirement which he loved," there can be no doubt that, for a considerable time, in ministerial arrangements, he chiefly guided the King; and that he entertained a strong hope of being able ostensibly to resume his position, when the prejudices excited against him should have passed away.

Parliament was hurriedly prorogued to prevent discussion; but the closing speech called forth No. XLV. of the "North Briton;" general warrants were issued by Lord Halifax, Secretary of State, to arrest the author, printer, and publisher,—Wilkes was arrested,—Wilkes was sent to the Tower,—Wilkes was liberated by the judgment of the Court of Common Pleas; and the cry of "WILKES AND LIBERTY!" resounded throughout the realm. Lord Bute became sensible that some new arrangement was necessary, and opened negotiations with the discarded ministers of George II. By a letter from Lord Hardwicke to his son, we are informed of the attempt made upon him:

"On Friday I was at the levee, a very thin one, to make my bow to the King before going out of town for the autumn. His Majesty was very civil; enquired when I went to Wimple, to which I answered, *on Monday*. I mention this circumstance, because I believe it brought upon me *what follows*. On Sunday noon I had a note from Lord Eg^t. to come to me either *immediately*, or *that night*, or on *Monday morning*, as early as I pleased. As I was just stepping into my chariot to dine at Highgate, I named either Sunday night or Monday morning, the last of which took place. His Lordship staid with me about an hour and a half; began with great civilities and professions of regard, and then told me that he came *by his Majesty's order*, whose good opinion and esteem for me he avowed to represent in the royal words, which were such as it will not become me to repeat. That the King wished to see me again in his council, and he was authorized by his Majesty to offer to place me *at the head of it*. That he (Lord E.) had taken occasion to lay before his Majesty, at different times, what had passed between us in former conversations; and that the King found that, after so long a friendship and connexion with the D. of Newcastle, I had some difficulties, upon the point of private honour, to break through them. That though his Majesty had reason to be offended with his Grace's late conduct, yet, for the sake of attaining what he so much wished, if the D of Newc. would accept one of the great offices about the court, the King would condescend to it. That his Majesty understood the Duke had declared, in the House of Lords, that he would not come again into a ministerial place; and desired to *know my opinion* whether his Grace would return to the King's service upon the foot proposed. I own I did not expect so *direct* a proposition; and made all the dutiful, grateful, but disabling

speeches that became me. How little I wished to come into office again, I said, appeared by my having declined the Great Seal in July, 1757, and the Privy Seal in the winter 1761; which I had done with the greatest consideration for his Majesty's service. That, as I had declined to accept an employment, though offered me, whilst all my friends were in court, it was impossible for me to accept one whilst all my friends were out of court. That as to what was said about the D. of Newcastle, my connection with him was avowed and well known; that I might have expressed myself shortly upon former occasions, but I had always described or alluded to others also. That most of, if not all, the great Whig Lords, with whom and their families I had acted for forty years, were now displaced; and I shou^d only tarnish my own character, at least in y^e opinion of y^e world, at y^e end of my life, and not be of any use to his Majesty, if I separated myself from them. That I rejoiced, for the sake of his Majesty's service, that the proscription was so far taken off from the Duke of Newcastle. That I looked upon it as a good beginning, but there were *others besides his Grace*. As to the point on which my opinion was asked, it was too delicate and important for any man to answer, without consulting the person concerned, upon *that very point* directly. Therefore I begged to know how far I might go with the Duke; for I wou^d not exceed his Majesty's permission by one jot. My Lord answered that the King wou^d by no means allow me to acquaint the D. of N. with this, unless I first declared my opinion that *it would do*. To this I said that I was then at a full stand. It was impossible for me to say now that it wou^d do, and how should I know if I could not ask? If I was to hazard a conjecture, it would be that this alone wou^d not do. That things had been suffered to go so far that his Grace himself must have formed connections, &c. However, it was repeated that I must not open one word of this to him. I could not help saying: He will even know of this visit of y^r Lordship's to me; may I own that you have talked to me in the like style as formerly upon my own subject? This was agreed to. * * * *

"He then spoke of the continuance of the cry against Lord B., that he had been hung up in effigie upon a gibbet, at one of the principal gates of Exeter, for this fortnight past, and nobody had dared cut the figure down in all that time. It is immaterial to run into the minutiae of our conversation; but, in the course of it, my Lord had happened to say that the King could not bring himself to submit to take in a party in gross, as an opposition party. I told him nobody wou^d advise his Majesty to avow the doing of that. But a King of England, at the head of a popular governm^t, especially as of late the popular scale has grown heavier, wou^d sometimes find it necessary to bend and ply a little. That it was not to be understood as being forced: but only submitting to the stronger reason, for the sake of himself and his government. That King William, hero as he was, had found himself obliged to this conduct; so had other princes before him; and so had his Majesty's grandfather, and found his governm^t grew stronger by it. I have now

told you the substance of a long conversation. The only material thing besides was that L^d Egremont at last varied a little the form of his restriction, as to the Duke of Newcastle, and put it finally, *that I should not say anything to him of this proposition, till after I had seen or heard from his Lordship again*; and so it was left. When either of those will happen I know not, for his Lordship knew I was fixed to go out of town the next morning, for the autumn, and came to me upon that foundation."

Lord Egremont having died suddenly a few days afterwards, the necessity for a change became more urgent, and a separate negotiation was opened with the Duke of Newcastle. He, too, having refused to desert his friends, the King found it necessary to send for Lord Chatham. We have a very interesting account of what passed between them in the following letter from the ex-Chancellor, which shows that he had greatly improved in the facility and elegance of his English composition since he wrote "PHILIP HOME BRED" for the "Spectator;" and that, if he had practised letter-writing, he might have rivalled Horace Walpole:—

"Wimple, Sept. 4, 1763.

"My dear Lord,^m

"I have heard the whole from the Duke of Newcastle; and, on Friday morning, *de source*, from Mr. Pitt. But if I was to attempt to relate in writing all that I have heard in two conversations of two hours each, *the dotterells and wheat-ears would stink* before I could finish my letter. Besides, it is as strange as it is long, for I believe it is the most extraordinary transaction that ever happened in any Court in Europe, even in times so extraordinary as the present.

"I will begin as the affair has gone on, preposterously, by telling you, that it is all over for the present, and we are to come back *re infectâ*.

"It began as to the substance, by a message from my Lord Bute to Mr. Pitt, at Hayes, through my Lord Mayor, to give him the meeting privately at some third place. This, his Lordship (Lord B.) afterwards altered by a note from himself, saying, that as he did things openly, he would come to Mr. Pitt's house in Jernyn Street in broad day-light.

^m His eldest son. This *mylording* of his own son, which would not have been practised by a Howard or a Spencer, confirms the charge against him that he preposterously piqued himself upon his nobility, and forces us to recollect the poor youth who, under his mistress's stern orders, brought home cabbage from the greengrocer's, and oysters from the fishmonger's. According to a well-known story, the late Lord Althorp, when a distin-

guished senator, was thus addressed by his noble father: "Ring the bell, Jack!"—*1st Edit.*

In all the copies of the letter heretofore printed, it begins "My dear Lord;" but Mr. Harris, in his Life of Lord Hardwicke, informs us that the original, which he has seen, begins "Dear Royston." "*Dear Phil.*" would have been still better.—(1849.)

They met accordingly, and Lord Bute, after the first compliments, frankly acknowledged that his ministry could not go on, and that the King was convinced of it; and therefore he (Lord B.) desired Mr. Pitt would open himself frankly, and at large, and tell him his ideas of things and persons with the utmost freedom. After much excuse and hanging back, Mr. Pitt did so with the utmost freedom indeed, though with civility. Here I must leave a long blank to be filled up when I see you. Lord Bute heard with great attention and patience; entered into no defence; but at last said, 'If these are your opinions, why should you not tell them to the King himself, who will not be unwilling to hear you?'—'How can I presume to go to the King, who am not of the council, nor in his service, and have no pretence to ask an audience? The presumption would be too great.'—'But suppose his Majesty should order you to attend him, I presume, sir, you would not refuse it.'—'The King's command would make it my duty, and I should certainly obey it.'

"This was on last Thursday sevensnight. On the next day (Friday) Mr. Pitt received from the King an open note, unsealed, requiring him to attend his Majesty on Saturday noon, at the Queen's Palace, in the Park. In obedience hereto, Mr. Pitt went on Saturday at noon-day, through the Mall, in his gouty chair, the boot of which (as he said himself) makes it as much known as if his name was writ upon it, to the Queen's Palace. He was immediately carried into the closet, received very graciously; and his Majesty began, in like manner as his quondam favourite had done, by ordering him to tell him his opinion of things and persons at large, and with the utmost freedom; and, I think, did in substance make the like confession, that he thought his present Ministers could not go on. The audience lasted three hours, and Mr. Pitt went through the whole upon both heads more fully than he had done to Lord Bute, but with great complaisance and douceur to the King; and his Majesty gave him a very gracious accueil, and heard him with great patience and attention. And Mr. Pitt affirms that, in general, and upon the most material points, he appeared by his manner and by many expressions to be convinced. But here I must again avail myself of my long blank, and make only one general description; that Mr. Pitt went through the infirmities of the peace; the things necessary and hitherto neglected to improve and preserve it; the present state of the nation, both foreign and domestic; the great Whig families and persons which have been driven from his Majesty's council and service which it would be for his interest to restore. In doing this he repeated many names; upon which his Majesty told him there was pen, ink, and paper, and wished he would write them down. Mr. Pitt humbly excused himself, by saying, that would be too much for him to take upon him; and he might, upon his memory, omit some material persons, which might be subject to imputation. The King still said he liked to hear him, and bid him go on; but said, now and then, his honour must be consulted; to which Mr. Pitt answered in a very courtly manner. His Majesty ordered him to come again on Monday, which he did, to the same place and in the same public manner."

[Here comes in a parenthesis, that on Sunday Mr. Pitt went to Claremont, and acquainted the Duke of Newcastle with the whole, fully persuaded from the King's manner and behaviour that the thing would do; and that on Monday the outlines of the new arrangement would be settled. This produced the messages to the Lords, who were sent for. Mr. Pitt undertook to write to the Duke of Devonshire and the Marquis of Rockingham, and the Duke of Newcastle to Lord Hardwicke himself.]

“But, behold the catastrophe of Monday. The King received him equally graciously; and that audience lasted near two hours. The King began that he had considered of what had been said, and talked still more strongly of his honour. His Majesty then mentioned Lord Halifax for the Treasury, still proceeding upon the supposition of a change.

“To this Mr. Pitt hesitated an objection—that certainly Lord Halifax ought to be considered, but that he should not have thought of him for the Treasury. Suppose his Majesty should think fit to give him the Paymaster's place. The King replied, ‘But, Mr. Pitt, I had designed that for poor G. Grenville; he is your near relation, and you once loved him.’ To this the only answer made was a low bow. And now here comes the bait. ‘Why,’ says his Majesty, ‘should not my Lord Temple have the Treasury? you would then go on very well.’—‘Sir, the person whom you shall think fit to honour with the chief conduct of your affairs cannot possibly go on without a Treasury connected with him. But that alone will do nothing. It cannot be carried on without the great families who have supported the Revolution government, and other great persons, of whose abilities and integrity the public has had experience, and who have weight and credit in the nation. I should only deceive your Majesty, if I should leave you in an opinion that I could go on, and your Majesty make a solid administration, on any other foot.’—‘Well, Mr. Pitt, I see (or I fear) this will not do. My honour is concerned, and I must support it.’ ‘*Et sic finita est fabula.*’ ‘*Vos valet.*’ but I cannot with a safe conscience add, ‘*plaudite.*’ I have made my skeleton larger than I intended at first, and I hope you will understand it. Mr. Pitt professes himself firmly persuaded that my Lord Bute was sincere at first, and that the King was in earnest the first day; but that on the intermediate day, Sunday, some strong effort was made which produced the alteration.

“Mr. Pitt likewise affirms that, if he was examined upon oath, he could not tell upon what this negotiation broke off, whether upon any particular point, or upon the general complexion of the whole; but that if the King shall assign any particular reason for it, he will never contradict it.

“My story has been so long, though in truth a very short abridgment, that I shall not lengthen it by observations, but leave you to make your own: it will certainly be given out, that the reason was the unreasonable extent of Mr. Pitt's plan—a general rout; and the minority, after having complained so much of proscriptions, have

endeavoured to proscribe the majority. I asked Mr. Pitt the direct question, and he assured me, that although he thought himself obliged to name a great many persons for his own exculpation, yet he did not name above five or six for particular places. I must tell you that one of these was your humble servant for the President's place. This was entirely without my authority and privity. But the King's answer was, 'Why, Mr. Pitt, it is vacant, and ready for him; and he knows he may have it to-morrow, if he thinks fit.'

"I conjectured that this was said with regard to what had passed with poor Lord Egremont, which made me think it necessary to tell Mr. Pitt in general what had passed with that Lord (not owning that his Lordship had offered it directly in the King's name), and what I had answered, which he, in his way, much commended.

"This obliges me to desire that you will send me by the bearer my letter to you, which you were to communicate to my Lord Lyttleton, that I may see how I have stated it there, for I have no copy.

"I shall now *make you laugh*, though some parts of what goes before make me melancholy, to see the King so committed, and his Majesty submitting to it, &c. But what I mean will make you laugh, is, that the Ministers are so stung with this admission that they cannot go on, (and what has passed on this occasion will certainly make them less able to go on,) and with my Lord Bute's having thus carried them to market in his pocket, that they say Lord Bute has attempted to sacrifice them to his own fears and timidity; that they do not depend upon him, and will have nothing to do with him; and I have been credibly informed that both Lord Halifax and George Grenville have declared that he is to go beyond sea, and reside for a twelvemonth or more. You know a certain cardinal was twice exiled out of France, and governed France as absolutely whilst he was absent as when he was present.

"Yours affectionately,

"HARDWICKE."

While the ex-Chancellor was thus speculating upon changes of administration, and his own return to office, he was struck with a mortal disorder. Hitherto he had enjoyed uninterrupted health, and such attention had he paid to temperance and to exercise when in his power, that, although originally by no means of a robust constitution, he was still active in his body, and the hand of time had been laid so gently on his frame, that he seemed to be only entering into a green old age.

Being made aware that he could not hope to recover, he submitted to the will of Providence with firmness, and even with cheerfulness—gratefully reflecting on the long and singularly prosperous career which he had run.

When parliament again met, he was unable to take part in the stormy discussions which arose out of the prosecution and imprisonment of Wilkes; but his faculties were still unimpaired, and, though confined to his bed, he could occasionally see and converse with his political as well as his private friends.

A resolution being moved and carried in the House of Commons, "that privilege of parliament does not extend to the case of writing and publishing seditious libels," was sent up to the Lords, who were called upon to concur in it. As Mr. Wilkes had attacked Lord Bute so violently and so successfully, he was warmly supported by the opposition,—and Pitt in one House, and Earl Temple in the other, boldly resisted the resolution;—but Lord Hardwicke, though a strong party-man to the last, when consulted, expressed a clear opinion "that privilege of parliament does not extend to prevent a member from being prosecuted and imprisoned for any crime; that the words in the common *cantilena*, 'treason, felony, and breach of the peace,' are only put as examples, and that it would be most discreditably to parliament to assert the right of all its members to commit with impunity all misdemeanors which did not amount to an actual breach of the peace." In consequence of this opinion, the Duke of Newcastle, and the peers more immediately connected with him, refused to vote with Lord Temple, or to join in his protest—much to the annoyance of that nobleman.

This was Lord Hardwicke's last interference with politics. Finding that his disease made rapid progress, he deliberately settled his worldly affairs, and then devoted himself to preparation for the awful change which was at hand. Amidst the most affectionate attentions of his family, he expired at his house in Grosvenor Square, on the 6th of March, 1764, in the seventy-fourth year of his age. As long as he drew breath his powerful mind remained unclouded, and he was serene and composed. "I saw him in his last moments," wrote his eldest son, "and he looked like an innocent child in his nurse's arms."

According to the directions of his will, he was buried privately at Wimpole, where a monument is erected to his memory, with an inscription, which, after stating the dates of his several promotions, thus eulogises him:—

"The Strength and Quickness of his Parts, joined to an unwearied Application and Industry, recommended him, soon after his entrance into Business, to an extensive course of

Practice, and advanced him, before the usual Age, to those Inferior Honours of the Robe, from which is open'd the fairest Prospect to the Highest. In this Situation as an Advocate and a Servant of the Crown, his Skill in the various Branches of the Law and Constitution, his Eloquence, his Integrity, his Zeal for Justice, and his Candor and Tenderness to the Subject, were universally acknowledged and admired. In each of the Courts where he presided, his Firmness and Dignity, his clear and ready Apprehension, his patient and close Attention, the Compass and Profoundness of his Knowledge, and the Justice of his Decisions, afforded the most valuable Instruction to the Profession, and the Highest Satisfaction to the Parties. His Eloquence in Parliament was natural and manly, his Method exact, his Reasoning powerful and persuasive, his Manner modest yet commanding, his Voice clear and harmonious; and all these received a lustre and a force, almost irresistible, from the acknowledged Integrity of his Character. When he advised in the more Secret Councils of State, his superior Judgement, his long Experience, his Acquaintance with History and Treaties, enabled him to state precisely, to debate fully, and to determine wisely and usefully to the Public those arduous Questions which were the Subject of Deliberation. In his Political Connexions, as well as private Friendships, he was uniform and constant. In his Religious Principles, he was attached to the National Establishment, with that Spirit of Moderation and Charity which becomes a sincere and enlightened Member of a Protestant Communion. In private Life he was distinguished by the Amiability of his Manners, his engaging Address, and his general Benevolence; ever easy and cheerful in the Conversation of his Family and Friends; and retaining the Taste of his early Classical Studies amidst his most laborious and highest Employments. Thus he lived during the Exercise of his great Offices; and in his Retirement was honor'd and revered by the whole Nation, and distinguished by the Approbation and peculiar Favor of his Sovereign, till his 74th year; when a long and painful Disorder, supported by an uncommon patience, and a Strength of Mind unimpaired, put a Period to his Life, March the 6th, 1764."

These are the effusions of filial piety; but notwithstanding his failings, and the censure to which some parts of his conduct may be liable, he is certainly to be considered a most eminent and meritorious personage in English history. Entering public life very early, he lived to a great age in very interesting times, and he acted an important part in many of the events which distinguished the century in which he flourished. He had heard speeches delivered from the throne by William III. and by George III.; he had seen the reins of government in the hands of Godolphin and in the hands of Pitt; he had witnessed the rejoicings for the victory of Blenheim and for the capture of Quebec; his ears had been split with cries of "*Sacheverell and High Church!*" and with cries of "*Wilkes and Liberty!*" he had been acquainted with Bolingbroke and with Burke; he had marked the earliest burst of admiration called forth by the poetry of Pope and by the poetry of Churchill; he himself had been fifty years a member of the Legislature, holding a most distinguished station in either House of Parliament; he had filled various important offices with singular ability; he had held the highest civil office in the kingdom longer than any of his predecessors (one excepted), since the foundation of the monarchy, and with greater applause than any of his pre-

decessors had ever gained or any successor could hope for; he had been mainly instrumental in keeping the reigning dynasty on the throne, by the measures which he advised for crushing a dangerous rebellion raised to restore the legitimate line; he was the great legislator for Scotland, freeing that country from the baronial tyranny by which it had been immemorably oppressed; in England he was the finisher and almost the author of the immortal Code of Equity to which his name might justly be attached; though of low degree, in his own lifetime his blood was mingled with that of the Campbells and the Greys, and he established one of the most potent families in the nobility of Britain. Through life, unceasing good luck attended him; but beyond this such results required lofty aspiration, rare intellectual ability, consummate prudence, absolute control of temper, rigid self-denial, and unwearied industry. His chief glory is, that, as a public man, he was ever consistent and upright. Compare him with preceding and with succeeding Chancellors, who started by making themselves formidable as the ultra-zealous champions of freedom, and who rose by renouncing and by persecuting the principles which they professed. He was from boy to old man a sound Whig—loving our monarchical form of government, but believing that it exists for the good of the people, and that for the good of the people the prerogatives of the Crown are to be restricted, and are to be preserved.

The heaviest charges I find brought against him by impartial writers, are—love of money, and arrogance of manner in common society:

“He was undoubtedly an excellent Chancellor,” says Lord Waldegrave, “and might have been thought a great man had he been less avaricious, less proud, less unlike a gentleman.”^a

“The stately and ceremonious reception of his visitors on a Sunday evening,” says Cooksey, “was insipid and disgusting in the highest degree. Stranger as he was to the life and habits of country gentlemen, he treated them with insulting inattention and hauteur. Came they from ever so great a distance, either to visit his Lordship or to see his place, their horses were sent for refreshment to the ‘Tiger,’ a vile inn near half a mile distant, as I have experienced more than once. He submitted, indeed, like other Lords, sometimes to entertain the *natives*, but with that visible and contemptuous superiority as disgusted rather than obliged them. When in high good-humour, he had two or three stock stories to make his company laugh, which

^a Mem. p. 20.

they were prepared and expected to do. One was of his bailiff Woodcock, who, having been ordered by his Lady to procure a sow of the breed and size she particularly described to him, came one day into the dining-room, when full of great company, proclaiming, with a burst of joy he could not suppress, '*I have been at Royston fair, my Lady, and got a sow exactly of your Ladyship's breed and size.*' He also used to relate an incident that occurred to him in a morning ride from Wimple. Observing an elegant gentleman's house, he conceived a wish to see the inside of it. It happened to be that of Mr. Montague, brother to Lord Sandwich, who, being at home, very politely, without knowing his Lordship, conducted him about the apartments, which were perfectly elegant; and expatiated on the pictures, some of which were capital. Among these were two female figures, beautifully painted, in all their native naked charms. '*These ladies,*' says the master of the house, '*you must certainly know, for they are most striking likenesses.*' On the guest's expressing his perfect ignorance, '*Why, where the devil have you led your life, or what company have you kept,*' says the Captain, '*not to know Fanny Murray and Kitty Fisher, with whose persons I thought no fashionable man like you could be unacquainted?*' On my taking leave, and saying, '*I should be glad to return his civilities at Wimple,*' what surprise and confusion did he express on his discovering he had been talking all this *badinage* to Lord Hardwicke!"^o

Others have given a more favourable view of his manners, representing that "he rose from the fatigues and anxieties of business to the enjoyment of the society of his family and his friends, with the spirits of a person entirely vacant and disengaged, preserving in old age the vivacity as well as appearance of youth, and ever uniting the characters of dignity and amiableness."^p

The censure of his love of money should be softened by the recollection of the penury from which he had suffered in his youth, and from the consideration that it never exposed him even to the suspicion of corruption. A graver fault, and attended with less palliation, may, I think, be imputed to him in his abandonment of literature and literary men. It might have been expected that, in the breast of one who had been taken to dine at the Kit-cat, who had acquired credit by writing a paper in the "Spectator," and who had witnessed the glory shed over Lord Somers in his decline by continuing the protector and the associate of wits and philosophers, the sacred flame once kindled would have smouldered, ready to burst out when freed from the load of Chancery precedents and official cares. But as he advanced in life he seems to

^o Cooksey, 101.

^p Life, by Chalmers.

have contracted a contempt for all liberal studies, and to have valued men only according to their rank, their riches, and their political influence. I find no trace of his having the smallest intercourse or correspondence, except with lawyers, or the leaders of faction. He obtained a pension for Mallet (a man doing no honour to the country of his birth), under pretence of his literary celebrity, but, in reality, for writing a pamphlet when the nation was exasperated by the ill conduct and disasters of the war, to turn the public resentment and vengeance from the ministry upon Admiral Byng. Dr. Birch, well known as a scholar and historical collector, had been tutor to his sons, and had dedicated the "Thurloe State Papers" to the Lord Chancellor himself. One of his pupils, much attached to him, seeing him neglected and starving, thus ventured to address the great distributor of church patronage:—"From my own acquaintance with him I can only confirm the general character he bears of being a clergyman of great worth, industry, and learning, subsisting at the mercy of booksellers and printers, without any preferment but a small living in the country, which will scarce keep a curate. He is a person of excellent heart as well as head, and, by his diligence and general knowledge in most parts of learning, may be made extremely useful to the public." The reply was an offer of a living in Wales of 30*l.* a year, which Dr. Birch declined accepting. Lord Hardwicke thought it his duty to dispose of ecclesiastical preferments in his gift—with a view to increase his own political influence,—without any scrupulous regard for the interests of religion, and—without the slightest respect for scientific or literary merit.⁹ He has had his reward. While Somers, Harcourt, and Murray are immortalised in the poems of Addison and Pope, Hardwicke was only praised by the dull authors of treatises on the practice of the Court of Chancery, or dull compilers of Chancery Reports. With all his titles and all his wealth, how poor is his fame in comparison with that of his contemporary, SAMUEL JOHNSON, whom he would not have received at his Sunday evening parties in Powis House, or invited to hear his stale stories at Wimpole! A man desirous of solid fame would rather have written the "Rambler," the "Vanity of Human Wishes," "Rasselas," or the "Lives of the Poets," than have delivered all Lord Hardwicke's speeches in Parliament, and all his

⁹ When he was actually going out of office, of no avail to him, he gave Dr. Birch a better and jobbing in church preferment could be living in the city of London.

judgments in the Court of Chancery; although the Author had been sometimes obliged to pass the night on the ashes of a glasshouse, and at last thought himself passing rich with his 300*l.* pension—while the Peer lived in splendour, and died worth a million.^f

Beyond his efforts in English prose composition, which I have already mentioned, I am not aware of any thing from Lord Hardwicke's pen, except his celebrated letter to Lord Kames. That profound jurist and philosopher, about to publish his treatise on "Equity," sent the "Introduction," explaining his general views on the subject in MS., to the great ex-Chancellor, whose fame was, if possible, higher in Scotland than in his own country. Lord Hardwicke's answer is a very masterly performance,^g and shows that he might have left some permanent monument of his fame to have placed him in the same category as Sir Thomas More, Lord Bacon, and Lord Clarendon,—great English Judges, who enriched the literature of their country. He not only gives an admirable sketch of the origin of Equity Jurisdiction in England, but enters deeply into the general principles on which the essential distinction between Law and Equity rests, and on which they are respectively to be administered. Unlike mere Chancery practitioners, whom favour or accident has elevated to high judicial office, and who, religiously persuaded that Chancery practice is the perfection of human wisdom,^h sincerely and strongly think that whatever differs from it must be absurd and mischievous,—while he contends, like Lord Bacon,ⁱ that

^f It is whimsical enough that Johnson himself for a moment wished that, instead of being at the head of English literature, he had been a "law Lord." But at other times he showed a consciousness of his own superiority to Chancellors and Peers: "It is wonderful, Sir, with how little real superiority of mind men can make an eminent figure in public life."^g—Hardwicke is to Johnson as the most interesting Life that could be written of Hardwicke is to Boswell's "Life of Johnson,"—the proportion of a farthing candle to the meridian sun.

^g June 30, 1759. Lord Woodhouselee's "Life of Lord Kames," i. 237.

^h Once, in a conversation I had with a very eminent counsel at the Chancery bar, who wore a silk gown, respecting the effect of "notice to a purchaser of an unregistered

deed," I opposed his opinion by citing a decision in point of Chancellor d'Aguesseau. "Ah!" said he gravely, "but had the French Lord Chancellor called in the assistance of the French Master of the Rolls?" This reminded me of the English tar, who, returning home from a French prison, said to his companion, "Jack, what rum'ns 'em 'ere Frenchmen be! Do you know, Jack, that they call a horse a SHOVEL, and a *hât* a CHOPPER?"

ⁱ "Apud nonnullos receptum est, ut jurisdictionis, quæ decernit secundum æquum et bonum, atque illa altera quæ procedit secundum jus strictum, iisdem curiis deputentur; apud alios autem, ut diversis: omnino placet curiarum separatio. Neque enim servabitur distinctio casuum, si fiat commixtio jurisdictionum."^h—*De Aug. L. viii. c. 3, aph. 45.*

the administration of law and equity should be committed not to the same court, as in Scotland, but to separate courts, as in England,—he liberally admits that there are partial advantages and inconveniences belonging to both systems, and that there is ground for considerable difference of opinion upon their rival pretensions. He afterwards discusses, in a most luminous manner, the important question, how far in the Prætorian jurisdiction the conscience of the Judge, or *arbitrium boni viri*, is to be controlled,—and beautifully shows the advantage of general rules in restraining caprice as well as corruption, and in letting the world know how civil rights are defined and will be adjudicated.

Lord Hardwicke has been held up by some of his injudicious flatterers as a great classical scholar, and we are referred to a letter which he wrote in the year 1724, “SAMUELI CLERICO,” in which he asks the learned Dr. Samuel Clerk to revise an epitaph composed on one of the Bradford family, to whom he was related by marriage, in consequence of a request “a Cocceio uxoris meæ germano, tibi bene noto.”* But there is nothing in this letter beyond what could be accomplished by a lad who had been at an ordinary grammar school; and Lord Hardwicke must be cited as an instance of success—not in consequence of a finished education, but in spite of a very defective one. By the anxiety with which he gave his own sons the benefit of academical discipline, he showed the consciousness he felt of the unequal fight he had fought from the want of it.

There are extant specimens of his poetical composition, which will perhaps be considered as justifying him in for ever renouncing the Muses, and trusting his reputation with posterity to *Atk.* and *Ves. sen.* Lord Lyttleton had written a copy of verses, addressed to the Countess of Egremont, entitled “VIRTUE and FAME,” supposed to be a Dialogue between these two ladies, in which VIRTUE, after drawing the character of the best of wives and mothers, concludes by setting FAME right, who thought this must be the wife of a country parson,

“ Who never saw the court nor town,
Whose face is ugly as her gown.
’Tis the most celebrated toast
That Britain’s spacious isle can boast;
’Tis princely Petworth’s noble dame;
’Tis Egremont—go tell it, Fame.”

* Birch’s MSS. Brit. Mus.

Addition extempore, by Lord Chancellor Hardwicke.

“Fame heard with pleasure—straight replied,
 First on my roll stands Windham’s bride ;
 My trumpet oft I’ve rais’d to sound
 Her modest praise the world around ;
 But notes were wanting ; canst thou find
 A muse to sing her face, her mind ?
 Believe me, I can name but one,
 A friend of your’a—’tis Lyttleton !”

Again, journeying to London after the death of his wife, he composed the following lines, which he thus entered in his Diary :—

“A Wimple iter faciens uxorem nupèr morte abreptam alloquitur.
 Junii 15^o 1762.

“Conjuge dilectâ privari dùm dolet, heu ! me
 Dùm dolet in viduo nocte jacere toro !
 Te rursùm sociam thalami redisse sub astra
 Exopto, notæ te comitemque viâ.”

I am sorry that neither from print nor the tradition of Westminster Hall can I collect any personal anecdotes or noted sayings of Lord Hardwicke to enliven my dull narrative of his Life.[†] I suspect that, unlike his immediate successor, studying his dignity very uniformly, and always very observant of decorum, he added little to the “*ana*” of his age. We must not look for the workings of his genius in Joe Miller, but exclusively in the Parliamentary History and the Chancery Reports.

I have now only to state that “he was one of the handsomest men of his time, and bestowed great attention to his appearance and dress.” There were reports circulated of his gallantries with a Lady B——, and with the celebrated Mrs. Wells ; but for these there was as little foundation as for his conjectured intimacy with Fanny Murray and Kitty Fisher. He was a perfect pattern not only of temperance and sobriety, but also of conjugal fidelity.

Before proceeding to speak of his wife and his descendants, I will further assist the reader to come to a right judgment

[†] There is one story related of him worth mentioning, which shows that he followed the precedent of Lord Chancellor Cowper, in being civil to the House of Cromwell. There being a suit heard before him in which Oliver’s grandson was a party, while the opposite counsel was very irrelevantly and improperly inveighing against the memory of the Pro-

tector, the Lord Chancellor said, “I observe Mr. Cromwell standing outside the bar there, inconveniently pressed by the crowd ; make way for him, that he may sit by me on the bench.” It is needless to add, that the representative of the family being so noticed, the orator felt rebuked, and changed his tone.

upon his merits and defects, by presenting characters of him as drawn by three eminent contemporaries who knew him well; the first being his greatest vituperator, the second his most indiscriminate eulogist, and the third speaking of him, I think, in the words of impartiality and truth. Says Horace Walpole:—

“He was a creature of the Duke of Newcastle, and by him introduced to Sir Robert Walpole, who contributed to his grandeur and baseness, in giving him an opportunity of displaying the extent of the latter, by raising him to the height of the former. He had good parts, which he laid out so entirely upon the law in the first part of his life, that they were of little use to him afterwards, when he would have applied them to more general views. On his promotion, he flung himself into politics, but, as he had no knowledge of foreign affairs but what was whispered to him by Newcastle, he made a poor figure. In the House of Lords he was laughed at,—in the cabinet despised.”

On the other hand, he is extravagantly praised by another Honourable,—Danes Barrington,—who considers him above all human failing:—

“There is not a report of a single decision of Lord Bacon; some few indeed (and those unimportant ones) by Lord Nottingham: we have hardly a determination of consequence by the great Lord Somers: and though he was succeeded by lawyers of ability and eminence, yet it may be said that we owe the present beneficial and rational system of equity to the peculiar national felicity of the greatest lawyer and statesman of this or, perhaps, any other country, having presided in this Court near twenty years without a single decree having been reversed, either in the whole or any part of it; an infallibility which in no other instance was ever the lot of humanity.”^z

The Earl of Chesterfield thus mediates between them, and pronounces sentence for posterity:—

“Lord Hardwicke was perhaps the greatest magistrate this country ever had. He presided in the Court of Chancery above twenty years,^a and in all that time none of his decrees were ever reversed, or the justness of them questioned. Though avarice was his ruling passion, he was never in the least suspected of any kind of corruption—a rare and meritorious instance of virtue and self-denial under the influence of such a craving, insatiable, and increasing passion. He was an agreeable, eloquent speaker in parliament, but not without

^z Observations on Statutes, 325.

^a Not quite correct.

some little tincture of the pleader. He was a cheerful, instructive companion, humane in his nature, decent in his manners, unstained by any vice (avarice excepted) — a very great magistrate, but by no means a great minister.”

His marriage with the young widow turned out most auspiciously. They continued to old age tenderly attached to each other. She contributed not only to his happiness, but to his greatness. “She often humorously laid claim (as she had good right to do) to so much of the merit of Lord Hardwicke’s being a good Chancellor, in that his thoughts and attention were never taken from the business of the Court by the private concerns of his family,—the care of which, the management of his money matters, the settling all accounts with stewards and others, and, above all, the education of his children, had been wholly her department and concern, without any interposition of his, farther than implicit acquiescence and entire approbation.”^b She was supposed to be very stingy, and foolish stories were circulated to annoy her; but “she would often smile at hearing of *the cold chine being turned and found bare, of the potted sawdust to represent lamprey, and of the want of Dr. Mead’s kitchen*^c to be added to *Powis House*, and only observe that, uncertain as was the time of Lord Chancellor’s dining, and the company that would attend him, yet if it should happen that he brought with him an ambassador or person of the highest rank, he never found a dinner or supper to be ashamed of.”

We may judge of the malicious turn given to her domestic arrangements, however deserving of praise, by the charge against her of stealing the purse in which the Great Seal was kept to make a counterpane. The truth is, that this purse, highly decorated with the royal arms and other devices, is, by ancient custom, annually renewed, and is the perquisite of the Lord Chancellor for the time being, if he chooses to claim it. Lady Hardwicke, availing herself of this custom, caused the purse, with its decorations, to be put as embroidery on a large piece of rich crimson velvet, corresponding to the height of one of the state rooms at Wimpole. These purses, just twenty in number, complete the hangings of the room, and the curtains of a bed, singularly magnificent. She, therefore, in reality only prepared a characteristic and proud heir-

^b Cooksey, 34, 40.

^c “Oft would he go when summer suns prevail,
To taste the coolness of his kitchen’s gale.”

loom to be handed down to commemorate the founder of the family.^d

Lord and Lady Hardwicke had seven children, five sons and two daughters, who all grew up, and flourished. Philip, the eldest son, married Jemima Campbell Marchioness Grey, only daughter of John Earl of Breadalbane, and granddaughter and heiress of the Duke of Kent, who obtained for her a remainder of his marquise. This Philip, who became the second Earl of Hardwicke, was a man of letters, and an excellent politician, continuing always a steady adherent of the Rockingham party. Of the accomplished and high-spirited Charles, the second son, it will be my duty to give a separate memoir, as he held the Great Seal of England. Joseph, the third son, being for many years ambassador to the States General, was raised to the peerage by the title of Lord Dover. John, the fourth son, was not inferior in learning or abilities to any of his brothers, but preferred a private station with the enjoyment of several lucrative sinecures conferred upon him by his father. James, the youngest son, was made Bishop of Ely. The eldest daughter having become Lady Anson, and the youngest Lady Heathcote, are said to have been distinguished ornaments of the court of George II. The Chancellor is now worthily represented by his great-great-grandson, the present gallant Earl of Hardwicke.^e

^d Cooksey, 39.

^e Grandeur of the Law, p. 66.

CHAPTER CXXXVIII.

LIFE OF LORD CHANCELLOR NORTHINGTON FROM HIS BIRTH TILL HE RECEIVED THE GREAT SEAL.

My next Chancellor I cannot place in the first rank as a lawyer or a statesman; but he is not despicable in either capacity, and he is a memorable personage in the history of the Great Seal, as he held it nine years, in two reigns,^f and during the whole of four administrations,—the last of which he overturned.^g

Robert Henley (afterwards Lord Keeper, Lord Chancellor, Baron Henley, and Earl of Northington) was descended from the ancient family of “Henley of that ilk,” in Somersetshire.^h In 1660, the elder branch was advanced to the dignity of the baronetage. Before then, a cadet, following the law as a profession, had filled the lucrative situation of “Master of the Court of King’s Bench on the Plea Side,”—from the profits of which he left to his family a landed estate of 3000*l.* a year. He acquired the Grange in Hampshire, which, when afterwards in the possession of his descendant, Horace Walpole speaks of with so much admiration. The house was built for the worthy taxpayer of costs, when he had become Sir Robert Henley, Knight, by Inigo Jones—presenting a hall and staircase which the world was called upon to admire as “beautiful models of the purest and most classic antiquity.”ⁱ

^f George II. George III.

^g Mr. Pitt’s, Lord Bute’s, Duke of Bedford’s, Marquis of Rockingham’s.

^h *i. e.* Taking their surname from the name of a territorial possession belonging to them, when surnames first began. Our surnames are chiefly derived from this origin, or from personal peculiarities,—from trades and employments, or from the Christian name of the father or mother. Of these, the first class is the most aristocratic, denoting a descent from an ancient baron, or, at least, the lord of a manor.

ⁱ Lord Henley says, “The critic, however,

was, I suspect, misled by the respect due to the name of Jones. The current testimony of all who remember it as it then was, represents it, notwithstanding the merit of individual parts, as, upon the whole, a heavy and gloomy structure, utterly unworthy of the great architect.”—*Life of Lord Northington*, p. 5. It is related, that Lord Chancellor Northington, expecting a visit here from George III. and Queen Charlotte, cautioned his daughters against telling their Majesties that the house had been built by “INDIGO JONES.”

The Grange was sold by the second Earl of

His son Robert sat in parliament for the borough of Andover, without acquiring much distinction; but the name of his grandson, Anthony, one of the politest and most accomplished men of his day, frequently occurs in the memoirs and correspondence of the reign of Queen Anne.

Having distinguished himself at Oxford by an early relish for literature, and the great refinement and elegance of his manners, on removing to London he was admitted into the society and friendship of the first wits of the time. He was intimate with the Earls of Dorset and Sunderland, and with Swift, Pope, and Arbuthnot. "It was thought strange," says his biographer, "as every one knew what a secret influence he had on affairs in King William's Court, that he who had a genius for any thing great, as well as any thing gay, did not rise in the state, where he would have shone as a politician no less than he did at Will's and Tom's as a wit. But the Muses and pleasantry had engaged him. He had something of the character of Tibullus, and, except his extravagance, was possessed of all his other qualities—his indolence, his gallantry, his wit, his humanity, his generosity, his learning, his taste for letters. There was hardly a contemporary author that did not experience his bounty."^k Garth's "Dispensary" was dedicated to him, and some even ascribed to him the authorship of that poem.^m He certainly was a contributor to the "Tatler." He first served in the House of Commons for Andover, and afterwards till his death for Weymouth and Melcombe Regis. He was a strong Whig, and on one occasion came prominently forward as mover of the address to Queen Anne, "that she would confer some dignity in the church upon Hoadly, as a reward for asserting and vindicating the principles of the Revolution." This made him so odious to the Tory administration, which bore sway for the last four years of Anne's reign, that they made a great effort to deprive him of his seat, first at the election, and then on a petition, but without effect. He married Mary, daughter and co-heiress

Northington to Mr. Drummond, and is now the property of Lord Ashburton. But the house has been rebuilt in a most sumptuous style, and not a vestige of the original structure remains.

^k Memoirs of Persons who died in 1711. 8vo. 1712.

^m There is not much resemblance of character between the father and the son, if there was any truth in the language of this Dedic-

tion: "A man of your character can no more prevent a dedication than he would encourage one; for merit, like a *virgin's blushes*, is still most discovered when it labours most to be coucealed. Rather than violate your *modesty*, I must be wanting to your other virtues; and to gratify one good quality, do wrong to a thousand." The Chancellor, through life, was more remarkable for his *brass* than for his *blushes*.

of the Honourable Peregrine Bertie, second son of Montague Earl of Lindsey, with whom he received a considerable fortune. They had three sons:—Anthony, the eldest, who inherited, and for a time enjoyed, the family estate; Bertie, the youngest, who went into the church; and ROBERT, the subject of this memoir, who was born in the year 1708.^a

I find no anecdotes of the future Chancellor's childhood, or omens to foretel his coming greatness. Indeed he was pretty well stricken in years before either he himself or others imagined that there would be any thing to distinguish him from the ordinary race of mortals who form the chorus in the play of life—without ever fretting and strutting a single hour upon the stage. He was educated at Westminster School. There he formed an acquaintance with the great Lord Mansfield, to whom he was junior about four years; but in consequence of the Chief Justice having spent some time in travelling on the Continent, after he had quitted Christ Church, there was only the difference of a few months in their standing at the bar, Murray being the senior by three terms. Another distinguished school-fellow of theirs was Sir Thomas Clarke, afterwards Master of the Rolls; so that the three highest stations in the law were occupied at the same moment by three Westminster men. Murray and Clarke were both King's scholars; Henley was an oppidan. I have no means of knowing what acquisitions of learning he made, or what disposition he exhibited, till he was transferred to St. John's College, Oxford. There he was entered, and began to reside, on the 19th of November, 1724, in his 17th year.

At this time Alma Mater still lay "dissolved in port," and young Henley, as soon as he was matriculated, ^{A.D. 1724—} piously contracted a great passion for that generous ^{1728.} liquor—which adhered to him through life, and made him despise claret and all other thin potations. He did not altogether neglect classical learning, but, without being thought at all remarkably deficient in mathematics, he only knew the difference in general appearance between a triangle, a circle, and a square, remaining ignorant of the most common properties of those figures. He chiefly delighted in humour and

^a The most distinguished man of the name, before our hero, was Orator Henley, celebrated by Pope. He claimed to be related to the ancient race I have been mentioning; and

they would probably have admitted the claim if he had gained his notoriety as a General or a Judge.

buffoonery, laying the foundation of that extraordinary collection of droll and not very delicate stories which gave brilliancy to his subsequent career. On the 3rd of November, 1727, he was elected a fellow of All Souls, a distinction for which he was supposed to be chiefly indebted to his powers of amusement. He did not take his degree of Master of Arts till the 5th of July, 1733.

But on the 1st of February, 1728, he was entered of the Inner Temple, and was supposed to begin his juridical studies. We are told that Murray, when he first came to town, "drank champagne with the wits," and that his classic tastes and literary attainments led him to prefer the society of scholars and men of genius to that of his professional brethren. Henley was devoted to the juice of a more powerful vintage, which, in the society he haunted, flowed in very copious streams. Though not devoid of scholarship, and possessing a rich fund of anecdote of a peculiar sort, his conversation was too jovial and boisterous to be endured in the circles where the accomplished Murray shone. Having attended the Courts in the morning, and read a little black-letter law on his return, he gave himself to "pleasure, in the way he liked it," for the rest of the day, with a few thirsty "All Souls" friends, or some congenial spirits of the Temple. The truth is, that hard-drinking was at that time the ruling vice and bane of society, and Henley was not, at his early period of life, fortunate enough to escape the general contagion. He afterwards so far reformed as not to allow his love of wine very seriously to interfere with the pressing business of life, but many a severe fit of the gout was the result of his youthful indulgences. When suffering from the effects of this disease, he was once heard, in the House of Lords, to mutter, after several hobbling and painful walks, with the purse in his hand, between the wool-sack and the bar, "If I had only known that these legs were one day to carry a Lord Chancellor, I'd have taken better care of them when I was a lad."

However, he was a very shrewd fellow; he had an exceedingly good head for law, and, from occasional starts
A.D. 1728—1732. of application, he made much more progress than dull plodders who pore constantly over the "Year Books." Although he never could be called a scientific lawyer, he acquired a competent practical knowledge of his profession, and could get up very reputably all the learning on any particular question with which he had to deal. He was called to

the bar, by the Society of the Inner Temple, on the 23rd of June, 1732.^o

He began with taking a seat in the back row of the Court of King's Bench, where for a long while he had little employment but to take notes, to crack jokes, and to arrange supper parties. From family connections he chose the Western Circuit, of which he afterwards became the leader, but there his progress was very slow.

He had at first a few briefs at Winchester. He showed himself very handy in business, and displayed great skill in cross-examining witnesses, although he was sometimes supposed to take unjustifiable liberties with them. Bishop Newton, who was very intimate with him, as they had been at Westminster together, relates an anecdote of his having cross-examined a broad-brimmed saint, named ZEPHANIAH REEVE, at Bristol, with so much raillery and effect, that the Quaker, forgetting the pacific tenets of his sect, actually sent him a message, insisting on honourable satisfaction, or an apology. Mr. Henley was by no means wanting in courage, but, sensible that he had exceeded the bounds of professional licence, and anxious to escape the ridicule of going into the field with such an antagonist, very readily adopted the latter alternative. Many years afterwards, when he was Lord Chancellor, having had a couple of pipes of Madeira con-
signed to him at Bristol, he remembered ZEPHANIAH,
A.D. 1733-1742.
and employed him to pay the freight and duty upon them, and forward them to the Grange. "The winter following," says the Bishop, "when the Quaker was in town, he dined at the Chancellor's with a large party of nobility and members of the House of Commons. After dinner the Chancellor related the whole story of his first acquaintance with his friend Reeve, and of every particular that had passed between them, with great good-humour and pleasantry, and to the no little diversion of the company."

In those days the smart junior barristers used to pass their vacations at Bath, a custom not entirely left off when I first knew the profession. Young Counsellor Henley was there, the gayest of the gay, and distinguished himself among the ladies in the pump-room in the morning, as well as among the toppers in the tavern at night. Here he formed a rather

^o He was afterwards admitted of Lincoln's Inn (1745), but this was only to qualify him to hold chambers. The Inner Temple was always his true Inn of Court; and he became a bencher of that Society on being made a King's counsel in 1751.

romantic attachment, of which, from his rattling reckless manner, and his being a professed votary of the god, "ever fair and ever young," he was supposed to be incapable. There was at Bath, for the benefit of the waters, a very young girl of exquisite beauty, who, from illness, had lost the use of her limbs so completely that she was only able to appear in public wheeled about in a chair. She was the daughter and co-heiress of Sir John Husband, of Ipsley, in Warwickshire, who, though not "of that ilk," was the last male of a time-honoured race, whom Dugdale states to have been Lords of that manor in lineal succession from the Conquest. Henley, struck by the charms of her face, contrived to be introduced to her, when he was still more fascinated by her conversation. His admiration soon ripened into a warm and tender attachment, which he had reason to hope was reciprocal. But it seemed as if he had fallen in love with a *Peri*, and that he must for ever be contented with sighing and worshipping at her shrine—when suddenly the waters produced so effectual and complete a cure, that Miss Husband was enabled to comply with the custom of the place by hanging up her votive

A.D. 1743. crutches to the nymph of the spring, and to dance the "minuet de la cour" at the Lower Rooms with her lover. Soon after, with the full consent of her family, she gave her hand to the suitor who had so sedulously attended her. To the end of a long life she continued to enjoy a most perfect state of health, and, their affection remaining unabated, she gave him that first of human blessings, a serene and happy home. The marriage ceremony was performed by his school-fellow, Bishop Newton,—of which that prelate, in his Memoirs, has the following agreeable recollection: "It happened that he and his lady were married by Mr. Newton, at the chapel in South Audley Street, at which time they were a very handsome couple. Several years afterwards Mr. Newton went one day into Lincoln's Inn Hall while the Court was sitting, to speak with Mr. Murray on some business,—Mr. Henley being next to him, and reading a brief. When he had despatched his business, and was coming away, 'What,' said Mr. Murray to Henley, 'have you forgotten your old friend Newton, or have you never forgiven the great injury that he did you?' Upon which he started as out of a dream, and was wonderfully gracious to his old schoolfellow, acknowledging that he owed all his happiness in life to him. And, indeed, he had good reason to be happy in his wife and family." ^p

His business not being yet very lucrative, and her father surviving for some years, the newly married couple started with but slender means. Their first residence was a small house in Great James Street, Bedford Row, where they lived for three years very quietly, but very contentedly—in a style congenial to the simplicity of their tastes. After he became Lord Chancellor and Lord Lieutenant for Hampshire, both he and his wife would often look back with pleasing recollection from the Grange and Grosvenor Square to the freedom and frugality of their early establishment near Bedford Row, “where a leg of mutton lasted them three days; the first day hot,—the second day cold,—and the third day hashed.”

His farther rise was now in great peril by the death of his elder brother Anthony without issue, whereby the ^{A.D. 1745—}family estates in Hampshire and Dorsetshire de- ^{1747.}scended upon him, with the fine house on the south side of Lincoln's Inn Fields, now occupied by the College of Surgeons. Fortunately the property was found much incumbered with debt, or the future Chancellor and Earl would have sunk into a country squire, perhaps distinguished by filling the chair at sessions—petty and quarter. The good management of a few years cleared off, or greatly lightened, the incumbrances, but by this time objects of high ambition had presented themselves to him, and the notion of rural retirement had lost all its attractions.

After his marriage, Henley continued to go frequently to Bath, carrying his wife along with him. He now led comparatively a sober life, but occasionally he would indulge in his old convivial habits, and by his toasts and his stories, and his very agreeable manners, he ingratiated himself so much with the Mayor and Common Council, forming a very small corporation,—with the right of returning members to parliament exclusively vested in them,—that they made him their Recorder, and agreed to elect him at the next vacancy one of their representatives; being swayed, perhaps, not merely by his personal good qualities, but the prospect of his being now able to show his gratitude for their kindness to him. Accordingly, on the dissolution of parliament, which took place in the summer of the year 1747, he was elected a representative for Bath along with Field Marshal Wade, who had gained such notoriety during the recent rebellion.³

He became a warm supporter of the party of Frederick

Prince of Wales, designated by the appellation of "*Leicester House*," to which several eminent lawyers were already attached,—particularly Sir Thomas Booth, Chancellor of the Duchy, Dr. (afterwards Sir George) Lee, the eminent civilian, and the Honourable Hume Campbell, afterwards Earl of Marchmont, celebrated as the friend of Pope,—a set who, struggling for a share of the favours of the Crown during the present reign, confidently expected to monopolise the whole in the next.

It is with deep disappointment that, turning to the parliamentary records to ascertain when the new member
A.D. 1747—1751. for Bath made his maiden speech, and by what steps he acquired such a position in the House of Commons as to be appointed Attorney-General to the Crown, and afterwards to be intrusted with the Great Seal,—I cannot discover, during the ten years he sat in that assembly, his name once mentioned or referred to.^f It appears, however, from Horace Walpole and contemporary memoir-writers, that he was a frequent and active debater. He seems to have been anxious to come forward, as often as he thought he could be of any service to his party, without aiming at oratorical distinction. He was noted as a very steady and consistent politician, so that he did not derive the same benefit from the oblivion of his harangues which might have been enjoyed by some of his successors, who, to further advancement, have spoken with equal ability on both sides of the questions discussed.

In 1751 a heavy blow fell upon Leicester House in the sudden death of Frederick. Hume Campbell, and others, took the opportunity of going over to St. James's, but Henley adhered to the Princess Dowager, and, although he thereby rendered himself obnoxious to George II., he secured his ultimate elevation. Frederick's eldest son (afterwards George III.) being created Prince of Wales, and his establishment being formed, Henley became Solicitor-General to his Royal Highness, and at the same time he was appointed a King's counsel. In respect to this last promotion, there being a salary of forty pounds a year annexed to the office, he vacated his seat in the House of Commons; but he was re-elected without opposition.^g

Henley's silk gown had great success. He not only got

^f See Parl. Hist. xiv. xv.

^g 14 Parl. Hist. 77. The inconvenience of vacating a seat in parliament by a silk gown was afterwards obviated by "patents of precedence," or by declaring that the office was to be held "without fee or reward."

into the decided lead on the Western Circuit, but was now in the first business in the Court of King's Bench, both in banc and at nisi prius. He occasionally went into the Court of Chancery in important causes, but, according to the general usage of the eighteenth century, he did not regularly practise there till he became a law officer of the Crown.

So things went on till the year 1756, when Murray insisting on leaving the House of Commons, and being appointed Chief Justice of the King's Bench, the Duke of Newcastle resigned, and a new administration was formed. Leicester House was a party to this arrangement, and Henley succeeded Murray in the office of Attorney-General without having previously filled the office of Solicitor-General to his Majesty.[†] Now he left the circuit, and transferred himself to the Court of Chancery, where, from the good foundation he had laid in conducting common-law proceedings, from his natural shrewdness and handiness, and from the influence his station was supposed to give him over the Lords Commissioners who held the Great Seal, in the room of Lord Hardwicke, he immediately came into full employment, and was able to cope with the old Chancery counsel, notwithstanding the advantage they enjoyed in being able to make broad assertions as to the settled practice of the Court, and to cite unpublished decisions of the late Lord Chancellor, expressly in point.

He was soon much disturbed by the dismissal of Mr. Pitt and Mr. Legge, and the prospect of himself being turned adrift by the total dissolution of the ministry. By and by he was a little comforted by finding that, with the concurrence of Leicester House, negotiations were opened for a coalition between different parties,—but soon alarmed by the report that Lord Hardwicke, who he thought had a particular spite against him, was to resume the office of Chancellor,—and again re-assured by the intelligence that Mr. Pitt peremptorily objected to this arrangement. Next followed a confident statement, which was not very disagreeable to him, that Sir Eardley Wilmot, the junior Lord Commissioner, was to be Chancellor; but this was contradicted by that worthy person, who, in a letter to his brother, which was handed about, said, “the acting junior of the commission was a spectre I started at, but the sustaining the office alone I must

[†] Sir Richard Lloyd, the Solicitor under the Duke of Newcastle, was dismissed, but afterwards made a Baron of the Exchequer. Henley had for his colleague as Solicitor the famous Charles Yorke, whose story we shall by and by have to tell.

and will refuse at all events ; I will not give up my peace of mind to any earthly consideration whatever : bread and water are nectar and ambrosia compared with the supremacy of a court of justice." " One day Henley was much excited by hearing that the Great Seal had been offered to Lord Mansfield, and by anticipating that he might accept it, so as to leave the Chief Justiceship of the King's Bench to the Attorney-General. Then came certain intelligence that, Lord Mansfield having refused the Great Seal, it had been tendered to Sir John Willes, the Chief Justice of the Common Pleas, who was willing enough to accept it, but was standing out for a peerage, which the King objected to, although the last six Chancellors had been Peers, and there had been a general belief that a gagged Keeper or Chancellor would not again be placed on the woolsack.

Henley had not, down to this time, entertained the most distant notion of the Great Seal being offered to himself, as he had only very recently been made Attorney-General from practising in a common law court, and he felt that he had not sufficient political consequence to aspire to such a dignity. But (as sometimes happens) his mediocrity was the real cause of his elevation. Mr. Pitt knew enough of him from his appearances in the House of Commons to be sure that he could not be formidable in the cabinet,—though considered a fair lawyer, qualified decently to get through the duties of a judicial office ;—and under colour of paying a compliment to Leicester House, and effectually to bar the return of that old Volpone, Lord Hardwicke, he proposed, with seeming disinterestedness, that the Attorney-General, though not politically connected with him, should be the man. Leicester House was rejoiced, and the Duke of Newcastle did not object, being somewhat indifferent about the appointment since he could not procure it for Lord Hardwicke.

The King was obliged to yield any point on which the three parties were agreed ; but as Henley, from his connection with Frederick and with the present Prince of Wales, was personally disagreeable to him, he stipulated that the Great Seal must now be taken without a peerage. The offer being made to Henley with this condition, he instantly and joyously accepted it, not even stipulating for a pension, or the rever-

“ In fact, the offer was not made to Willes, but to Sir John Willes, who refused (as we shall see), twice over, in the year 1770. The offer was made to Willes, but he refused (as we shall see), twice over, in the year 1770.

sion of a Tellership to his son, which had been usual on such occasions.*

He then thought it would be decent to inform the Chief Justice of the Common Pleas of what had happened. Their interview on this occasion is the subject of one of the stock-stories of Westminster Hall. Thus it used to be related with characteristic humour by the late Lord Ellenborough:—"Immediately after Willes had refused the Seals, Henley called upon him at his villa, and found him walking in the garden, highly indignant at the affront which he considered that he had received in an offer so inadequate to his pretensions. After entering into some detail of his grievances, he concluded by asking, 'whether any man of spirit could, under such circumstances, have taken the Seals;' adding, 'Would you, Mr. Attorney, have done so?' Henley, thus appealed to, gravely said, 'Why, my Lord, I am afraid it is rather too late to enter into such a discussion, as I have now the honour of waiting upon your Lordship to inform you that I have actually accepted them.'"^y

He was sworn in as Lord Keeper at a Council held on the 30th of June, 1757, and on the first day of Michaelmas Term following, after a grand procession to Westminster Hall, he was duly installed in the Court of Chancery.^z

* Horace Walpole says, contrary to truth, that he demanded and obtained both: "Willes proposed to be bribed by a peerage, to be at the head of his profession; but could not obtain it. Henley, however, who saw it was the mode of the times to be paid by one favour for receiving another, demanded a Tellership of the Exchequer for his son; which was granted, with a pension of 1500*l.* a year till it should drop."—*Walp. Mem. Geo. II.* vol. ii. 226. These jobs were afterwards done for him.

^y Henley's Life of Northington, 34.—Horace Walpole attributed Henley's promotion on this occasion to Mr. Pitt's great desire to make Pratt (afterwards Lord Camden) Attorney-General: "One of the most extraordinary parts of the new system is the advancement of Sir Robert Henley. He was made Attorney-General by Mr. Fox at the end of last year, and made as bad a figure as might be: Mr. Pitt insisting upon an Attorney-General of his own, Sir Robert Henley is made Lord Keeper!"—*Horace Walpole to Sir H. Mann*, 3rd July, 1757. This possibly might be an ingredient in Mr. Pitt's determination; but I conceive that his chief motive was to

exclude Lord Hardwicke by a man who could not be dangerous.

^z 30th June, 1757.—"The Lords Commissioners, for the custody of the Great Seal of Great Britain, having delivered the said Great Seal to the King at his Palace at Kensington, on Thursday, the 30th day of June, 1757, his Majesty, about one o'clock the same day, delivered it to Sir Robert Henley, Knight, his Attorney-General, with the title of Lord Keeper, who was then sworn into the said office before his Majesty in Council. His Lordship sat at Lincoln's Inn Hall during the Seals after Trinity Term, and the Seals before Michaelmas Term, 1757. And on Monday, the 7th day of November, being the first day of Michaelmas Term, he went in state from his house in Lincoln's Inn Fields to Westminster Hall, accompanied by the Earl Granville, Lord President of the Council, the Duke of Rutland, Lord Steward of the Household, the Duke of Newcastle, First Lord of the Treasury, the Earl of Hardwicke, the Lord Anson, First Lord of the Admiralty, the Lord Vis. Dupplin, Sir Thomas Robinson, Knight of the Bath, the Master of the Rolls, the Judges, King's Serjeants, King's Counsel, and

CHAPTER CXXXIX.

CONTINUATION OF THE LIFE OF LORD NORTHINGTON TILL THE DEATH
OF GEORGE II.

THE new Lord Keeper had nothing to divert him from his judicial duties. His political functions were long in a state of abeyance. He had a pretty strong suspicion in his own mind that he was appointed because he was likely to be quiet in the cabinet, and he did not seek to interfere. Formal meetings of it were occasionally called which he attended, but he was as little consulted by Pitt about the raising of Highland regiments, or the conduct of the war, as the Six Clerks or the Masters in Chancery. If there had been any debates in parliament, he was precluded from taking part in them; but there were none,—all opposition having vanished for several years, and neither his time nor his attention was in any degree occupied by the sittings of the House of Lords, which generally lasted only while prayers were read, and the question was put “that this House do now adjourn.” If a motion was introduced by a speech, it was to vote a monument to a hero who had fallen in battle, or thanks to his surviving comrades; and the Lord Keeper, as Speaker, had only to transmit these thanks, and to read from the woolsack the answers which he received.

Let us follow him then into the Court of Chancery, where his duties were arduous. Here he acquitted himself respectably; but he was contented if he could continue to fill the office, escaping censure,—without aiming at high reputation. He did not follow the example of the fathers of Equity, Lord Nottingham and Lord Hardwicke, who, on coming to the Great Seal, notwithstanding much previous familiarity with the business of

several other persons. The Lords accompanied him into the Court of Chancery, where (before he entered upon business), in their presence, he took the oaths of allegiance and supremacy, and the oath of Lord Keeper of the Great Seal of Great Britain, the Master of the Rolls holding the book, and the Deputy Clerk

of the Crown reading the said oaths; which being done, the Attorney-General moved that it might be recorded, and it was ordered accordingly. Then the Lords departed, leaving the Lord Keeper in Court.”—*Rolls*, 1726—1757.

the Court in which they were called upon to preside, entered upon a laborious and systematic course of inquiry and of study to qualify themselves for their new situation, that they might discharge its duties in a manner satisfactory to their own minds, and in the hope of being permanently applauded as consummate magistrates. He was satisfied with the stores of professional learning (not inconsiderable) which he had laid in, and with bestowing a reasonable share of pains on the different cases which successively came before him. He always took full notes of the arguments of counsel, and he investigated important questions with much research. Sometimes he wrote out elaborate judgments in his own hand. On the bench he was universally allowed to be impartial and upright. *Laudatus a laudato*, he was pronounced by Lord Eldon to have been "a great lawyer, and very firm in delivering his opinion." He attended Court in the morning with alacrity and cheerfulness, but the evening sittings were a great annoyance to him, from their interference with his convivial pleasures,—and he at last succeeded in abolishing them. With the able assistance of Sir Thomas Clarke, the Master of the Rolls, he contrived pretty well to keep down arrears, although complaints of delay were much louder than in the time of Lord Hardwicke, and the Court was by no means in such good odour with the public. The consequence was that, in all important cases, there was an appeal to the House of Lords. The state of things there was very different from what it had been for twenty years past. The Judge who had pronounced the decree appealed from, had now neither vote nor voice; he could not even ask a question of the counsel at the bar; and a motion being made for a reversal, he could only say, "*the Contents have it.*" Ex-Chancellor Lord Hardwicke always attended, and Lord Mansfield very frequently. It would be wrong to say that they had any inclination to reverse, but they bore no particular good-will to the Lord Keeper, who belonged to a different section in politics from them, and whose authority on questions of Equity they did not consider very high. However, when he acquired a little more experience, and when, being raised to the Peerage, he could freely defend his opinions, he stood higher as a Judge, and appeals from him became more rare. It is said that, after all, "only six of his decrees were reversed or materially altered."^a

For a long interval after his death, the proceedings of the

^a Life, 56.

Court of Chancery in his time had been very insufficiently reported, and when I first entered the profession there were only traditionary recollections of his judgments as of his jests;^b but a few years ago the pious labours of his grandson, my most amiable and accomplished friend, the late Lord Henley, from the Chancellor's own MSS., and from notes taken by several eminent counsel who had practised under him, produced two volumes of his decisions, which "greatly raised his reputation with those best qualified to estimate it." These show him to have been very bold and very vigorous, and generally very sound; but they are certainly wanting in the depth of thought, in the logical precision, and in the extreme caution, which distinguished the decisions of his predecessor.

I shall give, as a favourable and characteristic specimen of his manner, the judgment delivered by him in the case of *Norton v. Relly*,^c where the bill was filed by a maiden lady residing at Leeds, against a Methodist preacher, and others, trustees named in a deed of gift executed by her to him,—suggesting that it had been obtained by undue means,—and praying that it might be delivered up to be cancelled. The "*Tartuffe*" had introduced himself to her notice by a letter, in which he said, that "although unknown to her in the flesh, from the report he had of her he made bold to address her as a fellow member of that consecrated body wherein the fulness of the Godhead dwelt, and that he was coming among them at Leeds, for a little time, to preach the kingdom of God," subscribing himself "her affectionate brother in the flesh." She was prevailed upon to invite him to her house, to accompany him to London, to give him large sums of ready money, and to grant him an annuity charged on her real estates in Yorkshire:—

Lord Chancellor Henley. "This cause, as it has been very truly observed, is the first of the kind that ever came before the Court, and, I may add, before any court of judicature in this kingdom. Matters of religion are happily very rarely the subject of dispute in courts of law or equity." [After expressing his respect for dissenters, he proceeds:] "But very wide is the difference between dissenters and fanatics, whose canting, and whose doctrines, have no other tendency than to plunge their deluded votaries into the very abyss of bigotry, despair, and enthusiasm. And though, even against those unhappy and false pastors, I would not wish the spirit of persecution to go

^b Ambler alone had noticed him.

^c Eden's Rep. ii. 286.

forth, yet are not these men to be discountenanced and discouraged whenever they are properly brought before courts of justice? — men who, in the apostle's language, *go about and creep into people's dwellings, deluding weak women* — men who go about and diffuse their rant and warm enthusiastic notions, to the destruction not only of the temporal concerns of many of the subjects of this realm, but to the endangering their eternal welfare. And shall it be said that this Court cannot relieve against the glaring impositions of these men? That it cannot relieve the weak and unwary, especially when the impositions are exercised on those of the weaker sex? This Court is the guardian and protector of the weak and helpless of every denomination, and the punisher of fraud and imposition in every degree. Here is a man, nobody knows who or what he is; his own counsel have taken much pains modestly to tell me what he is not; and depositions have been read to show that he is not a Methodist. What is that to me? But I could easily have told them what, by the proofs in this cause and his own letters, he appears to be — a subtle sectary, who preys upon his deluded hearers, and robs them under the mask of religion. Shall it be said, in his excuse, that this lady was as great an enthusiast as himself? It is true she was far gone — but not far enough for his purpose. Thus he addressed her, *'Your former pastor has, I hear, excommunicated you, but put yourself in my congregation, wherein dwells the fulness of God.'* How scandalous, how blasphemous is this! In coming from London to Leeds he will not come in a stage coach, but must have a post-chaise, and live elegantly on the road at the expense of the plaintiff, who gave him 50*l.* in money, besides presents of liquor — so that his own hot imagination was further heated with the spirit of brandy. He secured a part of her fortune by lighting up in her breast the flame of enthusiasm, and undoubtedly he hoped in due time to secure the whole by kindling another flame of which the female breast is so susceptible; for the invariable style of his letters is *'all is to be completed by love and union.'* Let it not be told in the streets of London that this preaching sectary is only defending his just rights. I repeat, let not such men be persecuted, but many of them deserve to be represented in puppet shows. I have considered this cause not merely as a private matter, but of public concernment and utility. Bigotry and enthusiasm have spread their baneful influence amongst us far and wide, and the unhappy objects of the contagion almost daily increase. Of this, not only Bedlam, but most of the private mad-houses, are melancholy and striking proofs. Let it be decreed that the defendant execute a release to the plaintiff of this annuity, and deliver up the deed for securing it. I cannot conclude without observing that one of his counsel, with some ingenuity, tried to shelter him under the denomination of *'an independent preacher.'* I have tried in this decree to spoil his *'independency.'*

The finest judgment Henley ever delivered is supposed to

have been in the case of *Burgess v. Wheate*,^d where the question was, “whether the Crown be entitled by escheat to a trust estate upon the *cestui que trust* (or person beneficially interested) dying without issue?” He called in the assistance of Lord Mansfield and Sir Thomas Clarke, who differing, he sided with the latter against the escheat, so as to leave the estate to the trustee discharged of every trust,—and his decision has given the rule ever since. But it proceeds on reasonings too technical and abstruse to be introduced here.

He likewise obtained great credit for the rule he laid down respecting *perpetuities*, in the case of *Duke of Marlborough v. Earl of Godolphin*. The hero of Blenheim, endeavouring to retain after death a power beyond the limits allowed by law, devised his great estates to trustees for the benefit of several existing persons successively for life, with remainder to their sons in strict settlement; but directed his trustees, on the birth of each son of each tenant for life, to revoke the uses before limited to their respective sons in tail male, and to limit the estates to such sons for their lives:—^e

Lord Keeper. “It is agreed on all hands that this clause is new, and that, although it has been privately fostered by a particular family, from whom it issued, it never has been adopted by conveyancers. In substance, the testator makes his great-grandson, the present Duke, who was at the date of the will unborn, tenant for life, with a limitation to his sons as purchasers in tail. It is agreed that this could not be done directly by words of limitation, because, though by the rules of law an estate may be limited, by way of contingent remainder, to a person not *in esse* for life, or as an inheritance, yet a remainder to the issue of such contingent remainder-man, as a purchaser, is a limitation unheard of in law, nor ever attempted, as far as I have been able to discover. Technical reasons, upheld by old repute and grown reverend by length of years, bear great weight and authority, but a new technical reason appears with as little dignity as an usurper just seated in his chair of state. The common law seemed wisely to consider that real property ought not to be put out of commerce, and should be left free to answer the exigencies of the possessors and their families, and, therefore, would not admit perpetuities by way of entails. The dissipation of young heirs, the splendour of great families, the propriety of annexing sufficient possessions to support the dignities obtained by illustrious persons, afford specious arguments for perpetuating estates by entails; but, in a commercial country, to damp the spirit of industry, and to take away one of its greatest incentives, the power of honourably

^d Eden's Rep. i. 177.

^e Ibid. i. 404. j

investing its acquisitions, would produce all the inconveniences against which we have been guarding by fines and recoveries and other devices, now to be considered an essential part of our jurisprudence. The safety of creditors and purchasers requires that the law should be fixed and certain with respect to the limitations of real property in family settlements, — not subject to be questioned upon whimsical inventions, started (though by the ablest men) in order to introduce innovations in fundamentals.”

After treating the subject at great length, and with much ability, he decreed that the plaintiff, George Duke of Marlborough, was entitled to an estate in tail male, and not for life only, as John Duke of Marlborough had intended; and this decree, on appeal, was affirmed by the House of Lords.^f

In the case of *Lowther v. Cavendish*,^g respecting the words in a will which will carry leasehold estates along with freeholds, Lord Northington commented rather flippantly on the ruling authority of *Rose v. Bartlett*, which afterwards drew down upon him this strong censure from Lord Eldon, under the decent disguise that he had been misreported: “I am not disposed to believe that Lord Northington ever made use of the expressions respecting *Rose v. Bartlett* which are attributed to him. We all know that he was possessed of great law learning, and a very manly mind; and I cannot but think that he would rather have denied the rule altogether than have set it afloat by treating it with a degree of scorn, and by introducing distinctions calculated to disturb the judgments of his predecessors, and remove the landmarks of the law.”^h

But his greatest blunder was in *Drury v. Drury*,ⁱ where he took immense pains to get wrong, holding that “a female marrying under age might renounce the jointure settled upon her, and claim dower and thirds,”—contrary to the practice and understanding of the profession, and contrary to an *obiter* opinion of Lord Hardwicke,—although there was no decision exactly in point. In the course of his rather arrogant judgment, he gave deep offence to the irritable race of conveyancers, by observing, in corroboration of a remark at the bar, that the *conveyancers had not thought about it*,—“which is natural enough, their time being more dedicated to *perusal* than to *thought*!” But they had their revenge when the case was heard upon appeal, in the House of Lords, for Lord Hardwicke moved the reversal in a most crushing speech, in which he

^f Life of Lord Northington, Appendix, II.

^g Ambler, 357.

^h *Thompson v. Lawly*, 2 Bos. & Pull. 315.

ⁱ Eden's Rep. ii. 39.

said "The opinion—the course of conveyancers is of great weight. They are to advise, and if their opinion is to be despised, every case must come to law. No! the received opinion ought to govern. The ablest men in the profession have been conveyancers." Lord Mansfield concurred, and the poor Lord Keeper, having put the question, "So many of your Lordships as are of opinion that this decree be reversed will say, 'CONTENT;' of the contrary opinion, 'NOT CONTENT,'" was obliged to say, "The CONTENTS have it!"

From George II.'s dislike to him, on account of his connection with Leicester House, and from his insignificance in the Cabinet, he probably would have remained a commoner during the rest of this reign, had it not happened that Lord Ferrers thought fit to shoot Mr. Johnson, his steward, and was to be tried before the House of Peers for the murder. A Lord High Steward was to be appointed for the occasion, and he must be a Peer. Neither Lord Hardwicke nor Lord Mansfield coveted such a painful pre-eminence, and it had been usual that the holder of the Great Seal, if a layman, should preside at such trials. In consequence, on the 27th of March, 1760, letters patent passed, creating "the right trusty and well-beloved Sir Robert Henley, Knight, a Peer of Great Britain, by the style and title of Baron Henley, of the Grange, in the county of Southampton."

The trial took place in Westminster Hall, on the 16th of April, 1760, and the two following days. "Who,"
A.D. 1760. writes Horace Walpole, giving a most amusing narrative of it to his correspondent at Florence, "at the last trials^k would have believed a prophecy that the three first men at the next should be Henley the lawyer, Bishop Secker,^m and Dick Grenville?" The Judge and criminal were far inferior to those you have seen. For the Lord High Steward, he neither had any dignity nor affected any. Nay, he held it all so cheap, that he said at his own table t'other day, '*I will not send for Garrick and learn to act a part.*'"^o There is, no doubt, considerable exaggeration here, from the writer's indiscriminate love of abuse and ridicule; but it must be admitted that his Grace the Lord High Steward often carried his dislike of what he called "humbug" to a most unwarrantable length, and, both

^k Alluding to the rebel Lords in 1746.

^m Now Archbishop of Canterbury.

ⁿ Now Earl Temple, and, as Lord Privy Seal, having precedence of Dukes.

^o Letter to George Montague, Esq., 19th

April, 1760. To another correspondent he says—"Lord Keeper was Lord High Steward; but was not at all too dignified a personage to sit on such a criminal; indeed he gave himself no trouble to figure."

when sitting publicly on his tribunal, and in private society, did not scruple to violate the rules of decorum and decency.

On this occasion, however, if there were a departure from the heraldic injunctions of "bowing to the cloth of state," or presenting to his Grace his white wand "on the knee," a striking example was given to the world of substantial justice.^P Were such a case now to come before a jury, there would probably be an acquittal on the ground of *insanity*, although the noble culprit was actuated by deep malice towards the deceased,—although he had contrived the opportunity of satiating his vengeance with much premeditation and art,—and although the steps which he afterwards took showed that he was fully sensible of the magnitude and the consequences of his crime.

The Lord High Steward having received the answer from every Peer present, to whom he put the question "*Guilty or not guilty?*"—"GUILTY, UPON MY HONOUR," himself standing uncovered at the chair, and laying his hand on his breast, said, "My Lords, I am of opinion that Lawrence Earl Ferrers is guilty of the felony and murder whereof he stands indicted, UPON MY HONOUR." He then announced to the unfortunate Earl the unanimous verdict of his peers against him.

The address of the Lord High Steward, delivered the following day in passing sentence, has been praised as "one of the best specimens of judicial eloquence in existence—being at once grave, simple, dignified, and affecting."^q

"Lawrence Earl Ferrers,

"His Majesty, from his royal and equal regard to justice, and his steady attention to our constitution, which hath endeared him in a wonderful manner to the universal duty and affection of his subjects, hath commanded this inquiry to be made upon the blood of a very ordinary subject, against your Lordship, a Peer of this realm. Your Lordship hath been arraigned; hath pleaded and put yourself on your peers, and they (whose judicature subsists in wisdom, honour, and justice) have unanimously found your Lordship guilty of the felony and murder charged in the indictment. It is usual, my Lord, for courts of justice, before they pronounce the dreadful sentence ordained by the law, to open to the prisoner the nature of the crime of which he is convicted; not in order to aggravate or afflict, but to awaken the mind to a due attention to, and consideration of, the unhappy situation into which he hath brought himself. My Lord, the crime of which your Lordship is found guilty—*murder*—is incapable of

^P I shall farther examine the case in the important part in it.
Life of Charles Yorke, who acted a most im-

^q Life by Lord Henley, 44.

aggravation; and it is impossible but that during your Lordship's long confinement you must have reflected upon it, represented to your mind in its deepest shades, and with all its train of dismal and detestable consequences. As your Lordship hath received no benefit, so you can derive no consolation, from that refuge you seemed almost ashamed to take under a pretended insanity; since it hath appeared to us all, from your cross-examination of the King's witnesses, that you recollected the minutest circumstances of facts and conversations to which you and the witnesses only could be privy, with the exactness of a memory more than ordinarily sound; it is therefore as unnecessary as it would be painful to me to dwell longer on a subject so black and dreadful. It is with much satisfaction that I can remind your Lordship that though from the present tribunal, before which you now stand, you can receive nothing but strict and equal justice; yet you are soon to appear before an Almighty Judge, whose unfathomable wisdom is able, by means incomprehensible to our narrow capacities, to reconcile justice with mercy.^f But your Lordship's education must have informed you, and you are now to remember, that such beneficence is only to be obtained by deep contrition — sound, unfeigned, and substantial repentance. Confined strictly, as your Lordship must be, for the very short remainder of your life, according to the provisions of the late Act, yet from the wisdom of the legislature, which, to prevent as much as possible this heinous and horrid crime of murder, hath added infamy to death, you will be still, if you please, entitled to converse and communicate with the ablest divines of the Protestant church, to whose pious care and consolation in fervent prayer and devotion I most cordially recommend your Lordship. Nothing remains for me but to pronounce the dreadful sentence of the law, and the judgment of the law is, and this High Court doth award, that you, Lawrence Earl Ferrers, return to the prison of the Tower, from whence you came; from thence you must be led to the place of execution on Monday next, and when you come there you must be hanged by the neck till you are dead, and your body must be dissected and anatomised, and God Almighty be merciful to your soul!"

Henley acted with great propriety between the sentence and execution, doing what he could to gratify the unhappy criminal's last wishes, without saving him from his deserved fate. Horace Walpole writes:—"Two petitions from his mother and all his family were presented to the King, who said, 'As the House of Lords had unanimously found him

^f His Grace thought it unnecessary to disqualify himself as Baron Perrin did upon a similar trial for murder. The prisoner, after the verdict, having still asserted his innocence, the Judge thus modestly began: "Prisoner, you are soon to appear at the bar of a greater,

and, let me add, of an abler Judge; but, with my limited understanding, I must approve of the verdict, and my duty requires me to pronounce upon you the awful sentence of the law."—*Ex relatione Lord Chief Baron Alexander.*

guilty, he would not interfere.' Last week my Lord Keeper very good-naturedly got out of a gouty bed to present another: the King would not hear him. 'Sir,' said the Keeper, 'I do not come to petition for mercy or respite, but that the 4000*l.* which Lord Ferrers has in India bonds may be permitted to go, according to his disposition of it, to his mistress, his children, and the family of the murdered man.'—'With all my heart,' said the King, 'I have no objection; but I will have no message carried to him from me.' However, this grace was notified to him, and gave him great satisfaction."*

After this trial, although the Lord Keeper was now entitled to speak and vote as a Peer, he was still treated rather contumeliously by his colleagues, and he does not appear to have taken any part in debate or in political intrigue till a new field was opened to him by the accession to the throne of the youthful Sovereign, to whom and to whose father he had been so much devoted.

CHAPTER CXL.

CONTINUATION OF THE LIFE OF LORD NORTHINGTON TILL HE RESIGNED
THE GREAT SEAL.

THE death of George II. made a very auspicious change in the position of the Lord Keeper. Hitherto he had been received coldly at Court, and he had been without any political weight. The new King regarded him with great favour as a steady adherent of Leicester House, who might assist Lord Bute in the contemplated change in the administration. On the 16th of January, 1761, on his surrendering the Great Seal into his Majesty's hands, he received it back with the title of "Lord Chancellor," instead of "Lord Keeper,"[†] and

* Letter to Sir Horace Mann, in which there is an extremely interesting account of the execution.

† 1 Geo. 3, 16th January, 1761. Memorandum—That the Right Honourable Robert Lord Henley, Lord Keeper of the Great Seal of Great Britain, delivered the Great Seal to his Majesty in Council, when his Majesty was graciously pleased to re-deliver to him the said Great Seal, with the title of Lord Chan-

cellor of Great Britain. Whereupon his Lordship, then in council, took the oaths appointed to be taken instead of the oaths of allegiance, and also the oath of Lord High Chancellor of Great Britain.—*Cr. Off. Min.*, No. 2, p. 1. By another entry, No. 2, p. 4, it appears, that on the first day of the following Hilary Term he took all the oaths over again in the Court of Chancery in Westminster Hall.

he was afterwards created Earl of Northington,^u and appointed Lord Lieutenant of the county of Southampton.^x

He took the earliest opportunity to avail himself of the partiality of the reigning monarch, by asking his permission to discontinue the evening sittings in the Court of Chancery on Wednesdays and Fridays. George III. made a good story, which he used to tell for the rest of his reign, of what passed between him and his Chancellor on this occasion. "I asked him," said his Majesty, "his reason for wishing that these sittings should be abolished.—'Sir,' answered he, 'that I may be allowed comfortably to finish my bottle of port after dinner; and your Majesty, solicitous for the happiness of all your subjects, I hope will consider this to be reason sufficient.'"^y The permission was graciously accorded—we may suppose an explanation being added that *post-prandian* sittings were becoming generally unpopular, and were unsuited to the changed manners of society.^z

Lord Bute being at first sworn of the Privy Council—then made Secretary of State—next forcing Mr. Pitt to resign—A.D. 1761. and, at a short interval, becoming himself Prime Minister, before he had ever spoken in Parliament,^a and while only a Scotch Peer,—the Leicester House party, to which Lord Northington had so steadily adhered, was for a brief space triumphant. Although he now had a good deal of influence in the disposal of places, and he took a part in the factious conflicts which divided the Court, still he was not prominent as a politician. He does not seem to have been much consulted about the treaty of peace which it was the great object of Lord Bute's administration to negotiate; and, severely as the preliminaries of Fontainebleau were attacked by Lord Hardwicke, I cannot find that he gave any assistance to defend them. He was even silent on the Cider Bill. He spoke, when permitted, in such trenchant fashion, and was so apt to give an advantage to the adversary, that I suspect he was strongly cautioned to remain quiet.

^u 19th May, 1764.—By this title I shall hereafter call him.

^x 21st August, 1761.

^y According to other accounts, the Lord Chancellor's answer was still more blunt:—"that I may get drunk, please your Majesty;" or,—"because at that time I am apt to be drunk."

^z Sir William Grant, when Master of the

Rolls, pursued another remedy, by ordering his dinner—with a bottle of Madeira and a bottle of port—to be ready for him at the Piazza Coffee House, at ten at night, when the sittings were over.

^a It is a curious fact, that when he made his maiden speech he was Prime Minister. His most public previous effort had been in private theatricals.

When Lord Bute, having obtained peace abroad and thrown all England into an uproar, suddenly resigned, and the Duke of Bedford was supposed to be Minister, Lord North-^{Sept. 1763.}ington retained the Great Seal; but while this arrangement continued he seems strictly to have confined himself to the judicial duties of his office. Having received a personal order from the King that Wilkes should be prosecuted, he left the matter entirely in the hands of the law officers of the Crown.^b The general warrants were issued by Lord Halifax to arrest the printer and publisher of No. XLV. of the "North Briton," and the successive foolish steps were adopted which brought the Demagogue into such notoriety and importance, without the head of the law being at all consulted.

George Grenville, who was intended to act only a subordinate part in this government, had established a great ^{A.D. 1763-}ascendency, and, acting upon the contracted notions ^{1765.}of the constitution of the country which he had imbibed when studying for the bar in a special pleader's office, he threw every thing into confusion at home, and he sowed the seeds of that terrible conflict which, after he was in his grave, led to the dismemberment of the British Empire. It is little to the credit of Lord Northington, that, while he was Chancellor, the ill-omened plan was adopted of taxing America by the British parliament, and the too famous American Stamp Act was passed. A constitutional lawyer in the cabinet, like Lord Camden, would have reprobated such a measure on principle; and a wary one, like Lord Mansfield, would have disapproved of it as dangerous. But Lord Northington, allowed to enjoy the sweets of his office, gave himself no trouble either about the domestic or colonial policy of the government.

In the midst of the conflicts of faction, the town was amused for a short time by the trial of a Peer on a capital charge. William Lord Byron, uncle of the illustrious author of "CHILDE HAROLD," having killed a gentleman of the name of Chaworth in a duel fought in a tavern, an indictment for murder was found against him by a grand jury of the county of Middlesex, and was removed, by certiorari, into the House of

^b "Lord Chancellor told me he had mentioned the 'North Briton' to the King, and that his Majesty had desired him to give directions for the printers being prosecuted.

In consequence of which, he had spoken to Lord Shelburne to have a case prepared for the opinion of the Attorney and Solicitor-General"—*Journal of the Duke of Grafton.*

Lords. Thereupon the trial was ordered to take place in Westminster Hall, and the Earl of Northington was appointed to preside as Lord High Steward.

On the day appointed, the noble prisoner appearing, attended by the gentleman gaoler and the axe, with the edge turned from him, his Grace addressed to him the following preliminary admonition and comfort:—

“William Lord Byron, your Lordship is unhappily brought to this bar to answer a heavy and dreadful accusation, for you are charged with the murder of a fellow-subject. The solemnity and awful appearance of this judicature must naturally embarrass and discompose your Lordship’s spirits, whatever internal resource you may have in conscience to support you in your defence. It may be, therefore, not improper for me to remind your Lordship that you are to be tried by the fixed and settled laws of a free country, framed only to protect the innocent, to distinguish the degrees of offence, and vindictive only against malice and premeditated mischief. Homicide, or the killing of a fellow-creature, is, by the wisdom of law, distinguished into classes: if it ariseth from necessity or accident, or is without malice, it is not murder; and of these distinctious, warranted by evidence, every person, though accused by a grand jury of the highest offence, is at full liberty to avail himself. As an additional consolation, your Lordship will reflect that you have the happiness to be tried by the supreme jurisdiction of this nation; that you can receive nothing from your peers but justice, distributed with candour, —delivered, too, under the strongest obligation upon noble minds — *honour*. These considerations will, I hope, compose your Lordship’s mind, fortify your spirits, and leave you free for your defence.”

All the Peers present having agreed in a verdict of “*Manslaughter*,” except four, who said *Not Guilty* generally, and privilege of peerage being pleaded in bar of sentence, the Lord High Steward, without, as usual, giving a warning that such a plea could not be available on a second conviction, merely informed the prisoner that he was entitled to be discharged,—broke his white wand in a manner which could not be considered an imitation of Garrick in *Prospero*,—and abruptly adjourned the House.

Now, as at the trial of Lord Ferrers, he was too regardless of forms, but he committed no material mistake of which the accused or the public could complain.^o

When, at last, the King was so sick of being ruled and lec-

tured by George Grenville, that he preferred Lord Rockingham and the Whigs, without the aid of Mr. Pitt,—a great mistake was committed by them in not insisting on a new Chancellor. They did make Chief Justice Pratt a Peer, by the title of Lord Camden; but if they had given him the Great Seal, they might, from his talents and popularity, have weathered the perils to which they were exposed, and the country, enjoying the benefit of their sound constitutional principles, might have escaped the anarchy and misgovernment which soon followed. But Lord Northington hated them;—while he sat in the cabinet with them, he watched them with jealousy,—and at last he plotted, and he effected, their ruin. As they were to repeal the American Stamp Act, and to censure the proceedings against Wilkes which he had sanctioned, one does not well understand how he should have wished or been permitted to continue in office. But he was a “friend” of the King,—and some were silly enough to think that he might secure to the Government the royal favour and confidence.

The Stamp Act having produced the discontents and disturbances in America which might have been expected from it,—much against the King’s wishes, it was to be repealed; but, to mollify him, a preliminary resolution was moved, “that Parliament had full power and right to make laws of sufficient force to bind the colonies.” Feb. 1766. When this came to be debated in the House of Peers, it was objected to by Lord Camden as being not only ill-timed, but as being untrue, on the ground that it might, in its general language, include the power and right to *tax* the colonies, which he strongly denied. “My Lords,” he proceeded, “he who disputes the authority of any supreme legislature treads upon very tender ground. It is therefore necessary for me, in setting out, to desire that no inference may be drawn from anything I shall advance. I deny that the consequences of my reasoning will be, that the colonies can claim independence, or that they have a right to oppose acts of the legislature in a rebellious manner, even although the legislature has no right to make such acts. In my opinion, my Lords, the legislature had no right to make this law. The sovereign authority, the omnipotence of the legislature, is a favourite doctrine, but there are some things which you cannot do. You cannot enact anything against the Divine law. You cannot take away any man’s private property, without making him a compensation. You have no right to

condemn any man by bill of attainder without hearing him. But though the Parliament cannot take any man's private property, yet every subject must make contribution: and this he consents to do by his representative. Notwithstanding the King, Lords, and Commons could in ancient times tax other persons, they never could tax the clergy." He then goes on to consider the case of the counties palatine, of Wales, and of Berwick, showing that they never were taxed by Parliament till they sent representatives to the House of Commons; observing, that the Irish tax themselves, and that the English Parliament could not tax them. "But," said he, "even supposing that the Americans have no exclusive right to tax themselves, it would be good policy to give it them, instead of offensively asserting a power which you ought never to have exercised. America feels that she can do better without us than we can without her." This was Lord Camden's first speech in the House of Lords.

Lord Northington, leaving the woosack, commenced in a tone most insulting to the new Peer, and, what was much worse, most insulting to the people of America,—Benjamin Franklin being a listener below the bar:—

"I did not intend," said he, "to trouble your Lordships in this debate, but hearing doctrines laid down so new, so unmaintainable, so unconstitutional, so mischievous, I cannot sit silent. Such paradoxes are the result of a heated imagination, accompanied by a facility of utterance and readiness of language. The noble and learned Lord lays it down that the Americans have an exclusive right to impose taxes on themselves. He is to lay down the law for them, and the British Parliament is not to interfere with them. With great submission to the noble and learned Lord, I believe that all except himself will admit that every government can arbitrarily impose laws on all its subjects; there must be a supreme dominion in every state, whether monarchical, aristocratical, democratical, or mixed: to that supreme dominion all must bend. The noble and learned Lord has endeavoured to distinguish between the civil power of government and its casuistical power. Every legislature ought to make laws for the safety and the benefit of the whole; hut, my Lords, suppose they make a law contrary to this principle, a resistance to such law is at the risk of life and fortune." [After touching upon the power to tax the clergy, and the other illustrations introduced, he proceeded:] "My Lords, I seek for the liberty and constitution of this kingdom no farther back than the Revolution: there I make my stand: and in the reign of King William an act passed avowing the power of this legislature over the colonies. As to the expediency of carrying the Stamp Act into exe-

cution, does the noble and learned Lord mean that the King has a dispensing or suspending power? The King is sworn by his coronation oath to execute all the laws of this realm. Then the noble and learned Lord would get rid of it by a repeal, — but if you should concur with his Lordship in the expediency of repeal, you will tell twelve millions of your subjects of Great Britain and Ireland that you prefer to them the colonists who have got rich under their protection, and you will soon have these colonies at your doors, not merely besieging you as now with petitions, but using the ‘*argumentum baculinum*.’ What, my Lords, have these favourite Americans done? They have called a meeting of their States, and then have entered into resolutions by which, in my opinion, they have forfeited all their charters. But, my Lords, the nature of the Stamp Act seems to be mistaken. It binds all the colonies to contribute to the expense of the general government incurred in defending them, but it does not control the power each province has to lay internal taxes for local purposes. How could the Americans have acquired the exemption which they claim? If all the great lawyers in Westminster Hall should give an opinion that the King could grant the territory of North America, none could say that the King could put the grantees out of their subjection to the *summum imperium* of Great Britain. My Lords, the colonies are become too big to be governed by the laws they at first set out with. They have, therefore, run into confusion, and it will be the policy of this country to form a plan of laws for them. If they withdraw allegiance, you must withdraw protection; and then the little state of Genoa or of San Marino may soon overrun them.”^d

This coarse invective, the first of the sort delivered in Parliament against “the Rebels,” though sure to gratify the King and the “King’s friends,” was so very indiscreet, and was so evidently calculated to produce resentment and resistance on the other side of the Atlantic, that not only Lord Rockingham and his Whig colleagues were appalled by it, but it gave uneasiness to all moderate Tories who had approved of the Stamp Act, and were still desirous of supporting it.

Lord Mansfield immediately followed, in the hope of repairing or mitigating the mischief; and, notwithstanding his habitual self-command, was unable to conceal his mortification. Thus he gently disclaimed the diatribe of the Chancellor: “I stand up, my Lords, to bring your Lordships to the question before you, which is, whether the proposition enunciated by the noble Duke^e as to our right to make laws to bind the co-

^d 16 Parl. Hist. 161—177.

^e The Duke of Grafton, who moved the resolution.

lonies is, according to what appears from our law and history, true, or not true? It is out of the question whether it was, or was not, expedient to pass the law; whether it be, or be not, expedient to repeal it. Out of this question, too, are the rules which are to guide the legislature in making a law. This law is made, and the question is, whether you had a right to make it?" Without farther reference to the Chancellor, he then goes on, with much calmness, and with arguments to which I have never been able to find an answer, to deny, as far as the *power* is concerned, the distinction between a law to *tax* and a law for any other purpose. The resolution was agreed to, but this debate marred the effect of the repeal of the Stamp Act, and gave a great "*shake*" to the Rockingham administration, by showing that their conciliatory policy was distasteful to the Court.

The Lord Chancellor seems to have remained quiet for the rest of the session, and not even to have spoken when the House of Lords, very properly, rejected the bill passed by the Commons, declaring "General Warrants" to be illegal; leaving this question to be decided (as it was satisfactorily) by the Courts of Common Law.

Soon after the prorogation, it was evident that a political crisis was at hand. The immediate cause of the dismissal of the ministry is attributed to an intrigue of the Lord Chancellor Northington, who had long contemplated their feeble state, and meditated their overthrow.^f He had now personal as well as courtier-like reasons for wishing that there might be a revolution in the cabinet. Those legs, of which he had taken such bad care in his youth, refused to carry the Chancellor any longer between the woosack and the bar, and he was desirous of making the repose which they demanded as comfortable as possible. His attacks of gout had been of late so frequent and severe, that he found he could not longer hold the Great Seal; yet he was unwilling to retire into private life, and he thought that, in taking an active part in forming a new administration, he should be able to make a good bargain for himself. It may seem strange that he hoped to accomplish his object under the auspices of Mr. Pitt, who had been so odious at Court after his quarrel with Lord Bute, and had expressed a strong opinion against taxing America. But here begins the period of the life of that most illustrious patriot which is the least to his credit. Piqued that there should be a Whig go-

^f 1 Adolphus, 225.

vernment in which he was not included,—instead of supporting it, he had publicly said, “Lord Rockingham has not my confidence;”^s and, from his belligerent tendencies, there was an expectation that, if he were once in office, he might be induced to take part against the Americans, and to use the necessary force for subduing them. There is no such bond of political union as a common dislike of the minister. This makes all difference of principle and all past quarrels to be forgotten. George III. and the “Great Commoner” being equally desirous of getting rid of Lord Rockingham, there had been much coquetry between them during some months, and, for the nonce, there was actually considerable good will. Lord Northington was well aware of these reciprocal feelings, and determined to take advantage of them.

The occasion which he seized for effecting his purpose was the preparation of a Code for the government of Canada. A proclamation had issued in 1764, by which all the laws of England were introduced into the French provinces ceded by the peace of Paris; but this rash experiment (as might have been foreseen) caused general discontent and confusion. The papers relating to the disputes had, according to custom, been laid before the Attorney and Solicitor-General—most able men—Charles Yorke, and De Grey; and they had prepared a very masterly report for the consideration of the cabinet—proposing to leave to the natives their ancient rights of property and civil laws, and to temper the rigour of their criminal procedure by the more equitable and liberal system of English jurisprudence. Soon after the commencement of the recess a cabinet was called to consider this report, and, the Chancellor being confined by a fit of the gout, the meeting took place at his house in Lincoln’s Inn Fields. Contrary to his good-humoured and courteous, though blunt and careless manner, he was exceedingly cross and peevish on this occasion, and found fault with every body and every thing. He complained that he had been slighted in the affair by Mr. Attorney and Mr. Solicitor; he bitterly criticised and abused their performance; and he concluded by giving an opinion that no proposition on the subject could be sanctioned by the cabinet until they had procured a complete digest of all the existing laws of Canada,—which would occasion a delay of at least a whole year. His col-

^s Lord Rockingham’s position, at this time, bears a considerable resemblance to that of Mr. Canning in 1827, when the ultra-Tories and Lord Grey coalesced to eject him.

leagues believed that his waywardness proceeded from the bodily anguish he was suffering, and the meeting broke up without coming to any definitive resolution. Next day he refused to attend another cabinet—(as they still supposed) from his great toe being more painful. The rest of the ministers considering the matter very pressing,—that there might not be disturbances at Quebec, as well as at Boston, held two more meetings without him at the Duke of Richmond's house at Whitehall. The Attorney-General, who had taken the chief part in framing the Report, being summoned to attend, gave ample information on the principles by which he was guided, and proposed that it should be sent to Quebec for the inspection and consideration of Governor Carleton and the Colonial Crown lawyers, with instructions to return it corrected, according to their judgment, so that it might be in all respects suited to the circumstances and feelings of the province. Every difficulty seemed obviated. In consequence Lord Egremont, in whose department the business more immediately was, and who had recommended the summoning of the Attorney and Solicitor-General, went out of town, declaring his willingness to confide his judgment to their decision. Mr. Attorney, thinking all his cares over till the Morrow of All Souls, and the re-assembling of parliament should again make him wish that he could be divided into ten portions to be working in ten places at once,—retired into the country to enjoy the repose of the long vacation.

But the Lord Chancellor, when he heard at night of this last meeting of the Cabinet, loudly exclaimed, "By G—, they shall never meet again!" Next morning, repairing to Richmond, he informed the King "that the Ministers could not go on, and that at all events he himself must resign the Great Seal, and would attend Cabinet Councils with Lord Rockingham no longer." He concluded by advising his Majesty to send for Mr. Pitt,—holding out hopes that there was a change in him, and that he might now be found more pliant and accommodating. The King, without considering too curiously what might follow, being delighted with the prospect of getting rid of the men who had repealed the Stamp Act, and had induced Parliament to condemn the proceedings against Wilkes, very willingly adopted this advice, and they manufactured the following letter to "the Great Commoner:"

“Richmond Lodge, July 7, 1766.

“ Mr. Pitt,

“ Your very dutiful and handsome conduct the last summer makes me desirous of having your thoughts how an able and dignified ministry may be formed. I desire, therefore, you will come for this salutary purpose to town.

“ I cannot conclude without expressing how entirely my ideas concerning the basis on which a new administration should be erected are consonant to the opinion you gave on that subject in parliament a few days before you set out for Somersetshire.^b

“ I convey this through the channel of the Earl of Northington ; as there is no man in my service on whom I so thoroughly rely, and who I know agrees with me so perfectly in the contents of this letter.

“ GEORGE R.”

As soon as Lord Northington arrived in town he forwarded the royal missive, accompanied by the following communication from himself :

“ London, July 7, 1766.

“ Sir,

“ I have the King’s command to convey to you his Majesty’s note inclosed ; and as I am no stranger to the general contents, I cannot help adding that I congratulate you very sincerely on so honourable and so gracious a distinction.

“ I think myself very happy in being the channel of conveying what I think doth you so much honour, and I am persuaded will tend to the ease and happiness of so amiable and respectable a Sovereign, and to the advantage of this distracted kingdom.

“ It is the duty of my office to attend in London (though my health requires air and the country). If therefore, on your arrival, you want any information, I shall be very ready and willing to afford you all I can.

“ I have the honour to be, with great respect,

“ Dear Sir,

“ Your most obedient,

“ Most humble Servant,

“ NORTHINGTON.”

^b There is no trace of this speech any where to be found.

Mr. Pitt thus answered Lord Northington :

“Tuesday, 10 o'clock, July 8, 1766.

“ My Lord,

“ I received this morning the honour of your Lordship's very obliging letter inclosing his Majesty's most gracious commands in writing to me. I am indeed unable to express what I feel of unfeigned gratitude, duty, and zeal, upon this most affecting occasion. I will only say, that the remnant of my life, body, heart, and mind, is at the direction of our most gracious and clement Sovereign.

“ I will hasten to town as fast as I am able, and will, on my arrival, take the liberty to avail myself of the very kind permission your Lordship is so good as to allow me of troubling you : in the mean time, I beg leave to express, in a word, how truly sensible I am of the great honour your Lordship does me by such favourable sentiments on my subject, and to assure you how proud and happy I am in receiving such flattering marks of friendship and confidence from your Lordship. I am, &c.”

And here is his courtly response to the King :

“ Sire,

“ Penetrated with the deepest sense of your Majesty's boundless goodness to me, and with a heart overflowing with duty and zeal for the honour and happiness of the most gracious and benign Sovereign, I shall hasten to London as fast as I possibly can,—wishing that I could change infirmity into wings of expedition, the sooner to be permitted the high honour to lay at your Majesty's feet the poor, but sincere offering of the little services of

“ Your Majesty's

“ Most dutiful Subject,

“ and devoted Servant,

“ WILLIAM PITT.”

The particulars of the negotiation are not certainly known, but they may easily be conjectured from the two following letters from Lord Northington to Mr. Pitt :

“London, July 14, 1766.

“Dear Sir,

“I am sorry to find that you are so much out of order, and hope the air will speedily remove that complaint; which I trust will not be immediately felt, as, by his Majesty’s commands, I yesterday wrote to Earl Temple that the King desired to see him in London; and on the other side you will see his answer, received since I began this page. I desire to know when you go to Hampstead; as, if occasion requires, I may be able to communicate accordingly.

“I will apprise the King of your unlucky situation; who was so well satisfied with your dutiful behaviour as to feel it accordingly. I am with great respect,” &c.

“Sunday, 5 P.M., July 20, 1766.

“Dear Sir,

“Having seen his Majesty after the drawing room to-day, I now sit down to answer your very obliging letter; which, as far as it related to myself, I could not before do.

“The invidious share I have taken in the present business was the result of my sensible feeling for my most gracious Master, and this great commercial and brave country, with which I thought nothing could stand in competition. I therefore determined not to be considerate of myself in any respect, but to stand forth as a public servant, or retire a private man, as either should contribute to the King’s service.

“As I suppose you might speak with regard to me in the same style of partial consideration to the King you did to myself, I found his Majesty very desirous that I should take a great office in his administration, to which I assented, and to that you so kindly pointed out. Though no office is so personally inviting as that I am now in, yet is true what I urged that my health cannot sustain the Chancery, the woolsack, and state affairs. I need not, after what I said to you, say that the succession of Lord Camden will be most agreeable to myself. Your own thoughts respecting yourself have my full concurrence in, and approbation of, their propriety, and the other persons mentioned have all due respect from me.

“I shall only add, that if you lend your advice, as also your reputation, and the rest of the administration act with cordiality and resolution (from me you shall have the fullest support I can give), I see no difficulties to frighten *men*.

"I should have made you another visit after I had seen Lord Temple; but I know, in general, how unseasonable visits are to invalids. If you are well enough, I would call at your most convenient hour to-morrow. I have the honour to be, with the greatest respect, dear Sir,

"Your most obedient,

"and most humble Servant,

"NORTHINGTON."

The Chancellor had been the bearer of a communication from the King to Lord Temple, asking him to take office; but his terms could not be acceded to,—and without his co-operation was formed an administration the most fantastical in its construction, and the most whimsical in its proceedings, of any to be found in our annals.¹

Lord Northington went through the formal ceremony of resigning the Great Seal into his Majesty's hands, at St. James's Palace, on Wednesday, the 30th of July, 1766, and was at the same time declared by his Majesty PRESIDENT OF THE COUNCIL, with many gracious acknowledgments of his faithful services.

¹ The following is Horace Walpole's account of Lord Northington's breaking up the Rockingham administration: "On the 7th of July the Chancellor went into the King, and declared he would resign—a notification he had not deigned to make to the ministers, but which he took care they should know by declaring openly what he had done. When the ministers saw the King, he said, coolly, 'Then I must see what I can do.'"—*Memoirs of King George III.*, vol. ii. 334. Sir Denis Le Marchant, the learned editor of this work, says: "Lord Northington's health, and his frequent disagreements with his colleagues, had for some months made him desirous of an honourable and quiet retreat. There is no doubt, both from his own letters and the traditions still extant at the bar, that his habits of hard labour and extreme conviviality had by this time undermined his constitution much to the deterioration of his temper; and

he, perhaps, unsuspected slights that were never intended. Moreover, the scrupulous sense of public duty, the natural reserve and strict propriety of deportment which characterised Lord Rockingham and Mr. Conway, were by no means to his taste. He must have felt even less easy with such associates than his successor Lord Thurlow did in a later day with Mr. Pitt; and, like him, his usual course in the cabinet was to originate nothing, and to oppose everything. The commercial treaty with Russia, a measure of unquestionable benefit, nearly fell to the ground owing to his unreasonable and obstinate opposition. He would rarely listen to remonstrance from his colleague; and was on such cold terms with them, as probably justified him in his own mind in breaking up the cabinet so unceremoniously. He was too fearless to stoop to intrigue; and there was no necessity for it on this occasion."

CHAPTER CXLI.

CONCLUSION OF THE LIFE OF LORD NORTHINGTON.

My Lord President and ex-Chancellor Northington, while labouring for the public good,—in the new arrangements was not forgetful of what was due to himself. As an indemnity for his sacrifice of the Great Seal, it was agreed that, in addition to the salary of his present office, he should receive an immediate pension of 2000*l.* a year; that on his resignation of this office the pension should be raised to 4000*l.* a year; and that he should have a reversionary grant of the office of Clerk of the Hanaper in Chancery for two lives, after the death of the Duke of Chandos.

Although Lord Northington held a high appointment at the commencement of this motley administration, his connection with it was fleeting, and this is not the place to tell of the mortification, failure, and eclipsed fame of the “Great Commoner,” become Earl of Chatham,—when he found himself, from physical and mental infirmity, unable to control the discordant materials of which he had thought fit to compound his new cabinet.^k

The only measure of the government in which Lord Northington took any part, was the embargo to prohibit the exportation of corn; and here he exhibited his characteristic rashness and recklessness,—which seemed to be aggravated by age and experience.

On account of the almost unprecedented succession of wet weather in the summer and autumn of 1766, the harvest had failed in many parts of England, the price of bread had risen alarmingly, and a famine was apprehended. A foolish proclamation was issued against “forestallers and regraters,”

^k Lord Northington, from the time of his appointment as Lord President, frequently corresponded with the Duke of Grafton, who was at the head of the Treasury. Being at the Grange in September, 1766, he writes to him: “I have not spent my time here without regard to my new employment, having

perused the papers which I brought down here, and which have been long in arrear. I am sorry Lord Chatham is laid up; and shall only add, that I think no journey inconveient which tends to the King’s service, or to express the great personal regard with which I am,—My dear Lord,” &c.

which not increasing the quantity of corn, nor lessening the demand for it,—in as far as it had any operation, aggravated the evil by interfering with the operations of commerce. An order was then made by the King in Council, in which Lord Chatham, though absent, concurred, prohibiting the exportation of corn, and laying an embargo on ships loaded with cargoes of corn about to sail for foreign countries, where the scarcity was still more severe. Although it probably would have been wiser to have left the trade in food entirely free, without duty or bounty, the measure was generally approved of, and the government was actuated by the best motives in resorting to it. Still it was contrary to law; for there was no statute to prevent the exportation of any sort of grain, however high the price might be, or to authorize the Crown to interfere on such an occasion. Those concerned in the embargo were therefore liable to actions, and required to be indemnified. This was the rational view of the subject taken by Lord Chatham himself in his maiden speech in the House of Lords, on the first day of the ensuing session. He said, “it was an act of power which, during the recess of Parliament, was justifiable on the ground of necessity;” and he read a passage from Locke on Government, to show that, “although not strictly speaking legal, the measure was right in the opinion of that great friend of liberty, that constitutional philosopher, and that liberal statesman.” Upon this footing a bill of indemnity would have passed without difficulty. But Lord Northington, for some unintelligible reason, contended that the measure was strictly legal, and that no indemnity was necessary.^m He went so far as to maintain that the Crown had a right to interfere even against a positive act of parliament, and that proof of the necessity amounted to a legal justification. Seemingly unconscious that he was standing up for a power in the Crown to suspend or dispense with all laws, he defied any lawyer to contradict him, and saying “he was no patron of the people,” he even

^m The inconsiderate manner in which he had originally agreed to the measure, may be learned from an extract of his letter to the Duke of Grafton, dated 31st August, 1766. “I come now to that part of your Grace’s letter which more immediately relates to my office; the revival of the prohibition of the exportation of corn, by order of council, pursuant to the late act—which I have not here.

And I am of opinion, that it is absolutely fit and necessary, as I stand at present informed.” In truth, the order was directly contrary to the late act; and the President of the Council advises an order, supposed to be framed on an act which he does not see, and with which he is wholly unacquainted! Surely, we are less slovenly nowadays in our mode of transacting public business.

went on to throw out a sarcasm against the noble Earl, now at the head of the government, for his past popular courses.

Lord Mansfield, never displeased with an opportunity of chastising Lord Northington, clearly showed that the power he claimed for the Crown was utterly inconsistent with the constitution, and if it ever in any degree existed, was entirely at variance both with the letter and the spirit of the Bill of Rights.^a

The ex-Chancellor, though, to the amazement of mankind, countenanced by a great constitutional lawyer, who was expected to scout such absurd doctrine, never seems to have rallied from this downset. I cannot discover that he again opened his mouth in parliament, although he continued sulkily in office till the close of the following year. Finding that, in the absence of Lord Chatham, there were dreadful distractions in the cabinet, and that he had no weight there, he soon became desirous of retreating to the quiet enjoyment of his pensions and his sinecures.

He communicated his wish to resign to the Duke of Grafton, and they sent a joint representation to Lord Chatham, pointing out "the present state of the King's affairs from the want of his Lordship's support and influence, and from the unfortunate situation of his Lordship's health,—the administration having been rested, *ab initio*, on his Lordship's weight and abilities." They seem to have received a very rough answer from him, as we may conjecture from the following note addressed by Lord Northington to the Duke of Grafton :

" My dear Lord,

" I have the properest sense of your Grace's communication of a letter, most extraordinary, and, as relative May 29,
1767. to ourselves, most absurd as well as dangerous. My sentiments must remain as they were, in justice to my own honour, my duty to the King and the public, and the peace and quiet of my own mind. I have the honour to be with the greatest respect," &c.

While Lord Northington's resignation was under consideration, he paid his respects at St. James's, and then sent to the Duke the following account of his reception :

^a 16 Parl. Hist. 245—313.

“ My dear Lord,

“ I was this morning at Court, and had the honour of speaking to ——^o at the drawing-room, but as he had no commands for me, and several persons of ministry going in, I did not trouble the closet. But I thought it fit to signify to your Grace, that I am convinced, from circumstances, that it is wished by *many* to pause till after the session is up. And I could perceive, by the discourse of a noble neighbour of mine, that the thing you are inquiring after is as extensive as I thought it, and too large for your reception. The *many* alluded to above are not of our friends, and it being my permanent opinion that we should penetrate through the present cloud, I send this for your better and cooler judgment.

“ The S^y was beginning a long account of the state of America, &c. &c. But in the midst of this *hurlothumbo* they were called both in, staid a long time in the closet, and I left them there. . . . My Lord, the affection I bear to your Grace’s sentiments, honour, and abilities (and you know I can speak on this occasion only from truth) has induced me to suggest every material circumstance relative to your Grace’s conduct in this nice and important crisis, and if my friendship outruns my judgment, I am confident that I shall not only receive your pardon, but thanks for my warmth in endeavouring to express myself,—My dear Lord,

“ Your Grace’s,” &c.

Lord Northington was induced to delay his resignation, and to retreat into the country,—whence he wrote a letter to the Duke, in which, after expressing his satisfaction at having been present when his son was unanimously elected for Hampshire, he says: “ though the air and retirement have afforded me some ease, the weather hath as yet debarred me of any relief. I barely walk, and am without strength or appetite. Though I was not surprised that your Grace received no satisfaction in the information you inquired after, yet I lament it, as it daily confirms what I have long suspected, that the rancour and intoxication of faction would sap the very foundations of government. The contagion is so widely spread that it is beyond me to know whither to turn to avoid it. I hope, however, your next may afford me more comfort, as I am sensible of your Grace’s discernment to discover, and

^o Word illegible.

zeal to pursue, every avenue that may open and lead to the stability of your King and country."

A few days after, the Duke wrote to him an enormously lengthy despatch, giving him an account of negotiations with the Duke of Bedford, Rigby, Conway, Lord Gower, Lord Rockingham, &c., and thus concluding: "one favour I must entreat of your Lordship, who, considering the consequences it is of to the public, must not refuse—which is, though out of office, to assist the cabinet, and particularly myself, with the advice which your ability and great experience in public affairs will make so essential to the King's service." In his answer, Lord Northington says:

"I think myself much obliged to your Grace for communicating to me, in so clear and historical a manner, the progress of political matters since I left London." After tedious comments on recent intrigues, and praising the Duke for continuing in office, he thus concludes: "As to myself, my Lord, I thought it my duty frankly to open my state of health, and its insufficiency to an office so extensive, and of so much attendance: It was but just both to the King and to his ministers, as I was and am morally certain I shall never re-establish my strength to sustain that burthen, but I desire to be laid at the King's feet as one that out of office will be as zealous as in—and as one that will ever to the best of his abilities support his Majesty's government, and, without a compliment, never with so much pleasure as when your Grace is at the head of it." P

Being still pressed by the Duke of Grafton, in the King's name, at least to defer his resignation till the administration might be remodelled, he wrote back, "You are pleased to open the immediate plan of carrying on government in the interim till a better can be formed. . . . I also learn from your Grace's letter that in his Majesty's present situation

P The Duke, in his Journal, after setting out his own composition *in extenso*, thus proceeds: "It will be proper also to introduce here Lord Northington's answer: We lived in full and mutual confidence in each other: he had about him the genuine principle of a Whig,* and in all transactions I found him to be a man full of honour, a disinte-

rested gentleman, and, though much devoted to the King, with great zeal for the constitution. As a lawyer, his knowledge and ability were great; but his manner and speech were ungracious. I shall ever do honour to his memory wherever I hear his name brought forward."

* I should be curious to know the definition of a Whig, which would include Lord Northington, who might be a very sound politician, but was as little of a Whig as his successor Thurlow.

it is his wish, and your Grace seems to think it will be a convenience, that I should for a time retain the great employment which his Majesty, out of his abundant grace, was pleased to confer on me. I can have but one answer to that, which I must entreat your Grace to lay at the King's feet, 'That I am so sensible of the many and never-to-be-forgotten marks of the King's favour, proceeding from the greatness of his royal mind, which it hath been my good fortune to have received,—that I am disposed to stand wherever I can be of use to his Majesty's affairs till he can model his administration to his best approbation,—and this with all zeal, duty, and cheerfulness.' That, however, I may conceal nothing, I must inform your Grace that I write this from my bed, having been yesterday seized with the gout in my head, which continued till within this hour, with exquisite pain, and is intermitted so as to enable me to write; that yet I think myself better than when I left London, and hope to be able, at no inconvenient distance, to be in London long enough to despatch any business that may wait me at Council. But it will be a fortnight before I can use my own house, and in my present state of health I know not where else to lodge. I have thus answered your Grace with much difficulty, and with a total resignation of myself to the King's commands; and I have only to add, that my wishes for and support of your Grace's honour and glory will always wait upon you."

The Duke of Grafton expressed great satisfaction at the prospect of his retaining office, and sent for his consideration a large bundle of papers respecting the new constitution for Canada. Lord Northington in answer said: "My eyes would not permit me to write to your Grace by the last post, as I intended, with respect to the affairs of the Canada legislation, and to inform you fully of my ideas on that business. I must first premise that the formation of any plan of that kind can never commence or proceed through the office that I now enjoy, in whatever hands it shall be placed; because the Council cannot correspond with any of the King's officers there, to know the true state of that country, which correspondence resides alone in the Secretary of State. When such information is acquired by him, I am of that opinion, that before a plan can be formed, which must necessarily have the sanction of parliament, it is necessary to have the full sense of the King's servants upon that subject, that the measures may have the general support of government, and not be

thrown, as they were last year, upon one person not in the least responsible for them. When every information is obtained, I am certain your Grace's penetration anticipates the difficulties to be encountered, from the civil constitution of that province, composed of French received under a capitulation incorporated with English entitled to a legislation at some time, and who have been encouraged to call for it, by the proclamation, the King's commission, and other excitements. To this as great a difficulty succeeds with regard to a Popish hierarchy, and, of course, a Protestant one; both of which are, in my opinion, delicate subjects: loads too heavy to be sustained by any strength less than that of a concurring administration. I have all along been of this opinion in different administrations, and have been willing to lend my aid to this difficult task. I hope to be able to be in London in about ten days, though I am very indifferent still."⁹

Lord Northington accordingly came to town and remained there a few days; but from a fresh access of his disorder he was soon again obliged to retire to the Grange, where he experienced a little respite from his sufferings.

At last, on the 23rd of December, 1767, at his earnest entreaty, his resignation was accepted, and Granville Earl Gower was appointed President of the Council in his stead.[†]

Being relieved from the anxieties of office, he rallied considerably, although it had been thought that his last hour was at hand. In the course of the following year he was so much better that an effort was made to induce him to re-enter the cabinet. The Duke of Grafton says, in his Journal:—" Hoping that Lord Northington might have considered himself still equal in health to the business of the Privy Seal, his Majesty, in the first instance, made the offer to his Lordship, but which he declined on reasons which were very satisfactory to the King."

The Premier still continued to consult him on public affairs. The following is the last letter of his in my possession, and expresses his sentiments characteristically on the subject of the Middlesex election, which now intensely agitated the public mind:

⁹ It has been said, that this letter proves "that a good Chancellor and great lawyer could write in the language, and with the eloquence, as well as propriety, which might better become a common housemaid."—*Law Review*, No. 4. It is marvellous, to be sure,

to observe his utter disregard of the common rules of composition.

[†] Lord Henley represents that Lord Northington finally retired in June, 1767 (*Life*, 54); but I have fixed the date by a reference to the books of the Privy Council.

“Grainge, 10 Dec. 1769.

“My Lord,

“I had the honour of your Grace’s by last Sunday’s post. I was that day attacked by the gout, and not able to write till now. I am not surprised your Grace expresseth so strong a feeling of the distraction of the times. I have long entertained the same opinion of it, and of its tendency so dangerous to the vitals of this valuable constitution. But, my Lord, the distraction hath so long raged, hath been so much fomented, and in its attack of the supreme power of the nation (the Parliament I mean) so much neglected (wisely I must suppose), that it is scarce decent or safe now for an individual to open his sentiments on the subject. Yet it is now come to that pass that it seems totally impossible for the P. to meet and not vindicate its own honour. Doth it want power? Doth it want advice? Thank God the contest is there. Your Grace supposeth I have no idea of the backwardness and lukewarmness of some from whom the K. might expect advice and assistance in his difficulties. I assure your Grace I have long had an adequate one, and very just sentiments of the persons. In this situation your Grace wishes that I would spend the winter in London and give my assistance in the House of Lords. My Lord, I have but one answer, I cannot—my health will not enable me to live there this winter, nor if I were there to attend the House. But, my Lord, were I able, could I? What a figure should I, after the offices I have passed, make, prating on subjects to which I am a total stranger, and on measures in which I do not concur, and about doctrines I know not how adopted! Passive obedience to—a mob! I should, so circumstanced, hurt the service that I have a zeal for,—embarrass your Grace, whom I really honour. Believe me, my Lord, there is nothing to debate upon,—*OPORTET AGERE*.

“Indeed, my dear Lord, I am advanced in years—my constitution so impaired, that unless I can acquire more strength, must be content to remain the retired, unimportant thing I am.

“In whatever condition, I profess myself to be with equal truth and respect,

“My dear Lord,” &c.

During his intervals of ease from his terrible enemy, the gout, he amused himself with making deputy lieutenants,

militia officers, and justices of the peace, and getting his old friends round him,—whom he entertained with Dec. 10,
1769. old port and old stories.

He sunk gradually under his infirmities. When near his end he was reminded of the propriety of his receiving the consolations of religion, and he readily agreed that a divine should be sent for; but when the Right Rev. Dr. —, with whom he had formerly been intimate, was proposed, he said, “No! that won’t do. I cannot well confess to him, for the greatest sin I shall have to answer for was making him a Bishop!” The clergyman of the parish was substituted, and the dying ex-Chancellor joined in the ceremonies prescribed by the Church for such a solemn occasion with edifying humility and devotion. Having, in *characteristic language*, tenderly taken leave of his weeping daughters, he expired on the 14th of January, 1772, in the 64th year of his age. His remains were interred in the church at Northington, where is to be seen a monument,

“ Sacred to the Memory of
ROBERT HENLEY, first Earl of Northington;
JANE, Countess of Northington, his Wife;
And of ROBERT, Earl of Northington, their only surviving Son.”

The inscription, after warmly praising the virtues of all the three, thus concludes :

“ This monument is erected, as a tribute of respect and affection to their parents and their brother, by the R. H. Lady Bridget Tollemache, the R. H. Lady Jane Aston, Mary Viscountess Wentworth, and the R. H. Lady Elizabeth Eden.”

His children may well be excused for piously recording their opinion of the “consummate ability” as well as “inflexible integrity” with which he discharged the duties of all the offices which he filled, but the impartial biographer is obliged to form a more discriminating estimate of his merit.

Endowed with good natural abilities, and possessing very amiable qualities, he was a mere lawyer, seeking only his own advancement, and, though unstained by crimes,—unembellished by genius or by liberal accomplishments—nor very solicitous about the public welfare or even his own fame.

Much praise has been bestowed upon him for consistency as a politician. He certainly was always very faithful to Leicester House, and to the *clique* called the “King’s Friends,” which sprang out of that connection. But it is difficult to say what the principles were by which he is supposed to have been

guided. He seems never to have originated any of the measures of his political associates, but to have been always ready in a very zealous manner to defend such as they favoured. He turned out a strong Tory and coercionist, but I apprehend that he would have been as strong a Whig and reconciliationist if the liberal side had been taken by Lord Bute and George III. During the Rockingham administration he could only be considered a spy in the enemy's camp.

He is much more respectable as a Judge. He was not only above all suspicion of corruption or partiality, but, though by no means a profound jurist, his mind was well imbued with the principles of our municipal law; he disposed very satisfactorily of the routine business of his Court, and he could do considerable justice to any important question which arose before him. His judgments are at least remarkably clear, and if they have not the depth they are free from the verbosity and tortuosity of Lord Eldon's, which, dwelling so minutely upon the peculiarities of each case, often leave us in doubt how he has disposed of the points argued before him, and what general rule he means to establish. I do not think that the number of decrees reversed on appeal can be adopted as a criterion of the merits of a Chancellor; and had Lord Northington been raised to the peerage when he received the Great Seal, and had he, like Lord Hardwicke, been the only law Lord, he might possibly have received the same character for infallibility. But, independently of the decisions of the House of Lords against him, the printed reports confirm the tradition, that his boldness in declaring his opinion was not quite equalled by his care and caution in forming it. He may, perhaps, be advantageously contrasted with judges we have read of, who, desperately afraid of committing themselves,—that they may keep out of scrapes, defer giving judgment till both parties are ruined.

I am sorry that I can say nothing for him as a law reformer. But, although he never dreamed of making any attempt to render proceedings in the Court of Chancery cheaper or more expeditious, or to improve any of our institutions, no peculiar blame is to be imputed to him, for he lived at a time when the system of optimism, graced by the inimitable Commentaries of Blackstone, prevailed in Westminster Hall; and half a century elapsed before it was doubted that appearance to a subpoena in Chancery must necessarily be enforced by a commission of rebellion,—that, by the eternal constitution of things, com-

mon-law actions must be commenced by *latitat*, *capias*, or *quo minus*,—or that fraud and trifling violations of property must be checked by the multiplication of capital punishments.

Lord Northington is said to have kept up his acquaintance with the Greek and Latin classics, and to have shown some knowledge of Hebrew. He was singularly unskilled in the composition of English. Indeed, I can discover in him no love of literature, and I should conjecture that when he had got through his official labours he devoted himself to convivial enjoyment or the common gossip of vulgar life. He not only never aimed at authorship, but I do not find that, like Camden, Thurlow, or Wedderburn, he associated with literary men or with artists.

His great delight was to find himself in a circle of lawyers, or common-place politicians, and to indulge in boisterous mirth and coarse jocularly. He himself seems to have possessed a rich fund of humour. Many of his sayings and stories used to be repeated by young students, when

" 'Twas merry in the hall,
And beards wagged all,"

but would not be found suited to the more refined taste of the present age.* He likewise indulged in a bad habit which seems to have been formerly very general, and which I recollect when it was expiring,—of interlarding conversation with oaths and imprecations as intensitives—even without any anger or excitement.

But in spite of these faults, into which he was led by the fashion of the times, he was a strictly moral, and even a religious man. He continued to live on terms of the utmost affection and harmony with his wife, and he composed two beautiful prayers for her use—one soon after their marriage, and the other on the birth of their second child—proofs of his piety and tenderness, which she regarded with enthusiasm till the last hour of her existence. In all the domestic relations he deserves high commendation. He was particularly attached to his daughter—Lady Bridget, who, with the most perfect feminine delicacy, inherited his powers of humour, and was celebrated for sprightliness of repartee, as well as for her beauty. She was in the habit of reading for her father, and it is said that she could even extract amusement, for the gay

* I cannot even relate his compliment to the *capacity* of Lady Northington, or to the *bright eyes* of his daughter Lady Bridget.

society in which she mixed, out of bills, answers, and affidavits; but this must have been in ridiculing the proceedings of the Court, and all concerned with them.

Lord Northington, in his person, was a remarkably handsome man, of the middle size—rather thin, but, till crippled by the gout, very active and athletic. His portrait, by Hudson, gives him a very agreeable expression of countenance, and represents him, when on the woolsack, with a complexion still fresh and rosy, instead of being, like most of those who have reached this painful elevation, of the colour of the parchment they have pored upon—or like Mr. Surrebutter's, in the *Pleaser's Guide*, with

"A certain tinge of copper
Quite professional and proper."[†]

He enjoyed the lawyer's blessing, a large family—his wife having brought him eight children, three sons and five daughters. Only one son survived him, Robert, the second Earl, who was at an early age elected one of the members for Hampshire, and continued to represent that county till his father's death. He was a fast personal friend and political associate of Charles James Fox, and when the Coalition ministry was formed in 1783 he was sent as Lord Lieutenant to Ireland, with Mr. Wyndham for Secretary. He is said to have been likely to have succeeded well in this post from the frankness and popularity of his manners, as well as his good sense and firmness; but he was soon removed from it by the ascendancy of the younger Pitt.[‡] He afterwards died at Paris, on his return from Italy, in July, 1786; and, having never been married, the title became extinct.[§]

The daughters all formed high alliances, but they all died without issue, except Lady Elizabeth, married to the eminent diplomatist, Sir Morton Eden, afterwards raised to the Irish peerage by the title of Lord Henley,—whose son, my most valued friend, was the editor of Lord Northington's *Judgments*, and who, having married a lady adorned with every grace and virtue, the sister of the prime minister Sir Robert Peel, left by her a son, the present representative of his great-grandfather, the Lord Chancellor.

[†] *Pleaser's Guide*, Part I. Lecture vi.

[‡] Preface to Eden's "Reports," xxix.
Henley's "Life of Lord Northington," 62—64.

[§] The epitaph says, that "he was nominated in MDCCLXXXIV to the arduous and distinguished station of Lord Lieutenant of Ire-

land: where, in times very difficult, he manifested such talents, assiduity, and firmness as conciliated the love and respect of the nation over which he presided, and gained him the approbation and esteem of his sovereign and his country."

CHAPTER CXLII.

LIFE OF LORD CHANCELLOR CAMDEN FROM HIS BIRTH TILL THE DEATH
OF GEORGE II.

I NOW enter on a most pleasing task. The subject of the following memoir was one of the brightest ornaments of my profession, and of my party,—for I glory like him in the name of Whig, although, I hope, I have never been reluctant to point out the errors of Whigs, or to praise Tory talent, honour, and consistency. From some of the opinions of Lord Camden I must differ, and I cannot always defend his conduct; but he was a profound jurist, and an enlightened statesman,—his character was stainless in public and in private life,—when raised to elevated station, he continued true to the principles which he had early avowed,—when transferred to the House of Peers, he enhanced his fame as an assertor of popular privileges,—when an ex-Chancellor, by a steady co-operation with his former political associates, he conferred greater benefits on his country, and had a still greater share of public admiration and esteem, than while he presided on the woolsack,—when the prejudices of the sovereign and of the people of England produced civil war, his advice would have preserved the integrity of the empire,—when America, by wanton oppression, was for ever lost to us, his efforts mainly contributed to the pacification with the new republic,—and Englishmen, to the latest generations, will honour his name for having secured personal freedom, by putting an end to arbitrary arrests under general warrants, for having established the constitutional rights of juries, and for having placed on an imperishable basis the liberty of the press.

Charles Pratt, afterwards Lord Chancellor and Earl Camden, was descended from a respectable gentleman's family that had been long settled at Careswell Priory, near Collumpton, in Devonshire. The first distinguished member of it was his father, Sir John Pratt, who was an eminent barrister in the reigns of William III. and Queen Anne,—gained considerable reputation by supporting the Whigs in the House of Commons

as representative for Midhurst,—at the accession of George I. was appointed a puisne Judge of the King's Bench, and in 1718 succeeded Lord Macclesfield as Chief Justice of that Court. The most famous decision in his time was respecting the right of a widow who had married a foreigner to claim parochial relief after his death from the parish in which she was born—thus reported in Sir James Burrow :

“ A woman having a settlement
 Married a man with none,
 The question was, he being dead,
 If what she had was gone ?
 “ Quoth Sir John Pratt, The settlement
 Suspended did remain
 Living the husband, but him dead,
 It doth revive again.”

Chorus of puisne Judges. ——— “ hut him dead,
 It doth revive again.” †

He likewise drew upon himself a great share of public attention by the able manner in which he conducted the trial of the famous Christopher Layer for high treason,² and by his decided opinion in favour of George I. respecting the Sovereign's control over the education and marriage of his grandchildren.^a

He was twice married, and had a very numerous family. Charles was the third son by the second wife, daughter of the Reverend Hugh Wilson, a canon of Bangor, and was born in the last year of the reign of Queen Anne. Of his boyhood little is recorded, except that, from his quickness and love of reading, he was considered a lad of promise, and that, from his cheerful and affectionate temper, he was a great favourite among his companions.

When only ten years old, he had the misfortune to lose his father ; but this was probably the remote cause of his future eminence. While he was studying the law, and young at the bar, the run of the house of the Chief Justice of England, with the chance of sinecure appointments, would have been very agreeable, but would probably have left him in the obscure herd to which the sons of Chancellors and Chief Justices have usually belonged. His mother intimated to him that the small amount of his patrimony would do little more than, with good management, defray the expense of his education, and that by his own exertions he must make his way in the world.

† Burr. Sett. Cas. ; Burr's Just., tit. “ Settlement.” 2 16 St. Tr. 93. a 15 St. Tr. 1195.

He was soon after sent to Eton, and, on account of the reduced circumstances of his family, he was placed upon the foundation. But in those days the collegers and oppidans were on the most cordial footing, and here he formed a friendship which lasted through life, and not only led to his advancement, but was of essential benefit to the state—with William Pitt,—then flogged for breaking bounds—afterwards the “Great Commoner” and EARL OF CHATHAM. He likewise had for his playmates Lyttleton and Horace Walpole. At that time, as now, Eton, from its many temptations and gentle discipline, was very ill adapted to a boy idly inclined; yet it was the best school of manly manners, and in the studious the “Genius of the place” fanned the flame of emulation, and inspired a lasting love of classic lore. Fortunately, young Pratt was eminent in the latter category, and here not only was his taste refined, but from his lessons in Livy, and a stealthy perusal of Claudian, he imbibed that abhorrence of arbitrary power which animated him through life.

At the election in July, 1731, he got “King’s,” and in the following term he went to reside at Cambridge. Being from his earliest years destined by his father to the bar, he had previously been entered of the Society of the Inner Temple.^b While at the university he did not much meddle with the mathematical pursuits of the place, or even very diligently attend classical lectures, being, from the preposterous privilege of his college, entitled to a degree without examination; but, while most of his Etonian friends sank into indolence, he not only diligently read the best Greek and Latin authors in his own way, but he began that course of juridical and constitutional study which afterwards made his name so illustrious. It is said that while he was an undergraduate several controversies arose in the college respecting the election of officers, and the enjoyment of exclusive privileges, and that he always took the popular side, opposing himself to the encroachments of the master with as much warmth and perseverance as he afterwards displayed on a wider arena.^c

In 1735, he proceeded B.A. as a matter of course, and having finished his academical curriculum, took chambers and began to keep his terms in the Inner

^b His admission is dated 5th June, 1728. He is designated “Carolus Pratt, generosus, filius quintus honorabilissimi Joannis Pratt, Eq.,” &c.

^c This reminds me of a story I have heard

of a very distinguished contemporary, who is said, when he was entitled to *fags* at Eton, to have summoned them before him and formally to have *emancipated* them.

Temple. I have not been able to learn any thing of his habits during this period of his life, but, from what followed, it is quite clear that he had been much more solicitous to qualify himself for business, than to form any connexions for obtaining it; and I suspect that, contented with hard reading and a diligent attendance to take notes in Westminster Hall, he did not even condescend to become a pupil in an attorney's office, which had become a common practice since "*moots*" and "*readings*" had fallen into disuse, and "*special pleaders*" had not yet come up. He was called to the bar in Trinity Term, 1738.

But very differently did young Pratt fare from the man whose rapid career had recently been crowned by his elevation to the woolsack. Yorke, the son of an attorney, himself an attorney's clerk, and intimate with many attorneys and attorneys' clerks, overflowed with briefs from the day he put on his robe, was in full business his first circuit, and was made Solicitor-General when he had been only four years at the bar. Pratt, the son of the Lord Chief Justice of England, bred at Eton and Cambridge, the associate of scholars and gentlemen, though equally well qualified for his profession, was for many years without a client. He attended daily in the Court of King's Bench, but it was only to make a silent bow when called upon "to move;"—he sat patiently in chambers, but no knock came to the door, except that of a dun, or of a companion as briefless and more volatile. He chose the Western Circuit, which his father used

A.D. 1739— to "*ride*," and where it might have been expected that
1741.

his name would have been an introduction to him,—but he often declared that his father's memory never brought him a guinea. Spring and summer, year after year, did he journey from Hampshire to Cornwall, without receiving fees to pay the tolls demanded of him at the turnpike gates, which were then beginning to be erected. During the summer circuit, in the year 1741, his nag died, and from bad luck, or from the state of his finances, he was only able to replace him by a very sorry jade. With difficulty did he get back to London—whence he thus wrote to a friend:—"Alas! my horse is lamèr than ever,—no sooner cured of one shoulder than the other began to halt. My losses in horse-flesh ruin me, and keep me so poor that I have scarce money enough to bear me in a summer's ramble; yet ramble I must if I starve to pay for it."

: In the beginning of the following year he had a glimpse of good fortune, being retained in the famous Chippenham Elec-

tion case as counsel for the sitting members. But facts, law, and arguments were wholly disregarded. This was the death-struggle of Sir Robert Walpole. All looked ^{A.D. 1742.} with impatience to the division, for which there had been on both sides most strenuous efforts. There were brought down the halt, the lame, the blind, the moribund. It was discovered that, not by the eloquence of Pratt, but by the good management of the Opposition "whipper-in," the Government was to be beaten. As the tellers began their office, Sir Robert beckoned to Mr. Rolt, the member whose return was questioned by a ministerial petition, to sit near him, and entered freely into conversation with him, animadverting on the ingratitude of several persons who were now voting with the Opposition, although he had greatly obliged them, and declaring that he should never again sit in that House.

In a few days after, Pratt wrote the following letter to a brother barrister in the country, with whom he was on very intimate terms :—

"Feb. 6, 1741 (2).

"Dear Davies,

"I am afraid you think me dead, for you can't think I have forgot you if I am alive. I thought it better to execute your orders than write idle letters without doing your business: so that if you have received your wine, and it proves good, you'll excuse the want of a foolish epistle to forerun it. I have of late been much taken up with a petition in the House of Commons, w^{ch} has taken up a great deal of time. It was the Chippenham Election: and y^r humble ser^t was employed ag^t the Court for y^e sitting members. The last division in this famous petition put an end to S^r Rob^t's reign and glory, for he then left the House of Commons, gave up the cause, and next day resigned all his places. So that I am complimented by many persons as having assisted in giving the last fatal blow to this great man, — a compliment w^{ch} I don't desire the credit of, but am content with the honour of having served my clients faithfully. I dare say you imagine that we in town know all that is to happen upon this great change, and expect to hear from me a compleat list of the new ministers, and the future plan of their measures. The town is full of this discourse, and every man has already settled the government as he wishes it may be settled. But I assure you that as yet we remain in as profound an ignorance of what is to be as you do in the country, therefore I shan't amuse with any of y^e idle reports that are current, w^{ch} are as various as the inclinations and wishes of those men are upon whose hopes or dispositions these reports are grounded. This is fact, that S^r Rob^t Walpole is created Earl of Orford, and his natural daughter by his last wife before the marriage made a lady

to give her the rank of an earl's daughter, w^{ch} otherwise her bastardy wd^d prevent her from taking. This is a ridiculous circumstance in y^e patent, and makes some people smile and others angry. It is said, too, that he has a pension of 4000*l.* for life settled. Thus far his retreat has been honourable: how far it will be safe for the future, I can't tell; but most people think there will be some angry motions at the meeting of y^e Parl^t—perhaps impeachments, but probably they will end in nothing. Mr. Pulteney has refused every thing: he will continue, he says, a lover of his country, and do his utmost to support the family and any good administration. This is a great character if he can persist in it. Most people think the Tories will get nothing by the change, but will be left in the lurch. No talk yet of a reconciliation between the King and Prince.

“Y^s most affectionately,

“C. PRATT.”^d

However, if our aspirant thought that business was now to pour in upon him, he was grievously disappointed, for several years passed away without his receiving another brief.

To cheer him up, his school and college friend, Sneyd Davies, addressed him a poetical epistle, in which the poet dwells upon the worthlessness of the objects of human ambition, and points out to him the course of the bright luminaries then irradiating Westminster Hall:

A. D. 1745.

“Who knows how far a rattle may outweigh
The mace or sceptre? But as boys resign
The play-thing, bauble of their infancy,
So farca it with maturer years: they sage,
Imagination's airy regions quit,
And under Reason's banner take the field,
With resolution face the cloud or storm,
While all their former rainbowa die away.
Some to the palace, with regardful step
And courtly blandishment, resort, and there
Advance obsequious;—in the seuate some
Harangue the full-bench'd auditory, and wield
Their list'ning passion (such the power, the sway
Of Reason's eloquence!)—or at the bar,
Where Cowper, Talhot, Somers, Yorke before
Pleaded their way to glory's chair supreme,
And worthy fill'd it. Let not these great names
Damp, but incite; nor Murray's praise obscure
Thy younger merit. Know, these lights, ere yet
To noonday lustre kindled, had their dawn.
Proceed familiar to the gate of Fame,
Nor think the task severe, the prize too high
Of toil and honour, for thy father's son.”^e

^d Letter kindly furnished to me by Major Evans, of Eyton Hall.

^e Dodsley's Collection, vol. vi.

He persevered for eight or nine years; but, not inviting attorneys to dine with him, and never dancing with their daughters, his practice did not improve, and his "*impecuniosity*" was aggravated. At last he was so much dispirited that he resolved to quit the bar,—to return to the seclusion of his college,—to qualify himself for orders,—and to live upon his fellowship as he might, till, in the course of time, he should be entitled to a college living, where he might end his days in peace and obscurity. This plan he certainly would have carried into execution, if he had not thought that it was fit he should announce it to the leader of his circuit, who had always been kind to him. This was Henley, afterwards Lord Northington, who, first in his usual jesting manner, and afterwards with seriousness and feeling, tried to drive away the despair which had overwhelmed his friend, and prevailed so far as to obtain a promise that Pratt would try one circuit more.⁴

At the first assize town on the next circuit, it so happened that Pratt was Henley's junior (by contrivance, it was A. D. 1744— suspected) in a very important cause, and that, just 1746. as it was about to be called on, the leader was suddenly seized with an attack of gout, which (as he said) rendered it necessary for him to leave the court and retire to his lodgings. The lead was thus suddenly cast upon Pratt, who opened the plaintiff's case with great clearness and precision, made a most animated and eloquent reply, obtained the verdict, was complimented by the judge, was applauded by the audience, and received several retainers before he left the hall. His fame travelled before him to the next assize town, where he had several briefs,—and from that time he became a favourite all round the circuit.⁵ Although Henley continued senior of the

{ I find in the *European Magazine* for July 1794, a supposed account of the dialogue between them, which I consider entirely fictitious. Here is a specimen of it:—"Henley heard him throughout with a seeming and anxious composure, when, bursting out into a horse-laugh, he exclaimed, in his strong manner, 'What! turn parson at last! No, by G—, Charles, you shan't be a P— neither! You shall do better for yourself, and that quickly too. Let me hear no more of this canting business of turning parson: you have abilities that run before us all, but you must endeavour to scour off a little of that d—d modesty and diffidence you have

about you, to give them fair play.'" The writer knew so little of Pratt's real history as to represent that he was afterwards introduced for the first time by Henley to Pitt.

⁵ My friend Mr. Dampier, Vice-Warden of the Stannaries, writes to me,—“Sir James Mansfield, who was of K. C., and ab^t 19 years jun^r to L^d C., used to tell me that he remembered L^d C. on the West. Circuit, and that his rise was very sudden and rapid, after a long time of no practice; but once having led a cause in the west, he became known, and was immediately in full business, on the circuit.”

“Western” for several years longer, till he was made Attorney-General, Pratt’s success was facilitated by an opening from the removal of two inferior men, who had long engrossed a great share of the business. Employment in Westminster Hall soon followed; for in new trials and other business connected with the circuit he displayed such great ability, and such a thorough knowledge of his profession, that in cases of weight he was soon eagerly sought after to hold “second briefs,” although he never seems to have had a great share of routine business,—which, with less éclat, is attended with more profit.^h

The first case in which he attracted the general notice of the public was in the memorable prosecution of a printer July 6, 1752. by Sir Dudley Ryder as Attorney-General, under the orders of the House of Commons, in consequence of some remarks on their commitment of the Honourable Alexander Murray for refusing to kneel at their bar. Lord Chief Justice Lee, the presiding Judge, intimated his opinion that the jury were only to consider whether the defendant published the alleged libel (which was clearly proved to have been sold by him in his shop at the Homer’s Head in Fleet Street), and whether “the S—r” meant “the Right Honourable Arthur Onslow, the Speaker of the House of Commons,” and “the H—h B—ff” meant “Peter Leigh, gentleman, then High Bailiff of the city of Westminster?” Pratt was junior counsel for the defendant, and following Ford, a distinguished lawyer in his day, whom he greatly eclipsed, he showed that *ex animo* he entertained the opinion respecting the rights of juries which he subsequently so strongly maintained against Lord Mansfield, and for which, after a lapse of forty years, he triumphantly struggled against Lord Thurlow in the last speech he ever delivered in parliament. He told the jury that they were bound to look to the nature and tendency of the supposed libel, and to acquit the defendant, unless they believed that he intended by it to sow sedition, and to subvert the constitution in the manner charged by the prosecutors:—

“Are you impannelled,” said he, “merely to determine whether the defendant had sold a piece of paper value two-pence? If there be an indictment preferred against a man for an assault with an intent to ravish, the intent must be proved; so if there be an indictment for an assault with intent to murder, the jury must consider whether

^h His name does not occur in the Reports nearly so frequently as those of some others who are long since forgotten.

the assault was in self-defence, or on sudden provocation, or of malice aforethought. The secret intention may be inferred from the tendency; but the tendency of the alleged libel is only to be got at by considering its contents and its character; and, because ‘S—r’ means ‘*Speaker*,’ and ‘h—h—b—ff’ means ‘*high-bailiff*,’ are you to find the defendant guilty, if you believe in your consciences that what he has published vindicates the law, and conduces to the preservation of order?” He then ably commented upon the absurdity of this prosecution by the House of Commons, who, arbitrarily and oppressively abusing the absolute power which they claimed, would not even tolerate a groan from their victims. Said he, “There is a common proverb,—and a very wise Chancellor affirmed that *proverbs are the wisdom of a people*,—LOSERS MUST HAVE LEAVE TO SPEAK. In the Scripture, Job is allowed to complain even of the dispensations of Providence, the causes and consequences of which he could not comprehend. As complaints are natural to sufferers, they may merit some excuse where the infliction is by the act of man, and to common understandings seems wanton and tyrannical. A gentleman of high birth and unblemished honour is committed to a felon’s cell in Newgate, because, being convicted of no offence, he refuses to throw himself before those for whom he did not feel the profoundest respect, into that attitude of humility which he reserved for the occasion of acknowledging his sins, and praying for pardon, before the throne of the Supreme Ruler of the Universe. Must all be sent to partake his dungeon who pity his fate? The Attorney-General tells a free people that, happen what will, they shall never complain. But, gentlemen, you will not surrender your rights, and abandon your duty. The fatal blow to English liberty will not be inflicted by an English jury.”

The Attorney-General having replied, and Lord Chief Justice Lee having reiterated his doctrine, by which every thing was to be reserved to the Court, except *publication* and *innuendoes*, the jury retired, and, being out two hours, returned a general verdict of NOT GUILTY. When the Attorney-General could be heard, after the shout of exultation which arose, he prevailed upon the Chief Justice to call back the jury, who were dispersing, and to put this question to them:—“Gentlemen of the jury, do you think the evidence laid before you, of the defendant’s publishing the book by selling it, is not sufficient to convince you that the said defendant did sell this book?” The foreman was at first “a good deal flustered;” but the question being repeated to him, he said, in a firm voice, all his brethren nodding assent, “Not guilty, my Lord; not guilty! That is our verdict, my Lord, and we abide by it!” Upon which there was a shout much louder than before; and the

Court broke up.ⁱ The controversy respecting the rights of juries was not settled till the passing of Mr. Fox's Libel Bill in 1792; but, after this expression of public feeling, the practice of requiring persons summoned to the bar for breach of privilege to fall down on their knees was discontinued by both Houses of Parliament.^k

For several years Pratt went on steadily in the ordinary progress of a rising lawyer. Without a silk gown, he was now one of the leaders of the Western Circuit, and, being considered peculiarly well read in parliamentary law, he was the favourite in all cases of a political aspect. He had a great share of election business before the House of Commons, which for the present he preferred to a seat in that assembly.

From some cause not explained (some uncharitably said from the apprehension that he might rival the Honourable C. Yorke, now making a distinguished figure at the bar) he was not a

favourite with the Chancellor, but he was at last
A.D. 1755. made a King's Counsel, upon a report which he never authorised, that he intended permanently to practise in the Court of King's Bench. When with his silk gown he went over to the Court of Chancery, as eminent counsel then sometimes did, and he was actually beginning to interfere with Charles Yorke, he was treated with much civility, but with marked disregard, by Lord Hardwicke, who plainly, though not tangibly, showed that he never listened to any thing which Pratt said.^m

I do not find that he attached himself to any particular section in politics, but he was on a footing of familiar intimacy with the great Whig chiefs, particularly with his old school-fellow Pitt, who was in the habit of consulting him respecting questions of a legal or constitutional nature which from time to time arose.

He was likewise in the constant habit of associating with artists and men of letters. Although he did not yet enjoy the sweets of domestic life, this must have been an agreeable portion of his existence, for, free from the anxieties of office, he had achieved an enviable station in society, the pleasures of which were enhanced by recollecting the despair into which he had formerly been plunged; he was courted by friends, and

ⁱ 18 St. Tr. 1203—1230.

^k On the trial of a peer for felony it is still put down in the programme,—that is, "to kneel when arraigned:" but this ceremony is not insisted on in practice.

^m On the authority of Sir James Mansfield, from the relation of Lord Camden himself. He added, that "Lord Mansfield so enlarged the practice of K. B. that counsel did not leave his Court."

respected by opponents; highly satisfied with the present, he had brilliant prospects before him. The disgrace brought upon the country by the imbecility of the Government might disquiet him; but his solicitude was mitigated by the consideration that this Government was becoming daily more unpopular, and that it might be replaced by one patriotic and powerful, in which he himself might be called to take a part.

At last Mr. Pitt was at the head of affairs with dictatorial authority. Resolved, both on public and private grounds, that his old Etonian friend should now be provided for, he thought it might be too strong a measure at once to give the Great Seal to a man at the bar, who had never been a law officer of the Crown, nor had sat in parliament; but he declared that Pratt should be Attorney-General in the place of Sir Robert Henley, who was to be made Lord Keeper. Against this arrangement Charles Yorke, who had been appointed Solicitor-General the November preceding, and whose father was mainly instrumental in constructing the new ministry, strongly protested, as derogatory to his rights and his dignity; but Pitt was firm, maintaining that, from standing at the bar and merit, Pratt ought long ago to have been raised to the honours of the profession. Yorke, although in a manner very ungracious, and although still retaining a grudge against Pratt for this supposed slight, agreed to serve under him as Solicitor.—Mr. Attorney received the honour of knighthood. July, 1757.

In those days the law officers of the Crown had no anxiety about a seat in parliament; they were not driven to canvass popular constituencies, with the danger of being thrown out, and the certainty of a large hole being made in their official earnings. Sir Charles Pratt was put in for the close borough of Downton, which he continued to represent without trouble or expense till he was made Chief Justice of the Court of Common Pleas.

He now flourished in the Court of Chancery, and he was an overmatch for the heavy Equity pleaders who for twenty years had been sleeping over "Exceptions" and "Bills of Revival."ⁿ

To share his prosperity and to solace his private hours, being too much occupied to go into gay company, he, though "on

ⁿ During the four years that he afterwards practised in this Court, there is hardly a reported case in which his name is not mention-

ed as counsel.—See Eden's Rep., temp. North-
ington.

the shady side of forty," resolved to take a wife. The courtships of some of my Chancellors have been amusing; but, having to *relate*, not to *invent*, I can only say of this union (which I believe to have been highly prudent and respectable, but quite unromantic), that the lady of his choice was Elizabeth, daughter and coheir of Nicholas Jefferys, Esq., of Brecknock Priory, who brought considerable wealth into the family, and in compliment to whom one of its titles was afterwards selected. They are said to have lived together in harmony and happiness; but throughout the whole of Lord Camden's career we have to regret that very few personal or private anecdotes of him have been handed down to us. We must be contented with viewing him on the stage of public life.

It is a curious fact that, although he was afterwards such a distinguished orator in the House of Lords, during the whole time that he sat in the House of Commons his name is not once mentioned in the printed parliamentary debates. This arises partly from the very imperfect record we have of the proceedings of the legislature during this period of our history, there being only one octavo volume for the twelve years from 1753 to 1765,—partly from the cessation of factious strife during Mr. Pitt's brilliant administration, and partly from Pratt's style of speaking being rather too calm and ratiocinative for the taste of the Lower House,—so that while he remained there he was merely considered "*par negotiis, neque supra*,"—equal to carrying through the law business of the Government, and fit for nothing more,—no one dreaming that hereafter he was to rival Chatham, and that Mansfield was to quail under him.

The only occasion when he seems to have attracted much notice as a representative of the people was in bringing forward the excellent bill—which unfortunately proved abortive—for amending the "Habeas Corpus Act," in consequence of a decision that it did not apply, unless where there was a charge of *crime*—so that in many instances persons illegally deprived of their liberty by an agent of the Crown could not have the benefit of it. Horace Walpole tells us, that "the Attorney-General declared himself for the utmost latitude of the habeas corpus," and adds, that "it reflected no small honour on him, that the first advocate of the Crown should appear as the first champion against prerogative." The bill having easily passed the Commons, where it was warmly

A. D. 1757—
1761.

supported by Pitt, was (as I have had occasion to mention elsewhere)^o rejected by the Lords, in deference to the opinion of the "law Lords," who then opposed all improvement, and likewise to gratify the strong prejudices of the King, who had openly declared against it, and who, throughout the whole course of his reign, most conscientiously and zealously opposed every measure, domestic or colonial, that had in it the slightest tincture of liberality.^p

Pratt, while Attorney-General, conducted two government prosecutions, still professing and acting upon the great principles of justice for which he had so boldly struggled when defending those who had been prosecuted by his predecessors. The first was against Dr. Hensey for high treason, in corresponding with the King's enemies and inviting them to invade the kingdom. The trial took place at the bar of the Court of King's Bench, before Lord Mansfield and the other Judges of that Court. Mr. Attorney, in opening the case to the jury, having read several letters which had been written by the prisoner to the French Government during the war, and which he contended were treasonable, said—

"These letters, and translations of them, being laid before you, you, gentlemen, will be proper judges of their destructive tendency; indeed (under the sufferance of the Court) you are the only judges of this fact. Proof being given that they are in the handwriting of the prisoner, and were sent off by him,—if you are of opinion, from a fair construction of their contents, that his object was to solicit

^o Ante, p. 273.

^p It is a curious fact, that, with regard to law reform, the two Houses have recently changed characters. I will not presume to praise the assembly to which I have now the honour to belong, as far as politics may be concerned; but in jurisprudential legislation, I say boldly, they are greatly in advance of the other House—which has become the great obstacle to improvement. I will give a few instances. The late Libel Bill (generally called in Westminster Hall "Lord Campbell's Libel Bill"), which originated in the House of Lords, was deprived in the House of Commons of some of its most important clauses for the protection of private character and the liberty of the press. In the session of 1845 the House of Commons threw out bills which, being approved of by the Lord Chancellor and all the law Lords, had passed the House

of Lords unanimously—1. To abolish "Deodands," that disgraceful remnant of superstition and barbarism; 2. To allow a compensation to be obtained by action where a pecuniary loss is sustained from death caused by the negligence of another, so that a railway company might be compelled to make some provision for orphans whose father has been killed by their default; and, 3. To permit actions to be commenced against persons who, having contracted debts in England or Ireland, have gone abroad to defraud their creditors, and there spend the funds remitted to them from home,—which at present the law cannot touch.—(1846.) In the Session of 1847 I was able to carry Bills 1 and 2; but Bill 3, chiefly meant for the benefit of Ireland, is considered by Irish Members derogatory to the dignity of that country.—(1849.)

and to encourage the landing of a French army on our shore, then he is guilty of the crime laid to his charge by this indictment;—but otherwise it will be your duty to acquit him, whatever opinion you may form of his character, and whatever suspicions you may entertain of his conduct.”

The jury having found a verdict of “*guilty*,” the Attorney-General consented that the day for the execution should be appointed at the distance of one month. The prisoner, after being several times respited, was finally pardoned—a striking instance of the clemency of the Government, and a strong contrast with the execution of Byng under the late administration.^a

The only *ex officio* information which he filed was against Dr. Shebbeare for a most seditious and dangerous publication, entitled “A Letter to the People of England,” containing direct incentives to insurrection. Horne Tooke, no enemy to the liberty of the press, approves of the prosecution, saying, that “if ever there was an infamous libel against the Government, surely it was that.”^r The trial came on in Westminster Hall before Lord Mansfield. In opening the case to the jury, the Attorney, although using rather quieter language, adhered to the doctrine for which he had struggled with such brilliant success in his first great speech in the *King v. Owen*, and expressly told the jury that he desired them, besides the evidence of publication, and the *innuendoes*, to consider the language of the libel, and not to find a verdict for the Crown unless they were convinced that it had a direct tendency to a subversion of the public tranquillity—from which they might fairly infer that the defendant published it “maliciously and seditiously,” as charged in the information; but he added, that “he did not wish for a conviction if any man in the world could entertain a doubt of the defendant’s guilt.” At the distance of many years, he stated with pride, in his speech in the House of Lords on Fox’s Libel Bill, the marked manner in which he had intimated his opinion to all the world, “that the criminality of the alleged libel was a question of fact with which the Court had no concern.”^s

Pratt conducted with the same propriety the prosecution of Lord Ferrers for murder before the House of Lords. A.D. 1760. Thus he opened, with touching simplicity and candour:—“My Lords, as I never thought it my duty in any

^a 19 St. Tr. 1342—1389.

^r 20 St. Tr. 708.

^s Annual Register, 1758.

case to attempt at eloquence where a prisoner stood upon trial for his life, much less shall I think of doing it before your Lordships: give me leave, therefore, to proceed to a narrative of the facts." These he proceeds to state with great perspicuity and moderation, as they were afterwards fully proved by the witnesses. The labouring oar on this occasion, however, fell to the Solicitor-General Yorke, who so ably repelled the defence of insanity.[†]

The labours of the law officers of the Crown were very light at the close of the reign of George II., for all opposition in parliament was annihilated: from the universal popularity of a triumphant Government, seditious libels were unknown,—and there were no Government prosecutions, except in the Court of Exchequer against unlucky smugglers.

CHAPTER CXLIII.

CONTINUATION OF THE LIFE OF LORD CAMDEN TILL HE RECEIVED THE GREAT SEAL.

ON the demise of the Crown, all things for some time went on very smoothly. Pratt prepared the proclamation of George III. His patent as Attorney-General was ^{A.D. 1760.} renewed by the young Sovereign, and no great alarm was excited by the circumstance of Lord Bute, who had been groom of the stole to the Prince, being sworn a Privy Councillor. But when this nobleman was made Secretary of State, and began with the air of a royal favourite to interfere actively with the patronage and with the measures of the Government, it was discovered that Whig rule was coming to an end. The Stuarts having fallen into utter contempt, so that the return of their persons was no longer to be dreaded, there was to be a restoration of their maxims of government. Being of "good Revolution principles," which had been openly stated as a recommendation to office during the last two reigns, now made a man be looked upon at Court very coldly, and "the divine indefeasible right of kings" became the favourite theme,—in total forgetfulness of its incompatibility with the

[†] 19 St. Tr. 885.

parliamentary title of the reigning monarch. A breaking up of the combination of the few great families who called themselves "*the Whig party*,"—who had for many years monopolised the patronage of the Crown,—and who had on various occasions exhibited the vices with which they had formerly been in the habit of reproaching the Tories,—would have been a most laudable exploit; but unfortunately the Sovereign was determined to transfer power from one faction, kept in check by professing liberal principles, to another imbued with a love of absolutism,—although the leaders of it while in opposition had occasionally spoken the language of freedom—which they were now eager to disclaim.

Pratt being resolved to maintain his own principles, happen
A.D. 1760— what would,—as the proposal to make the Judges ir-
1761. removable at the commencement of a new reign was laudable by carrying into effect the intention of the Act of Settlement, and as he was not called upon to do any thing in parliament or in Westminster Hall inconsistent with his notions of duty,—he continued in his office of Attorney-General even when his chief—strongly condemning the foreign policy now adopted—had resigned. If he had continued Attorney-General till No. XLV. of "*The North Briton*" was published, he must then have thrown up his office, for he would sooner have thrust his hand into the fire than advised or defended general warrants to seize the printer and publisher, or countenanced any of the violent proceedings against Wilkes, which shortly rendered the Government so odious and contemptible, and introduced factious struggles almost unparalleled in our annals.

But in the lull before the storm died Lord Chief Justice
A.D. 1762. Willes, and the Attorney-General laid his head upon "*the cushion of the Common Pleas.*" It was rather agreeable to the Sovereign and the ministers that he should be placed in a Court in which it was thought that no political cases could come, and he could do no mischief with his "*wild notions of liberty.*" Accordingly, his patent as Chief Justice was immediately made out; and having qualified himself by submitting to the degree of the coif,^a on the 23rd of January, the first day of Hilary Term, 1762, he took his seat in the Court of Common Pleas. Here, it so turned out, there were soon more political cases than during many years after came

^a He was called along with Serjeant Burland. *Emblema annuli—Tu satis ambobus.*—z Wilson, 136.

before the Court of King's Bench,—where he would by no means have been trusted. He himself anticipated nothing but repose in his new office; and he really thought that his political life was at an end. Thus he writes to his old friend Davies: "I remember you prophesied formerly that I should be a Chief Justice, or perhaps something higher. Half is come to pass: I am Thane of Cawdor, but the greater is behind; and if that fails me, you are still a false prophet. Joking aside—I am retired out of this bustling world to a place of sufficient profit, ease, and dignity; and I believe that I am a much happier man than the highest post in the law could have made me." He then little expected that before long the prophet might have exclaimed to him, "Thou hast it now, King, Cawdor, Glanis—all!"

Lest he should never have a better opportunity, in the Court of Common Pleas, of proclaiming his adherence A.D. 1762- to constitutional principles, a question of practice 1763. arising during his first term, viz., "whether the Judges could refuse a plea *puis darrein continuance*," the Chief Justice said, "Such discretion is contrary to the genius of the common law of England, and would be more fit for an Eastern monarchy than for this land of liberty. *Nulli negabimus justitiam.*"^x

But, ere long, he had to adjudicate upon a case that excited more interest in the public mind than any that had occurred in a court of law since the trial of the Seven Bishops.

On the morning of Saturday, 30th of April, 1763, John Wilkes, the member for the borough of Buckingham, was arrested under Lord Halifax's general warrant to "seize the authors, printers, and publishers of the North Briton, No. XLV., together with their papers." As soon as a copy of the warrant could be obtained, while he was still in his house in Great George Street, in custody of the messengers, Serjeant Glyn, in the Court of Common Pleas, moved for, and obtained for him, a writ of *habeas corpus*, returnable immediately,—the Chief Justice observing, "that this was a most extraordinary warrant." The Solicitor to the Treasury, who was present, having reported what had passed to the Secretary of State, Mr. Wilkes, before the writ could be served on the messengers, was committed a close prisoner to the Tower, and the officers of the Secretary of State returned that "he was not in

^x 2 Wilson, 137. *Paris v. Salkeld.*

their custody." On the Monday a *habeas corpus* was obtained, directed to the Lieutenant of the Tower.

The metropolis was now in a state of almost unparalleled excitement. At the sitting of the Court, on the Tuesday morning, Mr. Wilkes was brought into Court by the Lieutenant of the Tower, who, without noticing in his *Return* the "general warrant" under which the arrest took place, merely set out the commitment to the Tower of Mr. Wilkes, as "the author and publisher of a most infamous and seditious libel, entitled the North Briton, No. XLV., tending to inflame the minds and to alienate the affections of the people from his Majesty, and to excite them to traitorous insurrections against the government." Thus the question of the legality of general warrants was for the present evaded: but Serjeant Glyn moved, that Mr. Wilkes should be set at liberty, "*first*, on the ground that it did not appear that there had been any information on oath against him before his commitment; *secondly*, that no part of the libel was set forth to enable the Court to see whether any offence had been committed; and, *thirdly*, that he was privileged from arrest as a member of parliament." After a learned argument by counsel, and a vapouring speech from Mr. Wilkes himself, the Court took time to consider; and, on the Friday following, the Lord Chief Justice Pratt delivered their unanimous opinion, overruling the first two objections, and thus dealing with the last:—

"The third matter insisted upon for Mr. Wilkes is, that he is a member of parliament, (which is admitted by the King's Serjeants,) and so entitled to privilege to be free from arrests in all cases *except treason, felony, and actual breach of the peace*; and we are all of opinion that he is entitled to that privilege, and that he must be set at liberty. The Seven Bishops were most unjustly ousted of their privilege, three of the Judges deciding that a seditious libel was an actual breach of the peace. 4 *Inst.* 25 says, 'the privilege of parliament holds, unless it be in three cases, viz., treason, felony, and the peace. Privilege of parliament holds in informations for the King, unless in the cases before excepted.' The case of an information against Lord Tankerville for bribery (4 *Anne*) was within the privilege of parliament. We are all of opinion that a libel is not a breach of the peace: it tends to a breach of the peace, and that is the utmost. But that which only tends to a breach of the peace cannot be an actual breach of it. In the case of the Seven Bishops, Judge Powell, the only honest man of the four Judges, dissented, and I am bound to be of his opinion, and to say that case is not law—but

it shows the miserable condition to which the state was then reduced. Let Mr. Wilkes be discharged from his imprisonment."

A great part of the population of London being in Westminster Hall, Palace Yard, and the adjoining streets, a shout arose which was heard with dismay at St. James's.^y

As the authorities then stood, I think a court of law was bound to decide in favour of privilege in such a case; but although I must condemn the servile desire to please the King and his ministers, by which both Houses were actuated on the re-assembling of parliament, I cannot but approve the resolution to which they jointly came, and which, I presume, would now be considered conclusive evidence of the law, "that privilege of parliament does not extend to the case of writing or publishing seditious libels."^z I do not think that privilege of parliament should in any respect interfere with the execution of the criminal law of the country. Little inconvenience arises from the immunity of members of parliament from arrest for debt, and this is necessary to protect them in the discharge of their public functions.

The immense popularity which Lord Chief Justice Pratt now acquired, I am afraid, led him into some intemperance of language, although his decisions might be sound. Many actions were brought in his Court, and tried before him, for arrests under general warrants; and, the juries giving enormous damages, applications were made to set aside the verdicts, and to grant new trials. It might be right to refuse to interfere, but not in terms such as these:—

"The personal injury done to the plaintiff was very small, so that if the jury had been confined by their oath to consider the mere personal injury only, perhaps twenty pounds would have been thought damages sufficient; but the jury saw before them a magistrate exercising arbitrary power over all the King's subjects—violating Magna Charta, and attempting to destroy the liberty of the kingdom by insisting on the legality of this general warrant; they heard the King's counsel, and saw the Solicitor to the Treasury endeavouring to support and maintain the legality of the warrant in a tyrannical and severe manner. These are the ideas which struck the jury on the trial, and I think they have done right in giving exemplary damages. To enter

^y 2 Wilson, 151—160; 19 St. Tr. 982—1002.

^z 15 Parl. Hist. 1365.—I am not aware whether the privilege was claimed in cases of libel after conviction, so as to prevent sen-

tence of imprisonment. The Earl of Abingdon, and other members of parliament, have since been sentenced to imprisonment for libel without question.

a man's house under colour of a nameless warrant in order to procure evidence, is worse than the Spanish inquisition—a law under which no Englishman would wish to live an hour;—it was a most daring attack on the liberty of the subject. 'Nullus liber homo capiatur vel imprisonetur, nec super eum ibimus—nisi per legale iudicium parium suorum vel per legem terræ.' An attempt has been made to destroy this protection against arbitrary power. I cannot say what damages I should have given if I had been upon the jury."^a

Mr. Wilkes's own action being afterwards tried before Lord Chief Justice Pratt, he said,—

"The defendants claim a right, under a general warrant and bad precedents, to force persons' houses, break open escritaires, seize papers where no inventory is made of the things taken, and no persons' names specified in the warrant, so that messengers are to be vested with a discretionary power to search wherever their suspicions or their malice may lead them. As to the damages, I continue of opinion that the jury are not limited by the injury received. Damages are designed not only as a satisfaction to the injured person, but likewise as a *punishment to the guilty, and as proof of the detestation in which the wrongful act is held by the jury.*"^b

The jury having given 1000*l.*, a bill of exceptions was tendered to the direction—but the Chief Justice refused to receive it, as it came too late after verdict.

In *Leach v. Money*,^c however, the question as to the legality of general warrants was regularly raised. There, Lord Chief Justice Pratt having given a similar direction, a bill of exceptions was duly tendered and carried by writ of error into the King's Bench. It was in arguing this case that Dunning laid the foundation of his splendid fame. Lord Mansfield having, in the course of the argument, thrown out an opinion against the legality of the warrant, the Attorney-General Yorke contrived to be beaten on a bye point; but, without a formal judgment, general warrants have ever since been considered illegal, although they were sanctioned by a uniform usage of ancient standing in the office of the Secretary of State.^d

Another very important case was brought before the Court of Common Pleas while Pratt presided there, in which the question was distinctly raised, "whether, on a charge of libel, the Secretary of State may grant a warrant to *search for, seize, and carry away papers;*" and in support of this practice too a long

^a 2 Wils. 206, 207. *Huckle v. Money.*

^c 3 Burr. 1692.

^b Ib. 244; *Beardmore v. Carrington.*

^d 19 St. Tr. 982—1002.

course of precedents was proved. But, after protracted arguments, the Chief Justice said,—

“The warrant was an execution in the first instance without any previous summons, examination, hearing the plaintiff, or proof that he was the author of the supposed libels,—a power claimed by no other magistrate whatever (Scroggs, C. J., always excepted); it was left to the discretion of the defendants to execute the warrant in the absence or presence of the plaintiff when he might have no witness present to see what they did, for they were to seize all papers, bank bills, or any other valuable papers they might take away if they were so disposed. If this be lawful, both Houses of Parliament are involved in it; for they have both ruled that, in such matters, they are on a footing with all the rest of the King’s subjects. In the case of Wilkes, a member of the House of Commons, all his books and papers were seized and taken away: we were told by one of these witnesses, that ‘he was obliged by his oath to sweep away all papers whatsoever.’ If this be law, it would be found in our books, but no such law ever existed in this country; our law holds property so sacred, that no man can set his foot on his neighbour’s close without his leave. The defendants have no right to avail themselves of the usage of these warrants since the Revolution,—that usage being contrary to law. The Secretary of State cannot make that law which is not to be found in our books. It must have been the guilt or poverty of those on whom such warrants have been executed that deterred or hindered them from contending against the power of a Secretary of State and the Solicitor to the Treasury, as such warrants could never have passed for lawful. It is said to be better for the Government and the public to seize the libel before it is published. If the legislature be of that opinion, they will make it lawful. As yet our law is wise and merciful, and supposes every man accused to be innocent till he is tried by his peers and found guilty. Upon the whole, we are of opinion that this warrant is wholly illegal and void.”^e

Pratt, while a common law Judge, certainly was of signal service to his country. He not only arrested some flagrant abuses in his own time, but he laid down principles upon which other flagrant abuses still continuing, such as the opening of private letters at the Post-office by order of the Secretary of State, may still be reached and remedied.

It would appear from the Reports that there were few cases of importance, not of a political nature, debated in the Common Pleas while Pratt was Chief Justice. The most important, perhaps, was *Doe v. Kersey*,^f in which he maintained, in

^e *Entick v. Carrington*; 19 St. Tr. 1002—*Eccl. Law*, 97; *Wyndham v. Chatwynd*, 1 Burr. 414.

^f See *Doe d. Hendson v. Kersey*, 4 Burn.

opposition to the other Judges of his own Court, and also to a unanimous decision of the King's Bench, that witnesses to a will must be disinterested when they attest it, and that it is not enough that their interest is removed before they come to prove it. Although he was overruled, the legislature adopted his opinion, by enacting that the moment of attestation is the period to regard in considering their credibility. In no other case was there a final difference between him and his brethren on the bench, and all his contemporaries unite in bearing testimony to the combination of dignity, impartiality, and courtesy with which he presided over the proceedings of his Court.⁵

After the liberation of Wilkes, and the condemnation of
 A.D. 1764. "general warrants" and "search warrants for papers," Pratt became the idol of the nation. Grim representations of him laid down the law from sign-posts. Many busts and prints of him were sold, not only in the streets of the metropolis, but in provincial towns and remote villages. A fine portrait of him by Sir Joshua Reynolds, with a flattering inscription, "in honour of the zealous asserter of English liberty by law," was placed in the Guildhall of the city of London. Addresses of thanks to him poured in from all quarters, and most of the great municipalities of the empire presented him with the freedom of their corporations. English journals and English travellers carried his fame over Europe; and one of the sights of London which foreigners went to see, was THE GREAT LORD CHIEF JUSTICE PRATT.

On the formation of the Rockingham administration, al-
 July, 1765. though the leaders unfortunately consented to have Northington for their Chancellor, they wished to court popularity, and to give a pledge that they meant to follow a different course of policy at home and abroad from their predecessors, who prosecuted Wilkes and taxed the colonies. Accordingly, their first act was to raise the popular Judge to the peerage, by the style of "Baron Camden, of Camden Place, in the county of Kent."^h The property from which he took his title had belonged to the celebrated antiquary of that name, and had passed, through several changes of ownership, into the possession of the Pratts.

⁵ 2 Wilson, 275—292; *Entick v. Carrington*; 19 St. Tr. 1073.

^h The Duke of Grafton, in his "Journal," says, "One of the first acts of our administration was to obtain from his Majesty the ho-

nours of a peerage for the true patriot, Lord Chief Justice Pratt, which the King had the condescension to grant to our earnest entreaties; the news of which was received by the nation with much applause."—Part. II. p. 47.

The new Peer took his seat in the House of Lords on the first day of the following session, being looked at with a jealous eye both by Lord Northington, who had opposed his elevation, and by Lord Mansfield, who instinctively dreaded a contest for the supremacy which he had enjoyed there since the death of Lord Hardwicke.

I have already mentioned Lord Camden's maiden effort upon the right to tax America, where he was so rudely assailed by the Lord Chancellor.¹ The declaratory bill being brought in, he on a subsequent day opposed it in a set speech, upon which he had taken immense pains,—which has been rapturously praised, and some passages of which are still in the mouths of schoolboys,—but which I must acknowledge seems to me to exhibit false reasoning and false taste. Having begun by alluding to the charge against him, as “the broacher of new-fangled doctrines, contrary to the laws of this kingdom, and subversive of the rights of Parliament,” he thus proceeded :

“My Lords, this is a heavy charge, but more so when made against one stationed as I am, in both capacities as a Peer and a Judge, the defender of the law and the constitution. When I spoke last, I was indeed replied to, but not answered. As the affair is of the utmost importance, and in its consequences may involve the fate of kingdoms, I have taken the strictest review of my arguments, I have re-examined all my authorities—fully determined, if I found myself mistaken, publicly to own my mistake and give up my opinion; but my searches have more and more convinced me that the British Parliament has no right to tax the Americans. I shall not criticise the strange language in which your proposed declaration is framed; for to what purpose, but loss of time, to consider the particulars of a bill, the very existence of which is illegal,—absolutely illegal,—contrary to the fundamental laws of nature, contrary to the fundamental laws of this constitution,—a constitution grounded on the eternal and immutable laws of nature,—a constitution whose centre is liberty, which sends liberty to every individual who may happen to be within any part of its ample circumference? Nor, my Lords, is the doctrine new; it is as old as the constitution; it grew up with it; indeed, it is its support; taxation and representation are inseparably united. God hath joined them, no British Parliament can put them asunder; to endeavour to do so, is to stab our very vitals. My position is this—I repeat it—I will maintain it to my last hour—taxation and representation are inseparable; this position is founded on the laws of nature; it is itself a law of nature; for whatever is a man's own,

¹ Ante, p. 329.

is absolutely his own ; no man has a right to take it from him without his consent, either expressed by himself or representative ; whosoever attempts to do it, attempts an injury ; whosoever does it commits a robbery ;^k he throws down and destroys the distinction between liberty and slavery. Taxation and representation are coeval with, and essential to, the constitution. I wish the maxim of Machiavel were followed — that of examining a constitution, at certain periods, according to its first principles ; this would correct abuses and supply defects. To endeavour to fix the æra when the House of Commons began in this kingdom, is a most pernicious and destructive attempt ; to fix it in Edward's or Henry's reign, is owing to the idle dreams of some whimsical, ill-judging antiquarians. When did the House of Commons first begin ? When, my Lords ? — it began with the constitution. There is not a blade of grass growing in the most obscure corner of this kingdom which is not — which was not ever — represented since the constitution began ; there is not a blade of grass which, when taxed, was not taxed by the consent of the proprietor." [He then examines, at great length, the arguments drawn by analogy from Ireland, Wales, Berwick, and the Counties Palatine ; and, having treated with merited scorn the miserable crotchet that America was virtually represented in the House of Commons, he thus concluded :] "The forefathers of the Americans did not leave their native country, and subject themselves to every danger and distress, to be reduced to a state of slavery : they did not give up their rights ; they expected protection, not chains, from their mother country ; by her they believed that they should be defended in the possession of their property, and not despoiled of it. But if you wantonly press this declaration, although you now repeal the Stamp Act, you may pass it again in a month ; and future taxation must be in view, or you would hardly assert your right to enjoy the pleasure of offering an insult. Thus our fellow-subjects in America will have nothing which they can call their own, or, to use the words of the immortal Locke, *What property have they in that which another may by right take, when he pleases, to himself?*"^m

Although the Stamp Act was most properly repealed, and nothing could exceed the folly of accompanying the repeal of it with the statutable declaration of the abstract right to tax, I confess I do not understand the reasoning by which, admitting that the British Parliament had supreme power to legislate for the colonies, a law passed to lay a tax upon them, though it may be unjust and impolitic, is a nullity. I agree that it may be put upon the footing of an act of attainder

^k These words offended George Grenville, the author of the Stamp Act, so much, that he complained of them in the House of Commons, pronouncing them, with great emphasis, to be "a libel upon parliament ;" and threat-

ening to bring the printer of the speech to the bar for punishment. But no farther notice was taken of it.—*Almon's Biographical Anecdotes*, i. 377.

^m 16 Parl. Hist. 177.

without hearing the party attainted in his defence, or an act to take away a man's private property without compensation; but could Lord Camden, sitting as a Judge, have held such acts to be nullities—hanging for murder the sheriff who assisted at the execution in the one case, or in an action of trespass recognising the property of the original owner in the other? Would not a statute oppressively encroaching on the personal liberty of the colonists, or wantonly interfering with the exercise of their industry, be in all respects as objectionable as a statute enacting that “their deeds and contracts shall be void, unless written upon paper or parchment which has paid a duty to the state?” Nor do I see how our constitutional rights would be at all endangered by acknowledging the undoubted fact, that representation was unknown in this country till the end of the reign of Henry III., and that the Commons did not till long after sit in a separate chamber as an independent branch of the legislature. The assertion that all property and that all classes were represented in England, rather favours George Hardinge's doctrine, “that the Americans were actually represented by the knights of the shire for Kent, because the land in America was all granted by the Crown, to be held in socage of the manor of East Greenwich in that county.” However, our patriot displayed a noble enthusiasm on this occasion, and perhaps one ought to be ashamed of critically weighing the expressions which he used.^a

With the exception of opposing the Declaratory Act, Lord Camden gave the Rockingham administration his A.D. 1766. cordial support; and he was free from the imputation to which Mr. Pitt was subject, of assisting the Court in getting rid of men who were sincerely anxious to conciliate America.

When Lord Northington at last abruptly brought on a crisis, and Mr. Pitt was sent for to form a new administration, Lord Camden was on the Midland Circuit. A communication was immediately opened between them; and Lord Camden ex-

^a Junius, in his first letter, which appeared on the 21st of January, 1769, six years before hostilities commenced, severely reflected on the speeches of Mr. Pitt and Lord Camden in this debate, and accused them of thereby separating the colonies from the mother country:—“Mr. Pitt and Lord Camden were to be the patrons of America, because they were in opposition. Their declaration gave spirit and argument to the colonies; and while,

perhaps, they meant no more than the ruin of a minister, they, in effect, divided one half of the empire from the other.” I cannot agree with this unscrupulous writer in imputing improper motives to them; but I do agree with him in condemning their assertion, “that the authority of the British legislature is not supreme over the colonies in the same sense in which it is supreme over Great Britain.”—See Junius's Letter, 5th October, 1771.

pressed his willingness to co-operate in any way for the public good. The state of his mind, and the progress of the negotiation, will best be disclosed by the following letters written by him to Mr. T. Walpole, a common friend :—

“ July 13, 1766. Nottingham.

“ Dear Sir,

“ I thank you for your intelligence, which turns out to be true, as the same post brought me a letter from the Chancellor to the same effect, though more authentic and circumstantial. Mr. P. then is come. May it be prosperous! But I foresee many difficulties before an administration can be completely settled. You are near the scene of action, and as likely to be entrusted by the great man as any body; or, if not, must of course be so conversant with those who know, as to hear the best intelligence. My old friend, the C^r, has taken so much laudable pains to leave his office, that he must, in my opinion, remain. The D. of N., and your friend, the Marquess, must give way: but I do not believe Mr. P. will wish to remove the rest in office, unless, perhaps, they, in a pique, should scorn to hold on under his appointment, which I do not expect. It is an untoward season of the year, every body out of town—and expresses must be sent for concurrence and concert to poor gentlemen who are at their country-houses, without friends or advisers near; so they must, in some measure, follow the dictates of their own judgment, which may be more likely to mislead than direct. I am unable to conjecture; but if I am not much mistaken, the E. T. will accede.

“ I can send you nothing in return for your intelligence, unless I could suppose you could be interested with stories of highwaymen and housebreakers. Perhaps you will not be displeased to hear that I am well and in good spirits—have had much travelling and little business—that one-third of my circuit is over, and that I am, let matters be settled or unsettled, most sincerely yours,

“ CAMDEN.”

“ July 19, 1766. Leicester.

“ Dear Sir,

“ I am arrived late at this place, and find letters from you and Nuthall, pressing me to leave the circuit. I am willing enough to quit this disagreeable employment, but I think I ought not, upon a private intimation, to depart from my post. If you will by letter, or by express if you please, only tell me that Mr. Pitt would wish to see me, I will come to town at a moment's warning. L^d T. is gone. If Mr. Pitt is not distressed by this refusal, or if he is provoked enough not to feel his distress, I am rather pleased than mortified. Let him fling off the Grenvilles, and save the nation without them.

“ Yours ever, &c.

“ CAMDEN.”

“Dear Sir,

“July 20, 1766. Leicester.

“I have slept since I wrote to you; and having taken the advice of my pillow upon the subject of my coming to town, I remain of the same opinion, that I ought not at this time to quit my station, uncalled and uninvited. If Mr. P. really wants me, I would relieve his delicacy by coming at his request, conveyed to me either by you or Mr. Nuthall; but I suspect the true reason why he has not desired me to come, is because, as things are just now, he does not think it fitting. Sure Mr. P. will not be discouraged a second time by Lord T.’s refusal. He ought not for his own sake, for it does become him now to satisfy the world that his greatness does not hang on so slight a twig as T. This nation is in a blessed condition if Mr. P. is to take his directions from Stowe. A few days will decide this great affair, and a few days will bring me back of course. In the mean time, if my sooner return should be thought of any consequence, I am within the reach of an express. I was caught at Chatsworth by the D. of Devon and his 2 uncles, and very civilly compelled to lye there; but not one word of politics.

“I am, &c.

“CAMDEN.”

“Warwick, July 24, 1766.

“Dear Sir,

“I am much concerned to find that Mr. Pitt’s illness hangs upon him so long, and the wishes of the public by that means disturbed. He must set his hand to the plough, for the nation cannot be dallied with any longer. L^d T.’s wild conduct, though Mr. P. is grievously wounded by it, may, for aught I know, turn out to be a favourable circumstance to reconcile him more to the present ministry, and of which corps he must form, as he always intended, this our administration. Indeed this inclination is one of the principal grounds of difference between the two brothers. L^d T. having closely connected himself with that set of men whom he opposed so inveterately; I have heard very authentically from the Stowe quarter, that one of the chief points upon which they broke was upon the promotion of L^d G., and recommended by L^d T. to be Secretary of State, under the colour of enlarging the bottom, and reconciling all parties. That since he asked nothing for his brother G., he had a right to insist upon this promotion. The other, on the contrary, put a flat negative upon all that connexion. L^d T. was very willing to go hand in hand with Mr. P. *pari passu*, as he called it, but would acknowledge no superiority or control. This was continually and repeatedly inculcated, not to say injudiciously, if he really intended to unite, because such declarations beforehand must create an incurable jealousy, and sow disunion in the very moment of reconciliation. He taxes Mr. P. with private ingratitude, and is offended that two or three days elapsed before he was sent for. This is public talk at his Lordship’s table, and

therefore requires no secrecy. There are now, or will be in a few days at Stowe, the two Dukes of B. and M., with their ladies, Sir J. Amherst, and the royal guests. Therefore L^d T. is declared not the head of that party, for that is an honour he must never expect, but a proselyte received amongst them. Let not Mr. P. be alarmed at this formidable gathering of great men. The King and the whole nation are on the other side. I hope to be in town next Wednesday. In the mean time, believe me, &c.,

“CAMDEN.”

When he arrived in town, on the conclusion of the circuit, he found the whimsical arrangement nearly completed,—according to which Mr. Pitt, becoming a Peer, was to be Lord Privy Seal and Prime Minister, the Duke of Grafton was to be First Lord of the Treasury, Lord Northington was to be President of the Council, Sir Charles Saunders was to be First Lord of the Admiralty, and Lord Shelburne and General Conway were to be Secretaries of State. The Great Seal was offered to Lord Camden, and, without hesitation, he accepted it,—stipulating only (as he reasonably might), that on giving up a lucrative situation, which he held during good behaviour, he should have a retired allowance of 1500*l.* a year, and the reversion of a tellership for his son.^o Although there were strange and discordant elements in the new Cabinet into which he was to enter, he reasonably supposed that he must be secure under the auspices of that great man who had formed it, and who had himself, through life, been the devoted friend of liberty.

Believing that the Lord Privy Seal would reduce into insignificance the Heads of the Treasury and of the Admiralty, and the Secretaries of State, he anticipated, with certainty, the speedy conciliation of America, the increased humiliation of the House of Bourbon, and the return of tranquillity at home, by the abandonment of the unconstitutional policy which had marked the measures of Government since the commencement of the present reign. He thought that Pitt's second administration was to be as prosperous as the first,—if, from its pacific tendency, it should be less brilliant. For himself,

^o In a letter to the Duke of Grafton, dated 1st Aug. 1766, he says —“The favours I am to request from your Grace's despatch are as follows:—

“1. My patent for the salary.
“2. Patent for 1500*l.* a year upon the Irish establishment, in case my office should deter-

mine before the tellership drops.

“3. Patent for tellership for my son.

“4. The equipage money: Lord Northington tells me it is 2000*l.* This, I believe, is ordered by a warrant from the Treasury to the Exchequer.”

he calculated that, with such a chief, the political functions of his office would require little time, and cause little anxiety,—so that, concurring in the measures of a powerful as well as liberal Government, he might chiefly devote himself to the discharge of his judicial duties, and to the improvement of our jurisprudence.

At a council held at St. James's on the 30th of July, 1766, Lord Camden received the Great Seal from his Majesty with the title of Lord Chancellor.

CHAPTER CXLIV.

CONTINUATION OF THE LIFE OF LORD CAMDEN TILL HE BECAME AN EX-CHANCELLOR.

LORD CAMDEN'S appointment to the woolsack gave almost universal satisfaction;^p and he had more doubts than any one else as to his own sufficiency. He deemed it lucky that he had ^{July 30,} the long vacation to refresh his recollection of ^{1766.} Equity, and to get up the cases which had recently been decided in the Court of Chancery, while he had been a common law Judge.

He held sittings before Michaelmas Term in Lincoln's Inn Hall, and on the 6th of November, the first day of the term, after a grand procession from his house in Lincoln's Inn Fields to Westminster Hall, he was there installed in his office with all the usual solemnities.^q

^p Lord Shelburne, in a letter to Mr. Pitt, dated 10th July, 1766, says, in a "P.S. You must permit me to add how happy I am in the choice of a Chancellor—and murmurs only come from the ultra-Tories."

^q "30th July, 1766. Robert Earl of Northington, Lord High Chancellor of Great Britain, having delivered the Great Seal to the King, at his Palace of St. James's, on Wednesday, the 30th day of July, 1766, his Majesty, the same day, delivered it to Charles Lord Camden, Chief Justice of the Common Pleas, with the title of Lord High Chancellor of Great

Britain; who was then sworn into the said office before his Majesty in Council. His Lordship sat in Lincoln's Inn Hall during the Seals before Michaelmas Term; and on Monday, the 6th day of November, being the first day of Michaelmas Term, went in state from his house in Lincoln's Inn Fields to Westminster Hall, accompanied by the Earl of Northington, Lord President of the Council, the Duke of Grafton, First Lord of the Treasury, the Earl of Bristol, Lord Lieutenant of Ireland, the Earl of Shelburne, and the Right Honourable Henry Seymour Conway, two of

As an Equity Judge Lord Camden fully sustained the reputation he had acquired while presiding in the Court of Common Pleas. When he pronounced a decree upon the construction of a will, or the liability of a trustee, he A.D. 1766—
1770. was not received with shouts of applause from hundreds of thousands of persons assembled round the Court, as when he ordered the liberation of WILKES, or adjudged the illegality of "general warrants;" but he now conciliated the calm respect and good opinion of all parties by his extensive legal information, by his quickness of perception and soundness of understanding, by the perspicuity with which his opinions were propounded, by the patience and impartiality which he uniformly displayed, and by his dignified politeness, which appeared more graceful by contrast with the unrefined manners of his predecessor. Although without the qualification, now considered indispensable and all-sufficient for the Equity bench, of having passed many years in the drudgery of drawing bills and answers, his mind was deeply imbued with the general principles of jurisprudence; he had studied systematically the Roman civil law,—he was acquainted with the common law of England in all its branches, the most familiar and the most abstruse,—his time in his earlier years after entering the profession not having been engrossed by "*præ-propera praxis*,"—instead of a hurried attention to a great variety of points, he had acquired the habit of deliberately investigating great questions,—as a *Nisi Prius* leader he possessed the faculty of sifting evidence and dealing rapidly and skilfully with facts,—he had taken infinite pains to make himself master of Equity doctrines and practice,—and for some years he had been first in business, as well as in rank, at the Chancery bar. In those days the notion had not sprung up that a common lawyer was unfit to be an Equity Judge, and Lord Camden was allowed to discharge his duty most admirably, even by hoary fixtures of the Court, such as AMBLER, who had "practised as a barrister for upwards of forty years, of which thirty

his Majesty's principal Secretaries of State, the Lord Viscount Barrington, Secretary at War, Lord Edgecombe, Treasurer of the Household, Sir Charles Saunders, Knight of the Bath, First Lord of the Admiralty, the Master of the Rolls, the Judges, King's Sergeants, King's Counsel, and other persons of quality. The Lords accompanied him to the Court of Chancery, where (before he entered upon business), in their presence, he took

the oaths of allegiance and supremacy, and the oath of Chancellor of Great Britain, the Master of the Rolls holding the book, and the Deputy Clerk of the Crown reading the said oaths: which being done, the Attorney-General moved that it might be recorded, and it was ordered accordingly. Then the Lords departed, leaving the Lord Chancellor in Court."—*Cr. Off. Min.*, No. 2, p. 14.

were employed in the Court of Chancery, under five Lord Chancellors, three sets of Commissioners, and five Masters of the Rolls." ^r

But we must appreciate his merits chiefly by the general testimonies in his favour from his contemporaries; for, when Chancellor, he was most unfortunate in the want of a "vates sacer." Not unfrequently his chief reporter, after a brief statement of the arguments of the defendant's counsel, thus deals with a judgment on which the Judge had bestowed infinite labour, and which was admired for its learning, precision, and lucid arrangement: "And Lord Camden being of the same opinion, which he delivered at large, the bill was dismissed." ^s But though these chroniclers only give us his dry conclusions of law in the fewest and most ordinary words, we may form a notion of his style and manner from a "Reminiscence" of BUTLER. "I distinctly remember," says he, "Lord Camden's presiding in the Court of Chancery. His Lordship's judicial eloquence was of the colloquial kind—extremely simple,—diffuse, but not desultory. He introduced legal idioms frequently, and always with a pleasing and great effect. Sometimes, however, he rose to the sublime strains of eloquence; but the sublimity was altogether in the sentiment; the diction retained its simplicity; this increased the effect." ^t About his dress and manner he seems to have been very little solicitous. "He wore a tie-wig in Court," says a contemporary, "and has been frequently observed to garter up his stockings while counsel were the most strenuous in their eloquence." ^u

I do not think that during the time he held the Great Seal (only three years and a half) he added much to our Equity code. I do not find questions of greater importance settled by him, than that a bequest to "the most necessitous of my relations" shall go among the *next of kin*, according to the Statute of Distributions, without any inquiry into their circumstances; ^x and that by a bequest "of all the testator's pictures," (he having at the making of his will a good collection,) after-purchased pictures shall pass. ^y

Only one of his decrees was reversed, and the general opinion has been that the reversal was wrong. A testator having devised freehold estates to certain uses, and bequeathed a lease-

^r Preface to Ambler, vi.

^s Ambler, 660. Dickens is generally more provokingly deficient.

^t Butler's Reminiscences.

^u Political Anecdotes, 385.

^x *Wedmore v. Woodroffe*, Ambler, 636.

^y *Ib.* 640.

hold message to trustees to convey to the uses of the freehold, "so that they should not separate," suffered a recovery of the freehold estates, whereby, as to them, the will was revoked, Lord Camden held, that the bequest of the leasehold was revoked also.^a This decree was reversed on appeal; but Lord Eldon said, in *Southey v. Somerville*,^a that "he should be disposed to agree with the opinion of Lord Camden rather than the judgment of the House of Lords;" and, on principle, I conceive it must be assumed (however contrary to the fact), that the testator knew and intended all the consequences of the recovery which he suffered.^b

Lord Camden's plans for legal reform were defeated by the unhappy turn which politics and parties took (so contrary to his seemingly well-founded expectations) almost from the moment of his elevation to his present office. He had intended, under the auspices of Lord Chatham, again to bring forward his Habeas Corpus Bill, with some other measures to improve the administration both of criminal and civil justice; but the great luminary to whose light and influence he had trusted was eclipsed, and for a time seemed blotted out of the system, so that darkness was spread over the political world, and chaos seemed to have come again.

Lord Chatham had scarcely called into existence his motley administration,—pleasantly depicted by Burke as "a cabinet so curiously inlaid—such a piece of diversified mosaic—such a tessellated pavement without cement—here a bit of black stone, and there a bit of white, which had a chance of coherence only from the controlling genius of its framer,"—when, by fresh and aggravated attacks of his old malady, the gout, he was almost disabled from attending to public business; and soon after, on account of a nervous disorder which is supposed even to have affected his mind, he was long seen only by his wife and his medical attendants. The consequence was, that Lord Camden's situation soon became most embarrassing and distressing. After a period of utter confusion, the members of the Government from whom he most differed got the ascendancy; and, from the protracted hope of the restoration of his friend, who nominally continued in office, he was cut off from the resource of resigning and going into opposition.

The first difficulty which arose after the formation of the

^a *Darley v. Darley*, Amb. 653.

^a 13 Ves. jun. 492.

^b 3 Br. P. C. 365; and see *Carrington*, v.

Payne, 6 Ves. jun. 404; *Louñes v. Stone*,
ib. 649; *Ware v. Polhill*, 11 Ves. jun. 280.

new government was from the scarcity, and apprehension of famine, produced by the failure of the harvest. The price of provisions was rapidly advancing, and the greatest alarm prevailed in the public mind. The prime minister was confined to his bed at Bath. A proposal being made that the exportation of corn should be prevented, the Chancellor recommended that this object should be effected by an order of the King in council. Lord Chatham, who was still able to communicate with his colleagues by letter, concurred in this advice, and the measure was carried into effect. It was popular in itself, but rendered odious by the manner in which it was defended. I have already mentioned the scrape into which the Government was on this occasion precipitated by the indiscretion and intemperance of Lord Northington, now President of the Council.^c He ought to have been thrown overboard, and the foundering vessel would have righted. Lord Camden thought that he must be supported, and was so far misled by his zeal to serve a colleague as to persuade himself (in trying to persuade others) that the act of interfering with lawful commerce, although against an express statute, was not only justifiable from expedience, so as to entitle the parties concerned in it to be protected by an indemnity, but was in itself strictly legal, and, without any indemnity, might be defended in a court of justice.—According to the evidence of credible witnesses present, he at last worked himself up to say:—

“The necessity of a measure renders it not only excusable, but legal; and consequently a judge, when the necessity is proved, may, without hesitation, declare that act legal which would be clearly illegal where such necessity did not exist. The Crown is the sole executive power, and is therefore intrusted by the constitution to take upon itself whatever the safety of the state may require during the recess of parliament, *which is at most but a forty days' tyranny*. The power exercised on this occasion was so moderate, that Junius Brutus would not have hesitated to intrust it even to the discretion of a Nero.”^d

He now received from Lord Temple the severest chastisement ever inflicted upon him:—

“Forty days' tyranny!” exclaimed his opponent. “My Lords, tyranny is a harsh sound. I detest the very word, because I hate the thing. But is this language to come from a noble and learned

^c Ante, p. 339.

^d Lord Charlemont's Correspondence, p. 22.

Lord, whose glory it might and ought to be to have risen by steps which Liberty threw in his way, and to have been honoured as his country has honoured him, not for trampling her under foot, but for holding up her head? I have used my best endeavours to answer the argument of the 'forty days' by argument founded on principles; I will now give the noble and learned Lord one answer more, and it shall be *argumentum ad hominem*. That noble and learned Lord has said, I believe, on other occasions, and he has said well, *the price of one hour's English liberty none but an English jury could estimate*; and juries under his guidance have put a very high value upon it, in the case of the meanest of our fellow subjects when oppressed by the servants of the state. But 'forty days' tyranny' over the nation by the Crown! Who can endure the thought? My Lords, less than 'forty days' tyranny,' such as this country has felt in some times, would, I believe, bring your Lordships together without a summons, from your sick beds, faster than our great patriots themselves, to get a place or a pension, or both,^e and, for aught I know, make the subject of your consultation that appeal to Heaven which has been spoken of. Once establish a dispensing power, and you cannot be sure of either liberty or law for *forty minutes*."^f

Lord Mansfield, more calmly but not less forcibly, pointed out the fallacy and the dangerous consequences of the Chancellor's reasoning, and on this occasion gained a signal triumph over his rival. There can be no doubt that Lord Camden was confounding acts which the law says may be lawfully done in a case of necessity—with acts done in violation of the law for the public good; and that his doctrines led inevitably to a power in the Crown to suspend or repeal all laws, without the previous or subsequent sanction of parliament. The doctrine has never since been contended for; and whenever ministers, for the safety of the state, have acted contrary to law, they have thrown themselves upon parliament, and asked for a bill of indemnity.^g

^e Lord Camden was often taunted with his retired allowance under the name of "pension."

^f Adolph. Hist. i. 290.

^g "The opposition acknowledged the rectitude of the measure; but we were not to be justified on the ground on which the Cabinet thought fit at first to take up the business, by supporting it as maintainable under the *Salus Populi Suprema Lex*, and we had the mortification, after two days' debate, to stoop to a Bill of Indemnity, which ought to have been proposed in the beginning. . . . In the struggle for and against the necessity of passing the Indemnity Bill, it was curious

to see Lord Mansfield bestriding the high horse of Liberty, while Lord Chatham and Lord Camden were arguing for the extension of prerogative beyond its true limits; and it was in these debates that the upright Chancellor, in the warmth of speaking, inadvertently made use of the expression, 'that if it was a tyranny, it was only a tyranny of forty days.'"—*Dulce of Grafton's Journal*.

"With regard to Lord Camden, the truth is, that he inadvertently overshot himself, as appears plainly by that unguarded mention of a *tyranny of forty days*, which I myself heard. Instead of asserting that the proclamation was legal, he should have said, 'My

The Government, rendered unpopular by this exhibition, was soon entirely deprived of all assistance from Lord Chatham, who was unable to attend either the debates in the House of Lords or the meetings of the Cabinet, and, shut up in his house at Hayes, refused to correspond on business with his colleagues or with the King. In a fit of national fatuity, which we can only explain by supposing that it was inflicted as a special visitation from Heaven for the sins of the people,—within a few months after the repeal of the American Stamp Act, there was passed, without opposition, and almost without public observation, the fatal act imposing a duty on tea and other commodities when imported into the colonies,—which led to the non-consumption combination,—to the riots at Boston—to civil war—to the dismemberment of the empire. How Lord Camden should have suffered it to pass through the House of Lords in silence, I profess myself wholly at a loss to conjecture: it was not only impolitic, but, according to his doctrine, it was *ultra vires parliamenti*, and to be treated as a nullity; for to justify this by calling it “a commercial regulation,” would only be rendering more contemptible his flimsy and fallacious distinction between a power to regulate commerce, and a power to impose a tax.^h

After Parliament was prorogued, Lord Camden had very nearly been deprived of the Great Seal when he had held it little more than a year,—and, for his fame as a minister, there is great reason to regret his continuance in office. Lord Chatham’s health was deemed irrecoverably gone, and Charles

Lords, I know that the proclamation was *illegal*, but I advised it because it was indispensably necessary to save the kingdom from famine; and I submit myself to the justice and mercy of my country.’ Such language as this would have been merely rational and consistent;—not unfit for a lawyer, and very worthy of a great man.”—PHILO JUNIUS, 15th Oct. 1771.

We are amazed at Lord Camden’s “FORTY DAYS’ TYRANNY,” but it is remarkable that there is hardly any public man who has not, at some time or other, indiscreetly used some expression which has passed into a by-word against him. I might mention Lord Melbourne’s “heavy blow and great discouragement to the Church,” Lord John Russell’s “finality of the Reform Bill,” and Lord Lyndhurst’s “aliens in blood, language, and religion.” I myself had the honour of having 50,000 copies of a speech, which I made in the

House of Commons when Attorney-General, printed and industriously distributed in every borough in England among freemen possessing the right of voting for members of parliament, because I very indiscreetly said (what was very true) that the “right of freemen to vote was *the plague-spot* on our representative system.”

^h Ten years afterwards, when the sowing of the wind was producing the whirlwind, Lord Camden being taunted with his sanctioning of the tax, he said, “I confess, as mere matter of supposition, the conjecture is plausibly supported, but the fact was entirely otherwise. I never did, nor ever will, give my consent to raising any tax in any form on the people of America for the purpose of raising a revenue to be under the disposal of the British parliament.”—18 Parl. Hist. 1222. His confidential correspondence with the Duke of Grafton had not then commenced,

Townshend, with the concurrence of the King, had arranged a new administration, in which he himself was to have been First Lord of the Treasury, and Charles Yorke was to have been his Lord Chancellor,—when the plan was rendered abortive by his sudden and lamented death, in the flower of his age.

Then followed the arrangement called the “Duke of Grafton’s administration,” in which he was recognised as Prime Minister. Lord Chatham still retained the Privy Seal, and was supposed to be a member of the Cabinet; but he remained entirely sequestered from public business, under circumstances which will never be fully explained.

Lord Camden did not concur in all the opinions of the First Lord of the Treasury, but greatly preferred him to the Duke of Bedford, Lord Shelburne, or any other Whig leader, and the closest friendship was established between them. To this we are indebted for the letters I am about to introduce, which will be found to throw a new light upon the state of parties, and the history of the country from this time, till the reins of government were placed in the hands of Lord North.

An important question soon arose, whether the Great Seal of Ireland should be held by an Irish or an English lawyer? Lord Townshend was then Lord Lieutenant, and, for the sake of popularity, being naturally desirous of having an Irishman, had brought over the Duke of Grafton to the same opinion. However, Lord Camden, being consulted by him, wrote back the following answer:—

“Bath, Sept. 27, 1767.

“My dear Lord Duke,

“I have since the receipt of your Grace’s letter turned my thoughts upon the subject of it with the most serious attention, and am displeased with myself for not agreeing altogether with your Grace in conferring the Irish Seal upon an Irishman. I will readily confess that I am not a competent judge of this question, for want of knowing the true state of that country, the manner in which it has been governed of late years, the power and influence of the several connexions, and, above all, the importance of the Irish bar in the House of Commons there; and therefore it is very likely that your Grace may be much better enabled than myself to form a true judgment upon the utility and policy of complimenting the Irish with the high office. Your Grace, however, has a right to my poor opinion, such as it is; and indeed, my Lord, I am very loth to give up to the unreasonable demands of two of those barristers (however eminent) the last, as well as most important law office in that kingdom, which England hitherto has thought fit to reserve to herself. All the chiefs

upon each bench were formerly named from hence ; the Irish have acquired the King's Bench, and the late Lord Lieutenant, for the first time, made them a present of the Chief Baron ; and there has not for many years been an instance of a puisne judge sent from this country : I believe Baron Mounteney was the last.

“ Thus, by degrees, has this country surrendered up all the great offices of the law, except only the Common Pleas and the Great Seal ; and I much doubt whether this country acquires any advantage by all these concessions.

“ In the last session, Mr. Flood moved a general censure upon the characters and capacity of the Judges sent from England, with a view, no doubt, of inflaming the people against all these nominations, in hopes of extending their encroachments to a total exclusion of the English from the Irish bench ; and now, such is the danger of precedent, they threaten general opposition (for so I understood from Lord Clare) if this favour is refused, and your Grace seems to think it will be an affront upon the next Council there.

“ Jocelyn and Bowes, though both Englishmen, are honoured with the appellation of Irish for the present purpose, and are cited as precedents in their favour. I am very apprehensive, that if your Grace should indulge now the Irish in this *demand* (for I can call it by no other name), the precedent will bind England for ever ; for national favours once conferred can never be resumed. Ireland has reason enough to be discontented with the mother country : the popular party are sure to distress the Castle to some degree every session, and the method has been hitherto to win over the leaders in the House of Commons by places, pensions, and honours, which has enabled the Lord Lieutenant for the time being to close his particular session with ease to himself ; at the same time that it has ruined the King's affairs, and enraged the people. The next successor is involved in the same difficulties, and his convenience has been complimented by the like measures ; till, at last, by this profusion of rewards the Government has nothing to give, and is left beggared, and consequently unsupported. In such a state of things, would your Grace wish to pursue such a plan, and grant now, before the opening of the session, the highest post in the law to one member only of the House of Commons (for only one can have it), whose removal afterwards to make room for an Englishman (let his behaviour be ever so obnoxious) would be a most odious and unpopular measure in that country ? An Englishman in the office is expected to remain an Englishman, and is permitted ; an Irishman anglicised would never be endured. Indeed, my Lord, the very yielding, in my humble opinion, would be a weakening of Government, and be more pernicious than the most troublesome session.

“ I am truly sensible of Lord Townshend's embarrassments, and foresee that, if he should not obtain this boon, he must expect to meet with some very disagreeable struggles. But, I dare say, his zeal, courage, and ability are equal to the whole, and I am sure he will cheerfully undertake what he has accepted, though your Grace should

adhere to our first opinion, of keeping the Seal, for the present, in commission.

“Your Grace will be pleased to consider that the Chancellor, Chief Baron, and Chief Justices, are called to the Council in Ireland in the quality of statesmen, and that the Council in that country is an assembly of equal importance of either of the branches of the legislature. If the Lord Lieutenant is surrounded with Irish only filling these offices at the board, he is subject to be overruled in every quarter by the great chiefs of the law, in which case I doubt he must submit.

“But if your Grace should at last be determined to name an Irishman, you will please to consider whether Sir A. Malone is not clearly the properest person. He has not indeed applied for it, but I understand he would be happy with the offer; and such is the deference to his superior character, that every one of those gentlemen who has applied have put themselves only in the second place after him. So that, if your Grace is resolved upon an Irishman, ‘Detur dignissimo!’ Let it carry with it a march of public spirit, at the same time that it is a management of parties. I know your Grace will forgive my frankness: this is my present opinion, though I will most willingly submit to a contrary determination, and when your Grace has done it, I shall say in public that it is well done; indeed, I shall go near to think so, because I am sure the decision will be taken by those who understand Ireland better than I do.

“I presume your Grace has asked Lord N——’sⁱ opinion upon this subject; that will have great weight with me, as well as your Grace. He used to think as I do, as did Lord Chatham; but different circumstances may well bring about a change of opinion.

“I know your Grace will be anxious to hear some news of Lord Chatham; if I had been able to have given you any authentic intelligence of his amendment to any considerable degree, I should have wrote before. The whole country in his neighbourhood report him much better; but his knocker is tied up, and he is inaccessible. I read a letter from Lady Chatham yesterday, who is so fearful of owning my Lord to be better, that she retracts it, even while she is admitting it in the same sentence, and conveys hopes of his recovery while she forbids them. I verily believe he is considerably mended.

“I propose to be in town on Monday morning, the 7th of next month, to prorogue the Parliament, at eleven o’clock in the morning, if your Grace will be so good as to order the proper preparations,—to go to Court,—to swear in Lord North, and set out immediately for my return. I hope this will be permitted.

“I have the honour to be, with the most perfect respect and esteem, your Grace’s

“Most obedient faithful Servant,

“CAMDEN.”

ⁱ Lord Northington’s.

Lord Townshend still pressed very hard for the appointment of an Irish lawyer, and, in a letter to Lord Camden, said,—“This measure is the very criterion of an odious or a popular administration; if the concession is not granted, it will be a proof of my own insignificance, and the safest course will be for me to confess it to all mankind.” Lord Camden, therefore, wrote to the Duke of Grafton:—“When such language is used, there are but two things to be done—to quarrel or to submit. The first being, at this time, to the last degree improvident and dangerous, which his Lordship well knows, makes the latter necessary.” However, the Cabinet resolved on resistance, as appears by the following letter from Lord Camden to the Duke of Grafton:—

“I find by your Grace’s letter, and one I received from Lord Shelburne, that I am called upon to name a person for the Irish Seal. He must be eminent, and one who at this ticklish juncture would be every way fit for the office. I doubt it will be too much for me, in such a dearth of men willing to accept, to recommend one who will answer that description, nor dare I undertake it without the sanction of a cabinet. The whole business is, indeed, a state question, and does not properly fall within my department.”

Mr. Serjeant Hewitt, afterwards Lord Lifford, was fixed upon. The Duke of Grafton says, in his Journal,—

“Lord Northington’s opinion concurred so fully with Lord Camden’s on the disposal of the Great Seal of Ireland, that the Cabinet was persuaded not to give way to Lord Townshend’s reasoning in favour of an Irish lawyer’s holding it; and I am persuaded that our firmness gave more real consideration to his Lordship’s situation, and dignity and weight to his government, than any yielding of his own would have effected. Before Parliament met, Mr. Serjeant Hewitt accepted the Seal, with every good disposition to discharge properly the great trust put into his hands, and his learning as a lawyer sanctioned our expectations from the appointment. He was a true Whig, and bore a character to which all parties gave their assent of respect; and though his speeches in parliament were long, and without eloquence, they were replete with excellent matter and knowledge of the law. His conduct in Ireland, under the peerage of Lifford, soon gained the esteem of the public.”

Lord Camden’s views on this subject were tinged by the prejudices which then subsisted in England, respecting the subjection of Ireland. The two countries A.D. 1767—1768. must now be considered on a footing of perfect equality, and the only consideration is, what is most conducive to their

mutual interest? That great statesman, Lord Wellesley, proposed (I think wisely) as a solution of this question,—that there should be one bar for England and Ireland; and that while lawyers practising in England should be occasionally appointed to preside in the courts of justice in Ireland, lawyers practising in Ireland should be reciprocally appointed to preside in the courts of justice in England.

Public affairs remained in a state of considerable tranquillity till the sudden re-appearance in England of the notorious John Wilkes, which threw the whole nation into a ferment. After the popularity he had acquired by establishing the illegality of “general warrants” and of “the seizure of papers by authority of the Secretary of State,” he had been convicted of publishing seditious and obscene libels; he had been outlawed, and he had lived in exile. Having failed in negotiations to obtain a pardon, he now boldly presented himself at the hustings as a candidate to represent the city of London in parliament. Defeated there, he started for Middlesex, and he was returned for this county by a great majority, being supported by a mob, who compelled all who appeared in the streets and highways to join in the cry of “Wilkes and Liberty!” The Government was most seriously alarmed, and Lord Camden, with the other ministers, being summoned to attend a meeting of the Cabinet, wrote the following letter to the Duke of Grafton:—

“Bath, April 3, 1768.

“My dear Lord Duke,

“Whatever vexation and inconvenience I may feel at this unexpected summons, which calls me from hence above a week before the time, yet I shall, without fail, give my attendance at the time appointed. The event is disagreeable and unforeseen, for I am persuaded that no person living, after Wilkes had been defeated in London, would have thought it possible for him to have carried his election for the county of Middlesex. Sure I am, that if the Government had arrested him while he was a candidate, this step would have secured his election, and would have been considered as the cause of his success. I cannot pretend, at this distance, without further information, to advise what proceedings are now necessary, as the only subject for consideration seems to be, what measures are to be taken by the House of Commons at the meeting of Parliament. If the precedents and the constitution will warrant an expulsion, that perhaps may be right. A criminal flying his country to escape justice—a convict and an outlaw! That such a person should, in open day-light, thrust himself upon the country as a candidate, his crime unexpiated,—is audacious beyond description. This is the light in which I consider the affair; the riot

only inflaming the business, and not showing the weakness of the Government more than any other election riot in the kingdom. But it would be well to consider what may be the consequences if W. should be re-elected. That is very serious. I take it for granted that he will surrender, and receive judgment in the K. Bench, the first day of the Term, — when, I suppose, the outlawry will be reversed, and he will be imprisoned. We expect him at this place to-night, where, I suppose, he intends to remain till the Term; and this town is not a little alarmed lest the same spirit of violence should follow him hither. But, I trust, we are not mad enough here to follow the example of the metropolis. Whatever may be the heat of the present moment, I am persuaded it will soon subside, and this gentleman will lose his popularity in a very short time after men have recovered their senses.

“I am,” &c.

At the Cabinet all present appear to have acquiesced in the determination that Wilkes should immediately be expelled the House of Commons; but when it appeared that the demagogue, instead of submitting to his sentence, meant to insist that the outlawry was erroneous,—that all the proceedings against him were void,—and that he was entitled to be treated as an innocent man,—the Chancellor quailed, and thus addressed the Premier:

“20th April, 1768.

“My dear Lord,

“I dare say you have been informed of what passed to-day in the Court of King’s Bench, and that Mr. W. is still at large. His counsel, however, promised that he should be forthcoming in custody, and then move to be bailed; sue out a writ of error and reverse the outlawry. They gave notice, likewise, that they intended, after they had got rid of the outlawry, to move in arrest of judgment. Your Grace will be pleased to perceive that Mr. W. stands at present convicted only by verdict; and if there shall appear to be any material defect in the record, that the judgment must be stayed; in which case he must be discharged, and he becomes a freeman upon this prosecution as much as if he had never been convicted. I dare say your Grace will see, upon this short representation, that till judgment is finally pronounced against Mr. W. by the Court, no man has a right to pronounce him guilty. This appears to me a real difficulty attending the measure, which yesterday we thought so clear. For how can the House expel a member, either as an outlaw or a convict, while the suit is pending, whereas he may turn out at last to be neither the one nor the other? I am afraid, considering the necessary delay in courts of law, it will be impossible for the King’s Bench to give judgment before the Parliament meets, and therefore it deserves the most serious con-

sideration whether the proposed measure should be pursued while the obstacle stands in the way.

“I have the honour,” &c.

The motion for the expulsion was accordingly deferred till, the outlawry being reversed, sentence of imprisonment for a year and ten months was pronounced on Wilkes, and he insulted Parliament by a virulent libel, which, at the bar of the Lower House, he avowed and boasted of. His expulsion was then carried, and a new writ was ordered to elect another representative for Middlesex. This proceeding, though impolitic, cannot be considered unlawful or unconstitutional; for there might be a presumption that his constituents would not have elected a person guilty of such misconduct, and it might be fair to give them an opportunity of determining whether they would still have him for their representative.

I am glad to think that the subsequent proceedings respecting the Middlesex election were not sanctioned by Lord Camden; for I believe that all mankind are now agreed that the House of Commons acted illegally and unconstitutionally in again expelling Mr. Wilkes for a supposed offence committed before his re-election,—in declaring him disqualified to serve in parliament,—and in seating Mr. Luttrell as representative for Middlesex, although he had only a small minority of the electors in his favour. The Chancellor is by no means exempted from blame for consenting to belong to an administration which overruled his opinion upon such questions. Although we may account for his continuing in office while he could be considered as having Lord Chatham for a colleague, it does astonish us exceedingly that he still condescended to hold the Great Seal after his great Chief had resigned, and was at open enmity with the Government. But he was placed in a most painful situation; Lord Chatham was still unable to appear in parliament, and there was no statesman with whom he thought he could better co-operate for the public good than the present head of the Treasury.

The three following letters to the Duke of Grafton explain the removal of Lord Shelburne from the Government, the consequent resignation of Mr. Pitt, and Lord Camden's perplexity:—

“29th Sept. 1768.

“I understand your Grace's plan is fixt, and I saw plainly the last time I was in town that Lord S——'s removal was determined. What can I say to it, my dear Lord? It is unlucky.

“The administration, since Lord Chatham’s illness, is almost entirely altered, without being changed, and I find myself surrounded with persons to whom I am scarce known, and with whom I have no connection. Lord Chatham is at Hayes, brooding over his own suspicions and discontents. His return to business almost desperate, inaccessible to every body, but under a persuasion (as I have some reason to conjecture) that he is given up and abandoned. This measure, for aught I know, may fix his opinion, and bring him to a resolution of resigning. If that should happen, I should be under the greatest difficulty.

“I am truly, my dear Lord, distressed. I have seen so much of courts that I am heartily tired of my employment, and should be happy to retire upon a scanty income if an honourable opportunity offered to justify my retreat to the King and your Grace; but that step I will never take without your consent, till I find I have not the King’s favour and your confidence, unless I should be forced by something more compelling than the Earl of S——’s removal.

“After all, though your Grace is so good as to relieve me from any opinion on the subject, yet the case being stated as it is, that either your Grace or the Earl must quit, my opinion is clear, in a moment, that your Grace must remain. I am,” &c.

“14th Oct. 1768.

“My concern upon the intelligence contained in your Grace’s letter is inexpressible, and though I was apprehensive that Lord Shelburne’s dismissal would make a deep impression upon Lord Chatham’s mind, yet I did not expect this sudden resignation. I will still live in hope that his Majesty’s letter may produce an alteration, because there is a possibility, though at the same time I do not flatter myself with any sanguine expectations. Your Grace and I feel for each other. To me I fear the blow is fatal, yet I shall come to no determination. If I can find out what is fit for me to do in this most distressed situation, that I must do; but the difficulty lies in forming a true judgment. Whatever my decision may be, I will never resign my active endeavours to support the King’s service, or my unchangeable attachment to your Grace. This most unfortunate event will throw the King’s affairs into a state of utter distraction. Perhaps order may spring up out of this confusion. I do assure your Grace that my mind is at present in too great an agitation to be soon settled, and therefore I do not give myself leave to form any opinion concerning my own conduct: I shall wait with impatience to hear the conclusion, and am, with the truest zeal and attachment,” &c.

“Bath, 16th Oct. 1768.

“Your Grace’s intelligence does not surprise me: I expected it, and predetermined my own journey to London before I had the honour of your Grace’s letter. Unfortunately one of my children is so ill that I must wait a day or two before I set out in order to see what turn her

distemper will take. I propose, however, to be in town on Wednesday next, or Thursday at the latest.

“Nothing could give me so much satisfaction as to join with your Grace in one line of conduct, and yet I see plainly that our situations are different, and the same honour due to the King and regard to the public operating upon two minds equally aiming at the same end, may possibly draw us different ways; but I dare say your Grace will believe me, in all events and circumstances, what I really am, with all respect and unfeigned attachment,” &c.

On his return to London, he heard such an account of Lord Chatham as to convince him that the country was for ever deprived of the services of this illustrious patriot; and, agreeing to support the present Government, he prevailed on Mr. Dunning to follow his example.^k

The dispute with the colonies was now assuming a very alarming aspect, the act so heedlessly passed to impose a duty on goods imported into America having produced the discontent and the resistance which might have been expected from it. Lord Camden's views upon the subject were most liberal and enlightened, and, if he had been listened to, he would have saved the empire from civil war and dismemberment. In the prospect of the meeting of parliament, having been consulted by the Prime Minister respecting the King's speech, he thus replied:—

“As to North America, before a speech can be sketched upon the subject, it is necessary to know what measures the King's ministers intend to pursue, for the speech and the address must mark the outlines of these measures.

“I was a long time in hopes that Massachusetts Bay would have been the only disobedient colony. It would have been no difficult matter to have dealt with them if the others had sat still and remained passive; but I am deceived in that expectation, for it is now manifest that the whole continent will unite and make it common cause. We are drifted by I know not what fatality upon Mr. Grenville's ground. We are pressed on the one hand by the declaratory law, and on the other by the colonies' resolute denial of parliamentary authority. The issue is now joined upon the *right* which, in my apprehension, is the most untoward that could have been started—fatal to Great Britain if she miscarries—unprofitable if she succeeds. For if it is (as I believe your Grace thinks with me it is) inexpedient to tax the colonies, as we all maintained when the Stamp Act was repealed,—after both sides are half ruined in the contest, we shall at last establish a right which ought never to be exerted.

^k Note to the Duke of Grafton, dated 4th Nov. “I sat late in Court, and have just dined. Mr. Dunning stays in his office at my request.”

“If the Americans are able to practise so much self-denial as to subsist only for one twelve-month without British commodities, I do very much fear that they will carry their point without striking a blow. Patience and perseverance in this one measure will ruin us; and I am the more apt to dread this event, because it seems to me that the colonies are more sober, and consequently more determined, in the present opposition than they were upon the Stamp Act. For, except only the riots at Boston, I see nothing like active rebellion in the other provinces. If this should happen, the merchants and manufacturers here at home will be clamorous, and half our own people will be added to the American party.

“Your Grace will ask, upon this representation of things, *what is to be done?* Indeed, my dear Lord, I do not know what is best to advise. The parliament, I presume, cannot repeal the Act in question, because that would admit the American principle to be right and their own doctrine erroneous. Therefore I conclude the parliament will not repeal, consequently must execute the law, and this of course must be the language of the Speech.

“The method how to execute it is the next consideration, and here I am as much at a loss. There is no pretence for violence any where but at Boston. That is the ring-leading province, and if any country is to be chastised, the punishment ought to be levelled there. I have been sometimes thinking, that if the Act was repealed in favour of the other provinces, excepting Massachusetts Bay, and there executed with proper rigour, such a measure might be successful. But I am aware that no man, perhaps, but myself, could be brought to relish such a concession, as almost every body else holds the declaratory law to be a sound fundamental one, never to be departed from.

“I submit to the declaratory law, and have thought it my duty, upon that ground, as a minister, to exert my constitutional power to carry the Duty Act into execution. But as a member of the legislature, I cannot bring myself to advise violent measures to support a plan so inexpedient and impolitic, and I am very much afraid (I speak this confidentially to your Grace) that if a motion should be made to repeal the bill I should be under the necessity to vote for it. But there are so few in my way of thinking, that such a motion is not to be expected.

“I am very sensible that a difference of opinion upon a subject so serious and important may be prejudicial to the administration, and I lament the occasion, being persuaded that a most perfect union amongst us is essential, and I will labour to effect it with my best endeavours. But I do fear, most exceedingly, that upon the American question the Bedfords and myself will be too far asunder to meet. I must maintain my own ground. The public knows my opinion and knows theirs. Neither of us can be inconsistent with ourselves.

“This letter is to your Grace only. You are my Pole Star, Lord Chatham being eclipsed. I had rather see your Grace at the head of government than any other man in the kingdom, and therefore I

have disclosed to you my whole heart upon this ill-fated business. I am sensible that my sentiments do not altogether coincide with your Grace's opinion.

"There is nothing I dread so much as a war with America. I shall be very happy to know the result of your councils in town upon this subject. — Corsica is rather a delicate than a difficult business."^m

Lord Camden's advice was entirely disregarded. He had, in like manner, quarrelled with his colleagues respecting the Middlesex election. Still he made an effort to save Dunning, who, continuing in office at his request, had given great offence to Lord North, now leader of the House of Commons, by insisting on one occasion that Wilkes should be heard before he was condemned. Thus he appealed to the Premier:—

"10th Dec. 1768.

"I had an opportunity, after I saw your Grace yesterday, of hearing an account of what passed in the House of Commons, and I find the debate turned upon this: 'Whether they should vote the paper a libel before Wilkes was heard in his defence?' and, that this was no question on the merits, but only discourse upon the mode of proceeding: that the Solicitor-General thought, if Mr. Wilkes was to be heard, he ought regularly to be at liberty to speak to the nature and quality of the paper, as well as to the fact of writing and publishing. And indeed, my dear Lord, I am of the same opinion; and I do verily believe that no lawyer can hold a different language. The Solicitor said that, difficult as the task would be for Mr. W. to maintain an argument that the paper was no libel, yet he ought not to be precluded from that argument, — which he would be if the House determined it to be a libel. I do not see how they can, consistent with the terms of justice, pronounce the paper to be a libel till they have heard him. Now, my dear Lord, give me leave to say that Lord North should not be quite so much offended with Mr. Dunning, because the matter before the House was rather a discourse upon the method of proceeding than a measure of administration. I do not believe Mr. D. will be so base as to remain in office, and not to be hearty in the support of administration. I have the honour," &c.

This application was successful, and Dunning continued in office till after Lord Camden's own removal.

The Ministers found they were getting into such tremendous

^m We owe the foregoing letters to the circumstance of the Chancellor having passed the autumn at Bath, while the Prime Minister was at Euston: "Lord Camden and myself unfortunately saw less of each other than in

other summers—both of us profiting by a retreat into the country of the leisure which a recess from Chancery and Treasury business offered."—*Duke of Grafton's Journal*, 1768.

difficulties respecting the Middlesex election by contemning the Chancellor's advice, that the Prime Minister wrote to him, specially inviting him to attend a Cabinet to be held upon the subject. The following was his answer:—

“My dear Lord,

“9th January, 1769.

“I have the honour of your Grace's letter, and will certainly attend the meeting of the King's servants on Wednesday morning next. I do wish, most heartily, that the present time could be eased of the difficulties that Mr. W.'s business has brought upon the Government: a fatality has attended it from the beginning, and it grows more serious every day. Your Grace and I have unfortunately differed. I wish it had been otherwise. It is a hydra, multiplying by resistance, and gathering strength by every attempt to subdue it. As the times are, I had rather pardon W. than punish him. This is a political opinion, independent of the merits of the cause.

“I am very glad to hear the holidays have given your Grace so happy a respite. They have been to me a perfect paradise, as I have employed my whole time in studying the Douglas cause, and my mind has been totally vacant from political vexations.

“I have the honour,” &c.

He attended the meeting, but with no good effect. The Duke of Grafton treated him with perfect civility, and was inclined to be governed by his opinion; but what he laid down respecting the law and the constitution was scornfully received by all the others.—From thenceforth he constantly absented himself from the Cabinet when the two great subjects of internal and colonial policy were to be discussed—Wilkes, and American coercion.

The public were not then in possession of these secrets. For two years it was remarked that he preserved an impenetrable silence in parliament, unless when, as Speaker, he put the question, and declared the majority; but no one suspected that he had, in reality, ceased to be a member of the Government.^a

At last, when Parliament reassembled in the beginning of January, 1770, the Lord Chancellor spoke out. Lord Chatham, after his resignation,—to the astonishment of all mankind, not only experienced a considerable relaxation of his bodily infirmities, but recovered the full energy of his gigantic intellect. On the first day of the session he was in

^a The reports of the debates respecting the Middlesex election and America at this time generally conclude with the words, “The Lord Chancellor was silent.”—16 Parl. Hist. 477. Jan. 9, 1770.

his place, though supported on crutches and swathed in flannel, and having delivered a most violent speech against the measures of the Government, affirming that the liberty of the subject had been invaded, not only in the colonies, but at home, he moved as an amendment to the address, that "the House would with all convenient speed take into consideration the causes of the present discontents, and particularly the proceedings of the House of Commons touching the incapacity of John Wilkes, Esq., depriving the electors of Middlesex of their free choice of a representative."*

Lord Mansfield having taken up the defence of the Government, and insinuated that all their measures must be considered as having the full approbation of the noble and learned Lord who held the Great Seal—"ever considered the champion of popular rights,"—the Lord Chancellor left the woolsack, and, in a burst of indignation, tried to defend his conduct and his consistency:—

"I accepted the Great Seal," said he, "without conditions: I meant not, therefore, to be trammelled by his Majesty—I beg pardon—by his Ministers; but I have suffered myself to be so too long. For some time I have beheld, with silent indignation, the arbitrary measures of the Minister; I have often drooped and hung down my head in Council, and disapproved by my looks those steps which I knew my avowed opposition could not prevent. I will do so no longer; but openly and boldly speak my sentiments. I now proclaim to the world, that I entirely coincide in the opinion expressed by my noble friend, whose presence again reanimates us, respecting this unconstitutional and illegal vote of the House of Commons. If, in giving my opinion as a Judge, I were to pay any respect to that vote, I should look upon myself as a traitor to my trust, and an enemy to my country. By their violent and tyrannical conduct, Ministers have alienated the minds of the people from his Majesty's government—I had almost said, from his Majesty's person. In consequence, a spirit of discontent has spread itself into every corner of the kingdom, and is every day increasing; insomuch, that if some methods are not devised to appease the clamours so universally prevalent, I know not, my Lords, whether the people in despair may not become their own avengers, and take the redress of grievances into their own hands."†

* It was in this debate that he so strikingly contrasted modern peers with their ancestors, who had won Magna Charta: "Those iron barons (for so I will call them when compared with the silken barons of modern days) were the guardians of the people; yet their virtues were never engaged in a question of such importance as the present. A breach

has been made in the constitution—the battlements are dismantled—the citadel is open to the first invader—the walls totter—the constitution is not tenable. What remains, then, but for us to stand foremost in the breach to repair or perish in it?"

† P 1 Adolphus, 390; 16 Parl. Hist. 644; Gent. Mag. Jan. 1770.

The amendment being negatived, Lord Rockingham moved that the Lords be summoned for the following day, when he should make a proposal of great national importance; but it being evident that, after this scene, the Government could not go on, Lord Weymouth, the Secretary of State, moved an adjournment for a week. Lord Temple said:—

“The House well knows for what purpose the Lords opposite want an adjournment; it is to settle the disordered state of the administration, which is now shattered in a most miserable manner, and, in all likelihood, will soon fall to pieces. Their particular object is to dismiss the virtuous and independent Lord who sits on the woolsack, and to supply his place with some obsequious lawyer who will do as he is commanded.” Lord Shelburne added: “After the dismissal of the present worthy Chancellor, the Seals will go a begging: but I hope there will not be found in the kingdom a wretch so base and mean-spirited as to accept of them on the conditions on which they must be offered.”

The ministerial crisis which followed was one of the most exciting and memorable in our party annals. Lord Chatham, Lord Temple, and Lord Rockingham were now reconciled, and, taking the same view of the questions which then divided the nation, might have formed a strong government, with Lord Camden for their Chancellor,—on the basis of American conciliation, and of the reversal of the unconstitutional judgment at home, that a commoner was rendered disqualified to represent the people by a vote of the House of Commons. But the Court was determined to make a vigorous effort to concoct an administration that would push on its favourite policy at home and abroad. The main difficulty was to prevail upon a lawyer of any reputation to take the Great Seal, as successor to Lord Camden,—particularly after the late denunciations in the House of Lords against all who should think of degrading themselves by basely doing so. Lord Camden, under the advice of his friends, determined that he would not voluntarily resign.

Through persuasions, and with a result which I shall have to detail in the life of Charles Yorke, he was induced in an evil hour to accept the offer pressed upon him, although he condemned his own act at the instant, and soon fatally repented of it.

On Tuesday, the 16th of January, 1770, about seven in the evening, Lord Camden, in pursuance of a summons he had received for that purpose, attended at the Queen's Palace, and

there surrendered the Great Seal into the King's own hands. He slept sounder that night than he had done for many months.

The very extraordinary circumstances in which he had been placed must apologise for his political conduct while in office. I am afraid it cannot be strictly justified.

To the last hour of his holding the Great Seal, the exercise of his judicial functions met with universal approbation. I ought not to pass over, without notice, the admirable manner in which he disposed of appeals and writs of error in the House of Lords. Lord Mansfield, on those occasions, generally sat along with him. To the honour of my profession, and for the credit of the decisions of the tribunal judging in the last resort in this country, it should be known that, however strongly law Lords may differ on questions of party politics, they have always zealously co-operated in the endeavour satisfactorily to dispose of the juridical business of the House; and, with a few exceptions,—when the lay Peers have exercised their strict right, and tried to prevail by numbers,—justice has been administered there with entire purity, and on the most enlightened principles. Lord Camden and Lord Mansfield sometimes attacked each other in debate so sharply as almost to render a resolution necessary, that “they should be required to give an assurance that *the matter should not go farther*,” or that they be taken into the custody of the Black Rod;” yet they never had the slightest difference of opinion in any case argued by counsel before them.

Soon after Lord Camden had taken his seat on the woolsack, Feb. 4, 1767. came on the famous writ of error in *Harrison v. Evans*, in which the question was, “whether a Dissenter was liable to a fine for not serving a corporate office which he was disqualified for serving by the Corporation Act, he not having taken the sacrament of the Lord's supper according to the rites of the Church of England?” This arose out of an ingenious scheme to raise a tax upon the Dissenters in the City of London for the purpose of building the MANSION HOUSE, which by law they could never enter. In the City courts judgment was given that the defendant was liable to the penalty of 600*l.* Lord Mansfield moved the reversal of the judgment in one of the finest specimens of forensic eloquence to be found in our books. Having shown that, as the person whom the citizens pretended to choose for sheriff could not serve the office (as they well knew), this was merely an attempt to

punish him for being a Dissenter, he said,—“Conscience, my Lords, is not controllable by human laws, nor amenable to human tribunals. Persecution, or attempts to force conscience, will never produce conviction, and can only be calculated to make hypocrites or martyrs.” Lord Camden, rejoicing to hear such noble sentiments from the Lord Chief Justice of the King’s Bench, heartily concurred in them, and by the unanimous judgment of the House a great triumph was given to religious liberty.^q

So when Wilkes’s case came to the bar of the House of Lords, Lord Camden and Lord Mansfield agreed on the two points which were raised on the record:—1. A.D. 1769.

“That the Solicitor-General, when the office of Attorney-General is vacant, has authority by law to file a criminal information;”^r and, 2. “That a defendant being convicted of two misdemeanors, may at the same time be sentenced to two periods of imprisonment, the second to commence after the expiration of the first.”^s

But Lord Camden attracted chief notice while Chancellor by his judgment in the great Douglas cause, which, in Scotland, had almost led to a civil war between the supporters of the opposite sides, and in England even had excited more interest than any question of mere private right had ever done before. Archibald Douglas, the appellant, had been brought up as the son of Lady Jane Douglas, and her husband Sir John Stewart,—being supposed, along with his twin-brother Sholto, who died an infant, to have been born in Paris, when their mother, after having long been married and remained childless, was in her forty-ninth year;—and, if such was his birth, he had a right to the immense estates of his maternal uncle, the late Duke of Douglas, and was the heir general of the Douglas family, one of the most illustrious in Europe. The Duke of Hamilton, the heir male of the Douglasses, and in default of issue of the Lady Jane, entitled to all their domains, as well as those of the Hamiltons, which he inherited

^q 16 Parl. Hist. 313; 3 Brown’s Parl. Cas. 465; Life of Sir Eardley Wilmot, 73.

^r After the resignation of Charles Yorke as Attorney-General, before a successor had been appointed, Sir Fletcher Norton, as Solicitor-General, had filed the information against Wilkes for composing and publishing the *North Briton*, No. XLV.

^s Being convicted on this information, and on another for composing and publishing the “*Essay on Woman*,” besides being fined, he was sentenced on the first to be imprisoned ten calendar months, and on the second to be imprisoned twelve calendar months, to be computed from the determination of the first imprisonment.

through a female, insisted that these two children were spurious, and had been purchased from a glass manufacturer and a rope-dancer at Paris,—brought an action in the Court of Session in Scotland to establish his right,—and there had a majority of the Judges in his favour.* The appeal was heard in the session of 1769, and drew vast crowds to the bar of the House of Lords to listen to the weighty and eloquent argumentation of Thurlow, Wedderburn, and the other most eminent advocates of the age. It was conjectured that the law Lords were for the appellant, but the great body of the Peers had attended the hearing of the appeal, and were to take part in the decision; there had been much canvassing for the “Douglases” and the “Hamiltons,” and a great degree of suspense existed down to the very morning of the judgment.

It astonishes us very much to be told, that when the order of the day had been read by the clerk for the further consideration of the cause of the *Duke of Hamilton v. Douglas*, the Duke of Newcastle “opened the debate,” and that “he was answered by Lord Sandwich, who spoke for three hours with much humour, and scandalised the Bishops, having, with his usual industry, studied even the midwifery of the case, which he retailed with very little decency.”^u

Lord Camden then thus began,—there being such silence while he spoke, that a handkerchief would have been heard to drop, notwithstanding the crowds in attendance: ^x —

“My Lords, the cause before us is, perhaps, the most solemn and important ever heard at this bar. For my own share, I am unconnected with the parties; and having, with all possible attention, considered the matter, both in public and private, I shall give my opinion with that strictness of impartiality to which your Lordships have so just and equitable claim. We have one short question before us,—Is the appellant the son of the late Lady Jane Douglas, or not? I am of the mind that he is; and own that a more ample and positive proof of the child’s being the son of a mother never appeared in a court of justice, or before any assize whatever.” After very ably stating the

* The fifteen Judges of the Court of Session divided 8 to 7—the Lord President Dundas being in the majority.

^u Horace Walpole’s “Memoirs of George III.,” vol. iii. 303.

^x “Lord Mansfield, it had long been dis-

covered, favoured the Douglasses; but the Chancellor Camden, with dignity and decency, had concealed his opinion to the very day of the decision.”—*Horace Walpole’s Memoirs of George III.*, vol. iii. 303.

primâ facie case from the marriage of the parents, and their acknowledging the appellant as their son, he minutely analysed the evidence to contradict and to corroborate it, and thus (*rondeau fashion*) concluded:—"The question before us is short, 'Is the appellant the son of Lady Jane Douglas, or not?' If there be any Lords within these walls who do not believe in a future state, these may go to death with the declaration that they believe he is not. For my part, I am for sustaining the positive proof which I find weakened by nothing brought against it: and, in this mind, I lay my hand upon my breast, and declare that, in my soul and conscience, I believe the appellant to be her son."

Lord Mansfield followed—*haud passibus æquis*—making the worst speech he ever delivered—so bad a speech as to bring suspicion upon the judgment—for he did little more than dwell upon the illustrious descent of the Lady Jane, and the impossibility of any one with such a pedigree being guilty of such a fraud as palming a supposititious child upon the world.* The House agreed to the reversal without a division, but five lay Peers signed a protest recording their opinion that "the appellant was proved not to be the son of Lady Jane Douglas."

Before finally quitting Lord Camden's Chancellorship, I

* It is hardly possibly that the account we have of Lord Mansfield's speech on this occasion can be full and correct, particularly as it does not contain the charges against Andrew Stewart, which were made the subject of the famous "Letters."

^a Horace Walpole thus states the result:—"The Chancellor then rose, and with leading authority and infinite applause told the Lords that he must now declare that he thought the whole plea of the Hamiltons a tissue of perjury woven by Mr. Andrew Stewart, and that, were he sitting as judge in any other Court, he would order the jury to find for Mr. Douglas; and that, what that jury ought to do on their oaths, their Lordships ought to do on their honours. This speech, in which it was allowed he outshone Lord Mansfield, had the most decisive effect. The latter, with still more personal severity to Stewart, spoke till he fainted with the heat and fatigue. At ten at night the decree was reversed without a division."—*Memoirs of George III.*, vol. iii. 304.

I believe the general opinion of English lawyers was in favour of the decision of the

Court 'of Session in Scotland; but this was produced a good deal by Lord Mansfield's wretched argument, and the very able letters of Andrew Stewart, the Duke of Hamilton's agent, whose conduct had been severely reflected upon. I once studied the case very attentively, and I must own that I came to the conclusion that the House of Lords did well in *reversing*. There was undoubtedly false evidence in support of the appellant; but it would have been too much in such a case to act upon the maxim, "false in one thing, false in all things," so as to deprive him of his birthright from misconduct to which he was not privy. There seems to be no doubt that the Lady Jane, notwithstanding her advanced age, was pregnant and had a miscarriage subsequent to the birth of the appellant; and insuperable difficulties attended the theory of his being the son of Madame Mignon. Being in possession of his *status*, I think the evidence was insufficient to deprive him of it—and the strong family likeness satisfactorily established seems to prove that the conclusion of law concurred with the fact of his physical origin.

must advert to the manner in which he disposed of his judicial patronage—always an important consideration in scanning the merits or demerits of Chancellors; and I am happy to say, that, instead of corrupting or enfeebling the bench by political job or personal favour, he acted steadily for the public good, on the maxim, *Detur digniori*. When about to leave the Common Pleas, he succeeded in having the learned and virtuous Sir Eardley Wilmot appointed to succeed him—whom he thus addressed:

“5th August, 1766.

“I have the King’s orders to acquaint you with his intention of removing you to the Chief Justiceship of the Common Pleas, if it be agreeable to you. As Mr. Morton is not yet determined to yield up to you the Chief Justiceship of Chester, I would advise you to *repose yourself in the Common Pleas* till that desired event happens. *I assure you it is a place of perfect tranquillity*. I do most sincerely congratulate you on this nomination, and beg leave to inform you that you owe as much to Lord Northington and to Lord Chatham as to myself. I have been under a treaty with George Cooke ever since I came to town, the particulars of which you shall know when you come. I have withstood his bribe, being determined never to defraud my successor upon my death-bed: his necessities are extreme as well as my punctilio: However, it is now in your hands rather than in mine;^b for I do not consider myself any longer in conscience, though I am in law, Chief Justice of the Common Pleas.

“I am with great truth, &c.

“CAMDEN.”

The times were too distracted to allow of any systematic amendment of the law; but it should be recorded that, under the auspices of Lord Chancellor Camden, passed the “Nullum Tempus Act,” by which an adverse enjoyment of property for sixty years gave a good title against the Crown, whereas the maxim had before prevailed, “*nullum tempus occurrit Regi*,”—according to which obsolete claims might be set up, and vexatious proceedings instituted by the government against political opponents.^c

About the same time likewise passed the famous “Grenville Act,” by which the decision of contested elections was transferred from the House of Commons as a body, to select committees sworn to do justice between the parties.^d The chief

^b This relates to an office in the Court which then, and long after, the Chief Justice might lawfully sell.

^c Stat. 9 Geo. 3., c. 16.

^d 10 Geo. 3., c. 16.

merit of the measure belongs to its author, whose name it bears, but from his colleague at the head of the law he had encouragement and assistance in preparing it.

Thus Lord Camden, while in office, must be allowed to have deserved well of his country. He rendered her still more important services when reduced to a private station.

END OF VOL. VI.

