

The Governace of England:

OTHERWISE CALLED

The Difference between an Absolute and a Limited Monarchy

BY SIR JOHN FORTESCUE, K.T.

SOMETIME CHIEF JUSTICE OF THE KING'S BENCH

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A Revised Text

EDITED

WITH INTRODUCTION, NOTES, AND APPENDICES

BY

CHARLES PLUMMER, M.A.

Fellow and Chaplain of Corpus Christi College, Oxford

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Φαντασία πολιτείας ἰσονόμου, κατ' ἰσότητα καὶ ἰσηγορίαν διοικουμένης, καὶ βασιλείας τιμώσης πάντων μάλιστα τὴν ἐλευθερίαν τῶν ἀρχομένων.—MARCUS AURELIUS ANTONINUS.

'The idea of a polity in which there is the same law for all, a polity administered with regard to equal rights and equal freedom of speech, and the idea of a kingly government which respects most of all the liberty of the governed.'—LONG'S TRANSLATION.

Preface.

THE work here presented to the reader has been three times previously printed ; twice, in 1714 and 1719 by Mr.. afterwards Sir John, Fortescue-Aland, who ultimately became Lord Fortescue of Credan, and once by Lord Clermont in his edition of the collected works of Fortescue¹. Of these editions the two first have become very scarce. while the third is only printed for private circulation. Of all three the value is very much impaired by the fact that the text is based on a comparatively late manuscript ; while no attempt has ever been made to bring out the historical significance and relations of the treatise. It is hoped therefore that the appearance of the present edition, which aims at supplying these deficiencies, will not be considered to be without justification.

Had the treatise 'On the Governance of England' no other claims on our attention, it would deserve consideration as the earliest treatise on the English Constitution written in the English language. But as a matter of fact, its historical interest is very high indeed ; far higher, I venture to think, than that of the author's better-known Latin treatise *De Laudibus Legum Angliæ*. We here see that

¹ From two notices in Heame's Collections (ed. Doble, i. 46, 154) it would appear that Lord Fortescue of Credan at one time entertained the idea, ultimately carried out by Lord Clermont, of printing a collected edition of the works of their ancestor.

Fortescue, while remaining true to those liberal principles of government which he had previously enunciated, was yet keenly sensible of the evils of Lancastrian rule, and that in the various remedies suggested by him, which have for their object the strengthening of the powers of the Crown and the reduction of the influence of the nobles, he was, consciously or unconsciously, helping to prepare the way for the New Monarchy.

This connexion of the work with the history of the time I have endeavoured to draw out, by bringing together from contemporary authorities whatever seemed to illustrate the meaning of the author. The closeness of the connexion is shown by the fact, more than once pointed out in the notes to the present edition, that the language of Fortescue is often identical with that of the public documents of the period. And this in turn illustrates another point of some importance to which I have also drawn attention; the fact namely that Fortescue, first of mediæval political philosophers, based his reasonings mainly on observation of existing constitutions, instead of merely copying or commenting on Aristotle.

It follows from this that the inspiration which Fortescue derived from literary sources is subordinate in importance to that which he drew from the practical lessons of history and politics. But I have endeavoured to illustrate this point also. The four works of which Fortescue seems to have made most use are: the *De Regimine Principum* which goes under the name of St. Thomas Aquinas, though only a portion of it is by him; the treatise with the same title by Ægidius Romanus; the *De Morali Principum Institutione* of Vincent of Beauvais; and the *Compendium Morale* of Roger of Waltham. The first two works have been often printed, and are more or less well known; the two last exist only in manuscript. It has added interest to my study of Vincent of Beauvais' treatise that I have been

able to read it in the very manuscript used by Fortescue himself. The *Compendium Morale* of Roger of Waltham I think I may almost claim to have discovered; for though it is mentioned by Leland and his copyists, it is clear that they cannot have had much acquaintance with its contents, otherwise they would not have fixed the author's *floruit* as they have done. Of Aristotle, except so far as Aristotelian doctrines are embodied in the above-named works, I have shown that Fortescue knew nothing beyond the collection of quotations which goes by the name of the *Auctoritates Aristotelis*.

One of the most important sources from which an author can be illustrated is himself. From this point of view I am under the greatest obligations to the collection of Fortescue's Works printed—I wish I could have added, published—by his descendant, Lord Clermont. It is I trust in no captious spirit that I have occasionally pointed out what seem to me omissions and mistakes on the part of the noble editor. If all representatives of historic houses would imitate the example set by Lord Clermont, light would be thrown on many a dark corner of English history. I have also derived much assistance from the scholarly notes on Fortescue's longest work, the '*De Naturâ Legis Naturæ*', with which Lord Carlingford, then Mr. Chichester Fortescue, enriched his brother's edition of that treatise.

In regard to the Appendices, the first and third are merely reprints from older and completer MSS. of documents already given by Lord Clermont; the second and fourth are new, though I have given reasons for believing that the last is a fragment of a treatise of which other fragments have been printed by Lord Clermont. From the second a brief extract was printed by Sir Henry Ellis in his Historical Letters, though without recognising either its author or its importance. It is however, as I have shown, closely connected with the present work, the

historical bearing and significance of which it illustrates in a very striking manner.

In reference to the life and times of Fortescue I have been able to glean some facts which have escaped previous biographers. These are derived chiefly from French and Burgundian sources. I cannot help thinking that the value of these authorities for English history, though long ago pointed out by Mr. Kirk in his History of Charles the Bold, has hardly been sufficiently appreciated by English historians; while if the archives of France contain many more documents bearing on English history equal in importance to those printed by Mdlle. Dupont in her edition of Waurin and by M. Quicherat in his edition of Basin (both published under the auspices of the Société de l'Histoire de France), much light may be hoped for from that quarter. A visit to the Record Office enabled me to clear up some mistakes and obscurities in regard to Fortescue's landed property.

It will be seen that I have edited this work from a historical and not from a philological point of view. Of the MSS. employed in the formation of the text a sufficient account will be found in the Introduction. A few words may here be said as to the manner in which I have dealt with them. I have, I believe, noted all cases in which I have departed from the reading of the MS. on which I have based my text. In other instances I have only given such various readings as seemed to me to have some historical or philological interest, or to be of importance as illustrating the relations of the MSS. to one another. *Forms* of words which appeared to me worthy of notice I have frequently included in the Glossary, with an indication of the MS. from which they are taken. Stops and capitals are introduced in conformity with modern usage; quotations have been indicated, as in MS. Y, by the use of Gothic letters. I have not attempted to distinguish between Early English þ and Middle-English *y*, as they are sometimes called;

they are used promiscuously, they fade imperceptibly into one another, and after all the *y* is only þ badly written. I have printed þ throughout. In regard to the junction and separation of words the MS. has been closely followed. The only exception is in the case of the indefinite article *a* or *an*, which in the MS. is sometimes joined with and sometimes separated from the word to which it belongs; I have always separated it. In the case of words just hovering on the verge of becoming compounds, and neither completely joined nor completely separated in the MS., I have followed the example of Professor Earle and divided the elements by a half-space, objecting with him to the use of hyphens as a purely modern invention. In the MS. the word *and* is sometimes abbreviated, sometimes written in full; it is here always printed in full. With these exceptions the peculiarities of the MS. followed are, I believe, faithfully reproduced, extended contractions being marked in the usual way by italics.

The Glossarial Index is merely intended to give help to those who, reading the text for historical purposes, may be puzzled by Middle-English forms or meanings. It makes no pretensions to any philological value.

I trust that this work may prove useful both to teachers and students of history in Oxford and elsewhere. But my main object has been to illustrate my author, and that is the point of view from which I would desire to be judged.

In a body of notes ranging over so many subjects, some of them lying far outside the sphere of my ordinary studies, it is hardly possible that there should not be slips and blunders. For the correction of these, whether publicly or privately, I shall always be grateful; and I should wish to adopt as my own the words of one of the most unselfish labourers in the field of learning, Hermann Ebel: 'opprobret nobis, qui volet, modo corrigat.'

It only remains for me to pay the tribute of my hearty

thanks in the many quarters where that tribute is due. I have to thank the Delegates of the Clarendon Press for the generous confidence with which they accepted the work of an untried hand, and for the liberality with which they permitted an extension of its scope much beyond what was originally contemplated. To the Lord Bishop of Chester I am under special obligations; who not only encouraged me to undertake the work, but both as a Delegate of the Press and in his private capacity helped it forward at a great expenditure of trouble to himself; to his published writings I, in common with all students of history, owe a debt of gratitude which can never be adequately expressed. To the Rev. C. W. Boase, Fellow of Exeter College, I am indebted for constant encouragement and assistance; nor am I the first who has profited by his wealth of historical learning; while Professor Skeat gave me much kind help and advice with reference to points of philology. Mr. Edward Edwards, the well-known and accomplished author of the *Life of Raleigh*, took more trouble than I like to think of, in the endeavour to clear up some points in which I was interested. That his researches were not always crowned with success does not diminish my sense of gratitude. The help which I have received in regard to special points is acknowledged in the book itself. I am indebted to Lord Calthorpe for the facilities which he afforded me in consulting the Yelverton MS., to Mr. Henry Bradshaw for similar favours in regard to the Cambridge MS., and to the Master and Fellows of Trinity College, Cambridge, for the loan of their MS. containing the *Epitome*; while to the Provost and Fellows of Queen's College, Oxford, my thanks are due for allowing me even a larger use of their valuable library than that which they so liberally accord to all Graduates. I have to thank Mr. W. D. Selby, who directed my researches at the Record Office; and Mr. E. J. L. Scott, of the Department of MSS., who did me the like service at the British

Museum. At the Bodleian I received constant help from Mr. Madan the Sub-Librarian, while Mr. Macray was an unflinching oracle on all points of palæography. I should like also to thank generally the officials of all the three institutions which I have named, for their unflinching courtesy, attention, and helpfulness. To the many friends who have helped me, if indirectly, yet very really by their sympathy and the interest they have taken in my work, I would also here return my grateful thanks. To one of them this work would probably have been dedicated, were it not that dedications are said to be somewhat out of date in this enlightened age.

C. C. C., OXON.,
July 29, 1885.

List of Authorities.

NOTE.—As a general rule the authorities referred to will be easily identified; only those are given here as to which any doubt might be likely to arise.—[C.S. = Camden Society. R.S. = Rolls Series.]

ERRATA.

- p. 41, l. 13, *for* Chief Justice of England, *read* Chief Justice of the King's Bench.
p. 64, note 5; p. 65, note 2; p. 215, l. 13 from bottom, *for* Ormond, *read* Ormonde.
p. 81, l. 22, *for* trace, *read* tract.
p. 84, l. 10, *for* 1464, *read* 1463.
p. 249, l. 6 from bottom, *for* de, *read* le.
p. 263, l. 7 from bottom, *for* sports, *read* spots.
p. 349, margin, insert *his* after *Warrewic*.

Ægidius Romanus, *De Regimine Principum*. English translation in MS. Digby 233.

Blakman, in Hearne's Otterbourne.

Burton, History of Scotland. Cabinet edition.

Chastellain, ed. Kervyn de Lettenhove.

Continuator of Croyland, in Fulman's *Scriptores Veteres*, vol. i. fol. 1684.

De Coussy, ed. Buchon.

English Chronicle, ed. Davies. C.S.

Fabyan, ed. Ellis, 4to.

Fortescue's Works, etc., ed. Clermont.

The writings of Fortescue occupy the first volume of a work in two volumes by Lord Clermont, with the title 'Sir John Fortescue and his Descendants;'; the Family History forming the second volume. The latter was however subsequently reprinted as a substantive work, and it is always this second edition which is cited under the title 'Family History.' The Legal Judgements of Sir John Fortescue will be found at the end of his Works, with a separate pagination. Of his works, the *De Naturâ Legis Naturæ* is cited for shortness as N. L. N., the 'Governance of England' as the *Monarchia*.

Froude, History of England. Cabinet Edition.

Gregory's Chronicle, in Gairdner's 'Collections of a London Citizen.' C.S.

Hall's Chronicle, 4to., ed. 1809.

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- Martineau, History of the Peace. 4 vols. 8vo., 1877-8.
- Monstrelet. 3 vols. fol., 1595.
- Paston Letters, ed. Gairdner.
- Political Songs, ed. Wright. C.S.
 „ „ R.S.
- Proceedings and Ordinances of the Privy Council, ed. Sir Harris Nicolas. (Cited as P. P. C.)
- Pseudo-Aquinas. Under this title is cited that part of the *De Regimine Principum* which is not by St. Thomas Aquinas.
- Rede's Chronicle, in MS. Rawl. C. 398.
- Rymer's *Fœdera*. Original Edition, 1704-1735.
- Stowe's Annals, ed. 1631, fol.
- Stubbs' Constitutional History. Cabinet Edition. (Cited as S. C. H.)
- Turner, Sharon, History of England during the Middle Ages. 8vo. Edition.
- Vincent of Beauvais, *De Morali Principum Institutione*, in MS. Rawl. C. 398.
- Waltham, Roger of, *Compendium Morale*, in MS. Laud. Misc. 616.
- Wars of the English in France, Letters and Papers illustrative of the, ed. Stevenson. R. S. (Cited as 'English in France.')
- Waurin, Anchiennes Chroniques, ed. Mdle. Dupont. (Société de l'Histoire de France.)
- Whethamstede. R.S.
- Worcester, William, Collections, and Annals, in Wars of the English in France, q. v.

Chronological Table of the Life, Times, and Writings of Sir John Fortescue.

- ? 1390-1400. Birth of Fortescue.
1399. *Oct.* Accession of Henry IV.
1413. *March.* Accession of Henry V.
1422. *Sept.* Accession of Henry VI.
- 1425, 1426, and 1429. Fortescue Governor of Lincoln's Inn.
- 1429 or 1430. Fortescue becomes a Sergeant-at-Law.
1429. *Nov.* 6. Coronation of Henry VI at Westminster.
1431. *Dec.* 17. „ „ at Paris.
1435. *Aug.* Conference of Arras.
- ? 1435-6. Fortescue marries Elizabeth or Isabella Jamyss.
- 1435-6. Fortescue acquires lands in Devonshire by grant of his brother Henry.
1439. Conference of Calais.
1440. *June.* Gloucester's manifesto on the release of the Duke of Orleans.
- 1440 and 1441. Fortescue acts as Judge of Assize on the Norfolk circuit.
1441. *Easter Term.* Fortescue made a King's Sergeant.
 — Grant to Fortescue and his wife of lands at Philip's Norton.
1442. *Jan.* Fortescue made Chief Justice of the King's Bench.
Feb. Grant to Fortescue of a tun of wine annually.
Oct. Fortescue ordered to certify the Council as to certain indictments brought against the Abbot of Tower Hill.
 Fortescue ordered to commit to bail certain adherents of Sir William Boneville.
- 1442 or 1443. Fortescue knighted.

1443. *Jan. or Feb.* Fortescue sent on a special commission into Norfolk.
March 4. Letter of thanks from the Council to Fortescue.
 — 14. Fortescue ordered to send to the Council a list of persons eligible for the offices of J.P. and Sheriff in Norfolk.
 — 23. Fortescue makes his report to the Council on the affairs of Norfolk.
April 3 and May 3. Fortescue attends the Privy Council.
May 8. Warrant ordered for the payment of 50 marks to Fortescue.
May 10. Fortescue summoned to advise the Council with reference to the attacks on Cardinal Kemp's estates.
 — 11. Fortescue makes his report to the Council.
 — 18. Fortescue sent on a special commission into Yorkshire.
May. Grant to Fortescue of a tun of wine annually.
July 11. Fortescue attends the Privy Council.
 Confirmation to Fortescue and his wife of the lands at Philip's Norton.
1444. *Jan.* Fortescue ill of sciatica, and unable to go on circuit.
1445. *Feb.-1455. July.* Fortescue a trier of petitions in Parliament.
1445. *April 22.* Marriage of Henry VI with Margaret of Anjou.
1447. *Feb. 23.* Death of Gloucester.
March. Fortescue receives an addition of £40 to his salary.
April 11. Death of Cardinal Beaufort.
Oct. Fortescue and his wife receive letters of confraternity from Christ Church, Canterbury.
 Fortescue refuses to deliver Thomas Kerver out of Wallingford Castle.
- 1447-8. Fortescue arbitrates between the Chapter and Corporation of Exeter.
1450. *Jan.-March.* Fortescue acts as spokesman of the Judges in relation to the trial of Suffolk.
May. Murder of Suffolk. Rising of Cade.
Aug. Fortescue sent on a special commission into Kent.
Sept. The Duke of York comes over from Ireland.

1451. *May-June.* Fortescue expecting to be attacked in his house.
1452. *Oct.* Fortescue acquires the manor of Geddynghall, and other lands in Suffolk.
1453. *July 6.* The King falls ill at Clarendon.
Oct. 13. Birth of Prince Edward of Lancaster.
1454. *Feb.* Fortescue delivers the opinion of the Judges on the case of Thorpe.
March 22. Death of Kemp.
April 3. York appointed Protector.
June 9. Edward of Lancaster created Prince of Wales.
Dec. 25. Recovery of the King.
 Fortescue divests himself of his lands in Devonshire in favour of his son Martin.
1455. *May 22.* First battle of St. Alban's. Death of Fortescue's younger brother, Sir Richard Fortescue.
Oct. The King falls ill again at Hertford.
Nov. 19. York reappointed Protector.
1456. *Feb.* The King recovers.
Feb. 25. York dismissed from the Protectorship.
Feb. Fortescue arbitrates between Sir John Fastolf and Sir Philip Wentworth.
March. Fortescue consulted by the Council with reference to the Sheriffdom of Lincolnshire.
May. Fortescue sits on a special commission at the Guildhall.
 Fortescue acquires the reversion of the manor of Ebrington.
1457. *May.* Fortescue acquires lands at Holbeton, Devon.
1458. *March 25.* Peace made between the Lancastrians and Yorkists. Margaret of Anjou instigates Charles VII to send French troops to England.
1459. *Sept. 23.* Battle of Bloreheath.
Oct. 12. Dispersal of the Yorkists at Ludlow.
Nov. Parliament of Coventry. Activity of Fortescue.
Dec. 7. Attainder of the Yorkists.
 Fortescue appointed a feoffee for executing the King's will.
1460. *Feb.* Negotiations of Margaret of Anjou with France.
July 10. Battle of Northampton.
Oct. The Duke of York claims the crown.

Chronological Table.

- Oct.* Margaret and the Prince in Wales.
Dec. 31. Battle of Wakefield.
1461. *Jan.* Negotiations of Margaret and the Dowager Queen of Scotland at Lincluden.
Jan. 20. Bond of Lancastrian lords to induce Henry VI to accept the terms agreed upon.
Feb. 3. Battle of Mortimer's Cross.
 — 17. Second battle of St. Alban's.
 ? Fortescue joins the Lancastrian forces.
March 4. Edward IV proclaimed.
 — 29. Fortescue present at the battle of Towton.
 The Lancastrians take refuge in Scotland.
April 25. Agreement of the Lancastrians to surrender Berwick to the Scots.
May. Berwick full of Scots. Carlisle besieged by the Scots. The siege raised by Montague.
June 26. Fortescue and others 'rear war' against Edward IV at Ryton and Brancepeth.
 — 28. Coronation of Edward IV.
July 22. Death of Charles VII of France.
1462. *Feb.* Lancastrian plots for invading England.
Feb. 20. Execution of the Earl of Oxford.
June 1461–*March* 1462. Somerset and Hungerford negotiate on the Continent in behalf of the Lancastrian cause.
1462. *March.* Somerset and Hungerford return to Scotland. A fleet for invading England assembles in the Seine.
April. Margaret and Prince Edward go to the Continent.
June 28. Treaty signed between Margaret and Louis XI.
Summer. Negotiations of the Scots with Edward IV.
 — The Northern castles lost by the Lancastrians.
Sept. Warwick defeats the invading fleet.
Oct. Margaret returns from France and recovers the Northern castles; is joined by Henry VI in Northumberland.
Nov. Henry VI and Margaret retire to Scotland.
Dec. 24. Bamburgh and Dunstanburgh surrender, and Somerset submits to Edward IV.
1463. *Jan.* 6. Alnwick falls.

Chronological Table.

- Before *Apr.* 29. Bamburgh and two other castles recovered by the Lancastrians.
May. Alnwick goes over to the Lancastrian side.
June. Henry VI and Margaret at Bamburgh. The Lancastrians dispersed by Warwick. Henry and Margaret retire to Scotland.
July. Margaret, Prince Edward, and Fortescue go to the Continent.
Sept. 1–2. Interview of Margaret with Philip the Good at St. Pol.
 The Lancastrian exiles retire to St. Mighel in Barrois. Negotiations with foreign courts.
Dec. Somerset returns to the Lancastrian allegiance.
- 1461–1463. Fortescue writes the 'De Naturâ Legis Naturæ,' and various tracts on the succession question.
1464. *Jan.* Henry VI at Edinburgh.
Spring. Norham and Skipton in Craven captured by the Lancastrians. Lancastrian rising in Lancashire and Cheshire.
March. Henry VI at Bamburgh.
April 25. Battle of Hedgeley Moor.
May 1. Edward IV privately married to Elizabeth Wydeville.
 — 8. Battle of Hexham.
 — 15. Execution of Somerset.
 — 27. Execution of Hungerford.
 Henry VI retires to Scotland.
June. Surrender of Alnwick and Dunstanburgh. Capture of Bamburgh.
 Before *Dec.* Fortescue goes to Paris.
Dec. Letter of Fortescue to Ormonde. Henry is safe and out of the hands of his rebels.
1465. *March.* ? Henry VI at Edinburgh.
July. Henry VI captured in Lancashire and sent to the Tower.
Summer. Fortescue goes to Paris.
 War of the Public Weal in France.

INTRODUCTION.

PART I.

CONSTITUTIONAL SKETCH OF THE LANCASTRIAN AND YORKIST PERIOD. (1399-1483.)

THE fifteenth century opens in two of the principal countries of Europe with a revolution. On September 29, 1399, Richard II of England resigned the crown; the next day he was deposed on charges, which were taken as proved by common notoriety, and Henry IV was accepted in his place. On August 20, 1400, a section of the electors of the Holy Roman Empire by an equally summary process deposed their head, Wenzel king of Bohemia, and on the following day elected Rupert of the Palatinate in his stead. The fortunes of the two deposed monarchs had not been unconnected. Richard's first wife, Anne of Bohemia, was Wenzel's half-sister: and there is extant a letter from Wenzel to Richard, dated Sept. 24, 1397, in which he offers Richard help against his rebellious nobles, in return for similar offers made by Richard to himself¹. The comparison is further worth making, because of the similarity of the charges which served to overthrow the two brothers-in-law.

Contemporary Revolution in England and the Empire.

Another comparison, which to students of English History is even better worth making, is the comparison between the revolution of 1399 and that of 1688. In both cases a great effort was made by the lawyers to preserve the formalities of the constitution, and to disguise by legal fictions

Comparison of the Revolutions of 1399 and 1688.

¹ Bekynton's Correspondence, I. lxi. 287-9.

Legal fic-
tions.

Many were
led further
than they
had in-
tended.

Henry and
William
came as
deliverers
of Church
and Na-
tion.
Foreign
policy.

Theory of
royalty.

what was in reality a breach of continuity: in both it was found necessary to pass over the immediate heir, so that Parliament had not merely, as in the case of Edward II, to claim the right of setting aside an unworthy king, but had implicitly to make the further claim to regulate the succession. So on both occasions probably many were carried by the course of events further along the path of revolution than they had intended. There were many who would gladly have seen Henry restored to his Duchy of Lancaster, and who were prepared heartily to support him in insisting that Richard should abandon his recent unconstitutional proceedings and return to his former mode of government, who yet felt themselves duped, when they found that he used the opportunity which they had given him to seat himself on the throne. So too there were many who were truly anxious that by means of the coming of the Prince of Orange the religion, laws, and liberties of England should be securely established in a free parliament, but who were disappointed when James II's pusillanimity paved the way for the elevation of his son-in-law to the crown. Both Henry and William came as the deliverers of a church which was threatened alike in doctrine and in property by a hostile form of religion, and of a nation perplexed and unsettled by a feverish attempt at arbitrary rule. In both cases questions of foreign policy had much to do with the result. But whereas at the close of the seventeenth century it was absolutely necessary for the salvation of Europe that England should be rescued from her subservience to France, at the close of the fourteenth century, on the other hand, France was by no means a dangerous power. It was her very weakness which tempted the unscrupulous and hypocritical aggression of Henry V. In both cases one of the chief advantages secured by the change of dynasty was that the royal authority was placed upon a proper footing, and seen to rest upon the consent of the nation. Richard II, like James II, had imbibed an entirely baseless view of English monarchy. The assertion that he had declared the laws to be in his own mouth and

breast, is perhaps an exaggeration of his enemies: but if true, such language is no worse than James II's prattle about 'his sovereign authority, prerogative royal, and absolute power, which all his subjects were to obey without reserve¹.' By the change of dynasty theories of this kind were got rid of. Whether from choice or from necessity, the Lancastrians always professed to rule as constitutional kings.

The Lancastrian period must always be of importance, as the period in which political liberty, at any rate in theory, reached its highest point during the middle ages. In fact the people acquired a larger measure of liberty than they were able to use: and the Commons, though bold in stating their grievances, were often helpless in devising remedies. In the words of Dr. Stubbs, 'Constitutional progress had outrun administrative order².' And this, combined with other causes which will be noticed later, made possible those disturbances which culminated in the civil war, and which wearied out the national patience, until even Tudor despotism seemed more tolerable than confusion.

The advantages of Lancastrian rule were mainly prospective, and its chief claim on our gratitude is the fact that it supplied the precedents on which the constitutional party in the seventeenth century based their resistance to that caricature of Tudor despotism which the Stuarts attempted to perpetuate³. Viewed in relation to contemporary history it was premature; and it combines with the fruitless rising of the Hussites in Bohemia, with the abortive attempts of the Church to reform itself in the Councils of Pisa, Constance, and Basle, and with the equally abortive attempts to restore administrative and constitutional unity to the disintegrated German Empire, to stamp upon the fifteenth century that character of futility which has been so justly ascribed to it⁴.

¹ Hallam, Const. Hist. iii. 71.

² Stubbs, Const. Hist. iii. 269.

³ S. C. H. iii. 2-5; cf. Rogers' Gascoigne, pp. lviii. ff.

⁴ 'Weak as is the fourteenth century, the fifteenth is weaker still; more *futile*, more bloody, more immoral.' S. C. H. ii. 624.

Key-note of Lancastrian policy, its appeal to national consent.

Privy Council.

Great Council.

Parliament.

Henry IV a Saviour of society.

'The key-note of the Lancastrian policy,' says Dr. Stubbs, 'was struck by Archbishop Arundel in Henry IV's first Parliament, when he declared that Henry would be governed, not by his own "singular opinion, but by common advice, counsel, and consent"¹.' For the tendering of this 'common advice, counsel, and consent,' there were during this period three organs: 1. The Privy Council; 2. The Great Council; 3. The Parliament. On the character and composition of the Privy Council during the Lancastrian period, and the schemes of Fortescue for reorganizing it, I have spoken at length elsewhere². On the Great Council also something will be found in the same place. Fortescue says nothing about it; perhaps, as I have there suggested, he disliked the institution as giving too much influence to the aristocracy. It forms however a characteristic feature of Lancastrian rule: for whereas in former reigns it appears as a mere survival of the old baronial parliaments, it now assumes special functions and a special position of its own, standing midway between the Privy Council and the Parliament, advising on matters which the former did not feel itself competent to settle, and preparing business for the meeting of the latter.

On the composition and powers of Parliament Fortescue is also silent. Probably he considered them to be too firmly settled and too well known to require any commentary. The increase of the power of parliament under the Lancastrians is indeed too obvious to escape notice. 'Never before,' says Dr. Stubbs, 'and never again for more than two hundred years, were the Commons so strong as they were under Henry IV³.'

Henry IV came to the throne as the representative of the 'possessed' classes—to use a contemporary expression⁴. The crude socialism of the Lollards, as the barons saw, and as the Churchmen were careful to point out, threatened the foundations not merely of the Church, but of all property. It was the mission of Henry IV to put

¹ S. C. H. iii. 14.

² Notes to Chap. xv. below.

³ S. C. H. iii. 72.

⁴ Sharon Turner, iii. 105.

down these anarchical tendencies, to maintain vested interests and the existing state of things. He came, in modern phrase, as a saviour of society. Richard II, even in his best days, had not been very favourable to the interests of the propertied classes. He had not been forward in persecuting the Lollard, and he had wished to give freedom to the serf. These errors Henry was expected to correct.

The second great object of Henry's reign was the maintenance of himself on the throne and the continuance of his dynasty. From this point of view his reign was one long struggle against foreign and domestic enemies. His ultimate success is a proof of his great ability, but he was at no time free from anxiety. Hallam¹ speaks as if Henry IV's submission to the demands of the Commons was unaccountable. But the causes of his weakness are plain enough. He was weak through his want of title, weak through the promises by which he had bound himself to those whose aid had enabled him to win the crown, weak most of all through his want of money. It was this which gave the Commons their opportunity, it was this which caused all the disasters of the reign, the rebellion of the Percies, the ill-success of the Welsh campaigns, the wretched state of Ireland, the danger of Calais. The most 'exquisite means'—to use Fortescue's phrase—of raising money were resorted to; the constitutional character of some of them being, to say the least, questionable. This scarcity of money was due partly to the general want of confidence in the stability of the government which succeeded the brief enthusiasm in Henry's favour², and which

¹ Middle Ages, iii. 95.

² The letter of Philip Repington, the King's confessor, afterwards Bishop of Lincoln, dated May 4, 1401, is worthy of careful study in regard to this point. It is no mere rhetorical composition made up of phrases always kept in stock and not intended to fit any thought in particular; but it gives a genuine picture of the unsatisfactory state of the country,

and of the deep disappointment felt at the way in which Henry had belied the (perhaps unreasonably high) expectations that had been formed of him. The author alludes in reference to Henry to Luke xxiv. 21, 'Nos autem sperabamus quia ipse esset redempturus Israel.' Bekynton's Correspondence, i. 151-4; cf. also Engl. Chron., ed. Davies, pp. 23, 28, 31; Hardyng, p. 371.

led people to hoard their gold and silver, so that not only was none forthcoming to meet the demands of the government, but capital, which ought to have been employed productively, was withdrawn from circulation, thus causing for the time a general diminution of the resources of the country. As soon as the accession of Henry V had shown that the dynasty was firmly established, abundant supplies were at once at his command¹. Another cause was the disturbance of commerce, and consequent decline of the customs which followed the accession of Henry IV, owing partly to the unsettled state of the relations between England and France². But the commons could not be got to believe in the poverty of the Government, and Henry did not dare to press for heavier taxation, for fear of increasing the already dangerous amount of discontent.

Disturbance of Commerce.

The unquiet time of Henry IV.

In this way passed what the chronicler Hall has justly called 'the unquiet time of King Henry the Fourth.' Harassed as he was by enemies foreign and domestic, deserted by many of the Lords, worried by the Commons, conscious that he had lost the love of his people, jealous and doubtful of his heir; with a divided court and broken health, which his enemies regarded as a judgement upon him, we can hardly refuse him our sympathy, although we may be of opinion that many of his troubles were self-caused. The interest which he is said to have taken in the solving of casuistical questions³, shows the morbid lines on which his burdened conscience was wearily working. There is psychological if not historical truth in the story that he expired with the sigh that God alone knew by what right he had obtained the crown⁴. It was a curious choice that he should wish to be buried so near the man whose son he had discrowned, if not done to death.

¹ S. C. H. iii. 87.

² On this, and on the general decline of England's maritime power during the reigns of Henry IV and Henry VI, see notes to chaps. vi. xvii. below, and cf.

S. C. H. iii. 65, note 1.

³ Capgrave, III. Henr. pp. xxxiii, 109.

⁴ Monstrelet, ii. f. 164 a, cited by Sharon Turner.

The accession of Henry V was by no means his first appearance either as a statesman or a warrior. He had served with distinction both in council and in the field, and had received in both capacities the thanks of Parliament. He had had his own policy, and his own party, who had urged him to claim the regency on the ground that his father was incapacitated by the disease from which he was suffering, which was said to be leprosy¹.

Accession of Henry V. His previous history.

The words which Shakespeare puts into the mouth of the dying Henry IV represent no more than the literal truth as to the advantages with which Henry V came to the crown:

His advantages.

'To thee it shall descend with better quiet,
Better opinion, better confirmation;
For all the soil of the achievement goes
With me into the earth².'

He reaped the benefit of an usurpation of which he had not shared the guilt. In accordance with these advantages he adopted a policy almost ostentatiously conciliatory. Even the unjustifiable attack on France may have been in part due to the same motive³. Only, if this was his idea, it was singularly falsified by the result. The causes which suspended for a time the outbreak of discord, did but make it the more intense when it came. And it is

¹ I am inclined to think that the above is the true account of a very obscure transaction. Henry Beaufort was said to have 'stired' the prince 'to have take ye governance of yis Reume and (of) ye crowne uppon hym;' (so I would construe the passage,) Rot. Parl. iv. 298 b; cf. Sharon Turner, ii. 362. Leprosy was a bar to the descent of real property; Hardy, Close Rolls, I. xxxi. In Rymer, xi. 635, is a certificate of the king's physicians that a certain person is not a leper, which is very interesting with reference to the nature of mediæval leprosy.

² Second Part of King Henry IV, Act iv. sc. 4.

³ Cf. Ægidius Romanus, De

Regimine Principum, III. ii. 15: 'Guerra enim exterior tollit seditiones et reddit cives magis unanimes et concordēs. Exemplum enim hujus habemus in Romanis, quibus postquam defecerunt exteriora bella intra se ipsos bellare coeperunt.' 'For outward werre aleyþ inward strif, and makeþ citeseyns þe more acorded. Herof we hauen ensample of the Romayns, for whanne hem failede outward werre, thei by gunne to haue werre among hemself.' MS. Digby, 233, fo. 142 c. To this motive also Basin ascribes the warlike policy of Humphrey of Gloucester. He too cites the example of the Romans; i. 189.

His reign constitutionally unimportant.

only as developing causes, and those evil causes, which hardly began to act until he had passed away, that the reign of Henry V has any place in constitutional history. He did nothing permanent for the good of England, and the legacy which he left her was almost wholly evil: a false ideal of foreign conquest and aggression, a reckless contempt for the rights and feelings of other nations, and a restless incapacity for peace, in spite of exhaustion which had begun to show itself even in his own lifetime¹. The history of the Southampton plot is characteristic of the haste with which the Lancastrians sought to stifle anything which raised the dangerous question of their title. The whole proceedings were so unconstitutional and irregular that they had to be specially legalized in the next Parliament². Even more noteworthy is the fact that 'this conspiracy was the first spark of the flame which in the course of time consumed the two houses of Lancaster and York. Richard Earl of Cambridge was the father of Richard Duke of York, and grandfather of Edward IV³.'

The Southampton Plot.

Beginning of the Wars of the Roses.

Henry VI.

Divisions of his reign.

But it was not till the house of Lancaster had proved in the person of Henry VI its entire incapacity to rule the kingdom, that the claims of the house of York were to be put forward openly. 'The troublous season of King Henry the Sixth,' to use once more the words of Hall, may be divided into three main periods: (1) from 1422 to 1437, the time of the minority proper⁴; (2) from 1437 to 1450, the time of Henry's own attempt at governing with the aid of those who may from time to time have had the ascendancy with him; (3) from Cade's rising in 1450 to 1461, the time of civil war. During the first of these periods the struggle is directly for preponderance in the council, mainly between the adherents of Gloucester and

¹ That Henry's aggression was disapproved by some even of his own subjects, see Gesta Henrici Quinti, p. xxxi; cf. Pecoock, Repressor, p. 516.

² Rot. Parl. iv. 64 ff.: 'ut judicia . . . pro bonis et legalibus judiciis habentur.'

³ Ellis, Historical Letters, II. i. 44.

⁴ Henry did not legally come of age till 1442, but from 1437 he began to influence the course of government. See Rot. Parl. v. 438-9, which document may be regarded as marking the transition from the first to the second period.

Beaufort. During the second period the struggle is rather for influence with the king, for possession of the royal ear. At first the contest as before is between Gloucester and Beaufort. Then, when they disappear, it is between Suffolk, Somerset, and Margaret on the one side, and York and his adherents on the other. Owing to the unhappy weakness of Henry both in will and intellect, no party could feel sure of maintaining their ascendancy with him, and of enjoying his support, unless they wholly monopolized his ear, and excluded all other influences¹. Hence all the unconstitutional attempts of Margaret and her partizans to keep first Gloucester and then York from the royal presence, which contributed largely to make the civil war inevitable. When that war broke out, the struggle for command of the king's person still continued; only it was no longer carried on merely by intrigue and party tactics, but depended for its issue upon the fate of battles.

The marriage of Henry to Margaret of Anjou in 1445 was a great misfortune not only to England², but also to the house of Lancaster. By degrading the crown into an instrument of party warfare, she involved it in the ruin of the party of her choice³. The death of Gloucester in 1447 was another event which helped to bring matters to a crisis. Little good as he had done the house of Lancaster during his life, his death was a very severe blow to it. It cast an indelible suspicion on the existing government, and

Henry's marriage disastrous.

Death of Gloucester and Beaufort.

¹ 'Pour ce que le roy Henry . . . n'a pas este . . . homme tel que il convenoit pour gouverner ung tel royaume, chacun quy en a eu povoir s'est voulu enforchier d'en avoir le gouvernement,' &c. Waurin, ed. Dupont, ii. 282.

² Gascoigne is especially strong on this point; e.g. pp. 203 ff., 219 ff.

³ Commynes remarks very justly on the disastrous effect of this partizan attitude of Margaret. She ought, he says, to have acted as mediator between the two parties, and not to have identified herself

with either; Liv. vi. c. 12. Chastellain says of her: 'Tu as esté ennemye trop tost et trop amyë à peu y penser; et sy te a porté grant grief ton hayr, et ton aimer peu de profit;' vii. 129 f. He makes her confess that she has been the ruin of England; ib. 102. Cf. Bacon, *Of Seditions and Troubles*: 'When the Authority of Princes is made but an Accessary to a Cause, and that there be other Bands that tie faster than the Band of Sovereignty, Kings begin to be put almost out of possession.' Cf. id. *Of Faction*.

it transferred the position of heir-presumptive and leader of the opposition to a man whose abilities were far greater than those of Gloucester, while his interests were diametrically opposed to those of the house of Lancaster, instead of being identical with them. A few weeks later died Cardinal Beaufort, and the stage was thus cleared for younger actors. Somerset and York were both absent from England, and Suffolk was omnipotent at court. He showed a rigorous determination to exclude not merely from power, but even from the king's presence, all but those who were prepared to be the subservient ministers of his will¹. The same policy was pursued with reference to the local administration². The reaction caused by this arrogance and partiality, and the ill-success of his foreign policy³, proved his ruin. By 1450 the popular indignation could no longer be restrained, and his impeachment was resolved on by the Commons. The ultimate decision of the question is an instance of a tendency, which appears more than once in this time of weakness and decline of true political life; the tendency, namely, to throw the responsibility for questionable actions upon the crown, and so to shift it from the shoulders of those who constitutionally ought to bear it. At the time of Henry's marriage the Lords protested that the king had been moved to the thought of peace 'onely by oure Lorde,' and not by 'the Lordes, or other of your suggettes⁴.' So now the king, 'by his owne advis, and not reportyng hym to th' advis of his Lordes, nor by wey of judgement,'

Ministry of Suffolk.

His impeachment.

Tendency to shift constitutional responsibility.

¹ Even the sermons preached before the king were subjected to a rigorous censorship; Gascoigne, p. 191; cf. Gregory, pp. xxiii, 203.

² Rot. Parl. v. 181 b, and notes to Chap. xvii. below.

³ Cf. Gascoigne, p. 219: 'Et sic facta est alienacio . . . predictarum terrarum . . . sine aliqua pace finali conclusa . . . inter illa duo regna.' Henry's subsequent protest that the cession of Maine was only made in consideration of a secure peace (Rymer, xi. 204, March 15, 1448) was, in the face

of the actual facts, not worth the parchment it was written on. The same may be said of the declaration of Suffolk's loyalty; Rot. Parl. v. 447 b.

⁴ Rot. Parl. v. 102 b. The same tendency appears in the Privy Council. See the case of Somerset's application for a grant, cited in the notes to Chap. xix. below. In the challenge which Henry V sent to the Dauphin in 1415, it is stated that none of his counsellors had dared to counsel him in so high a matter; Rymer, ix. 313.

banished Suffolk for five years, the Lords protesting that this 'proceeded not by their advis and counsell, but was doon by the kynges owne demeanaunce and rule¹.' In all these cases the Lords ought, if they approved of what was done, to have accepted their share of the responsibility, or, if they disapproved, they should have frankly opposed it. Their actual course was a piece of political cowardice. The whole proceedings in the case of Suffolk were most unconstitutional, a flagrant evasion of the right of the Commons to bring an accused minister to trial before the House of Lords². The idea of Henry was no doubt to find a compromise whereby the Commons might be satisfied, and yet Suffolk might be saved. He failed egregiously in both. Suffolk was murdered at sea, and this gave the signal for all the mischief that followed. The Commons of Kent rose under Cade, complaining, among other things, that 'the fals traytur Pole that was as fals as Fortager (Vortigern) . . . apechyd by all the holl comyns of Ingelond, . . . myght not be suffryd to dye as ye law wolde³.'

The rising of Cade was but the climax of a process which had long been going on. The government had gradually been losing all hold upon the country, and in the general paralysis of the central administration local disorder had increased to a frightful extent⁴. The causes of these 'troubles and debates⁵' are precisely those evils against which Fortescue's proposed reforms are mainly

Rising of Cade.

Causes of governmental weakness.

¹ Rot. Parl. v. 183.

² This right was not in the slightest degree affected by Suffolk's resignation of his privileges as a peer.

³ Three Fifteenth Century Chronicles, p. 95. According to Basin, i. 251-2, Somerset fanned the popular indignation against Suffolk, in order to divert attention from his own military failures.

⁴ The year 1443 e.g. seems to have been specially troublous. There were disputes between the Earl of Northumberland and Kemp the Archbishop of York,

P. P. C. v. 309, cf. ib. 268-9, 273; between Lord Grey of Ruthin and the town of Northampton, ib. 305; between S. Mary's Abbey, York, and the Corporation of that city, ib. 225, 232; between Fountains Abbey and Sir John Neville, ib. 241: there were riots at Salisbury, ib. 247-8; and in London, ib. 277-8. In 1437 the whole country was so disturbed that copies of the Statute of Winchester were sent to all the sheriffs, with orders for its enforcement; ib. 83.

⁵ See below, Chap. xvii.

directed, and they must therefore be investigated somewhat in detail.

Poverty. One great cause of the weakness of the government was no doubt its poverty. The revenue both central and local¹ was hopelessly encumbered, largely by grants of annuities and pensions to persons who were in reality much richer than the crown². The notes to this work will show in detail how every branch of the public service was constantly in arrear³. It was seldom if ever possible to wait until the supplies granted by Parliament were actually collected. Parliament itself generally gave authority to the Council to raise loans on the security of the taxes. Where this parliamentary sanction was given, and the loans were punctually repaid, this system was perhaps constitutionally unobjectionable⁴. But the financial result was disastrous. Fortescue estimates the loss to the king at 'the fourth or fifth penny of his revenues'⁵. Loans were constantly asked for from individuals, corporations, and towns, and sometimes in a way which seems distinctly unconstitutional⁶. Beaufort was the chief lender and loan

¹ On the state of the local revenue, see notes to Chap. xv. below.

² See notes to Chap. vi. below, and cf. Gascoigne, p. 158.

³ See especially notes to Chaps. vi. and vii.

⁴ A list of towns and persons, with the sums which they were expected to lend under Parliamentary authority, is in P. P. C. iv. 316ff. (1436). There are innumerable entries in the Cal. Rot. Pat. 'de mutuo faciendo per totum regnum'; 273 a, 274 b, 275 b, 276 b, 280 b, 284 b, 289 b, 293 b, 295 a, 296 a. Whether all these had parliamentary authority I cannot say. The Lords of the Council and others had frequently to bind themselves not to allow the assignments made for repayment of loans to be tampered with; P. P. C. iv. 145; Rot. Parl. iv. 275 b. This precaution had been taken under

Henry V; ib. 117. That it was not unnecessary is shown by the fact that in 1442 Beaufort alone supported the Treasurer in resisting an attempt to assign revenue that had been already appropriated; P. P. C. v. 216, cf. 220. But in 1443 he agreed to a grant out of the customs of London, 'notwithstanding any assignement maade before, and notwithstanding any estatut act or ordenance'; ib. 227.

⁵ Chap. v. below.

⁶ In 1430 the Pope lent Henry money; P. P. C. iv. 343. In 1437 a special appeal was made to the clergy; ib. v. 42. Dr. Stubbs (C. H. iii. 276 note) has tried to minimize the charge of unconstitutional taxation brought against the Lancastrian kings. One document, he thinks, is wrongly assigned to that period. Other cases 'involve only the sort of loans

contractor to the government¹. The king's jewels were perpetually in pawn². And the government seem not to have been above such petty acts of tyranny as exacting the fines for respite of knighthood twice over³. Fortescue himself admits that the poverty of the king compels him 'to fynde exquysite meanes of geyting of good'⁴. It is hardly likely that in this he is thinking only of the reign of Edward IV. It is obvious that an administration thus starved could not be efficient. The remedies which Fortescue proposes for this state of things are a large increase in the permanent endowment of the crown, and the making of that 'livelod' inalienable, a resumption of grants, the limitation of the king's power of giving by making the consent of the council necessary, and a system

Exquisite means.

Fortescue's remedies.

which were sanctioned by Parliament, though, if they were not actually sanctioned by Parliament, their constitutional character would still be doubtful. But the following instance (which Dr. Stubbs does not cite) seems too clear to be explained away. 'RIGHT trusty, &c. Howe it be that . . . we . . . charged you either to have sende . . . the cc. març, like as ye agreed . . . to lenne us, . . . or elles to have appered personally before us and oure Counsaile; . . . Neverthelessse . . . ye neyther have sende the saide money, nor appered. . . . For so moche we write . . . straite-ly charging you, that as ye wol eschewe to be noted and taken for a letter and breker of tharmee, whiche is appointed to be sende unto our saide duchie (of Guyenne), . . . ye withoute delay . . . either sende by the berer herof the saide cc. març, . . . or comme in alle possible haste personelly before oure saide Counsaile, . . . upon the paine abovesaide.' (July, 1453,) P. P. C. vi. 143, cf. ib. 330. To require a person to send money by the bearer, or to appear before the Council under pain of being 'noted' as a disloyal sub-

ject, is surely as arbitrary a proceeding as can well be imagined. That the man had promised to lend the money does not affect the constitutional question, if the promise was one which the government had no right to exact. Edward IV's financial measures were perhaps only a reduction to system of the hints furnished by his predecessors.

¹ For Beaufort's loans, see P. P. C. iv. and v. passim.

² e.g. P. P. C. iv. 214, vi. 106, &c. Cf. notes to Chap. vii.

³ At least a petition of the Commons that this might not be done was refused in 1439; Rot. Parl. v. 26 b.

⁴ Chap. v. below. According to De Coussy, c. 42, ed. Buchon, p. 83 b, the poverty of the royal household was sometimes so extreme, that the king and queen were in positive want of a dinner. On one occasion the Treasurer had to redeem a robe which the king had given to St. Alban's, because it was the only decent one which he possessed; Whethamstede, i. 323. That this poverty was one great cause of the unpopularity of the government of Henry VI, see Eng. Chron., p. 79.

of ready money payments, whereby a saving of twenty or twenty-five per cent. on the ordinary expenditure may be effected¹.

Power and insubordination of the nobles.

Another main cause of the paralysis of the government was the overgrown power and insubordination of the nobles. 'The two cankers of the time were the total corruption of the Church, and the utter lawlessness of the aristocracy².' The condition of the English Church and the policy and relations of the Lancastrian kings towards it are subjects which, however interesting, cannot be discussed here. They did not come within the scope of Fortescue's writings, and if they had, his orthodoxy and optimism³ would probably have made him averse to discussing them. But the reduction of the power and influence of the nobles is one of the chief objects which he has in view, and is the end to which most of his reforms are directed. The danger to the crown from 'over-mighty subjects' is one that is never absent from his mind. This therefore is a question which must be carefully discussed.

Origin of the evil under Edward III.

For the origin of the evil, in the form in which it appears during our period, we must go back to the time of Edward III. The evils of the older feudalism had been sternly repressed by William I and Henry I. Henry II had excluded feudal principles from the framework of the government. Edward I had eliminated them from the working of the constitution. The reign of Edward II is a period of transition during which the lords tried for a moment to recover the ground which they had lost; but the Despencers met them by a combination of the Crown and Commons, and for the first time placed upon the Statute Book a declaration of the principles of parliamentary government. The long reign of Edward III completed the work which the Despencers, from whatever motives, had begun; and the Commons steadily won their way to a legal equality with the elder estate of the

¹ See Chaps. vi-xi, xiv, xix, xx, below, and the notes thereto.

² Rogers' Gascoigne, Intro-

tion, p. lviii.
³ See below, Introduction, Part III.

baronage. The latter could no longer dream of monopolizing the government as they had attempted to do under Henry III. The Commons might be led, might be influenced, they could not be ignored. But though the great lords could not hope for a *de jure* monopoly of power, their influence *de facto* was still enormous. And it increased under Edward III, largely owing to the effects of the French wars. The old feudal system of military service being to a great extent obsolete, and being besides wholly unsuited to the carrying on of a prolonged foreign war, Edward III introduced a new method of raising forces, whereby the Crown contracted, or, as it was called, indentured with lords and others for the supply of a certain number of men at a fixed rate of pay. Thus not only did the lords make profits, often very large, out of their contracts with the government, and enrich themselves with prisoners and plunder while the war lasted; but when the war was over, they returned to England at the head of bands of men accustomed to obey their orders, incapacitated by long warfare for the pursuits of settled and peaceful life, and ready to follow their late masters on any turbulent enterprise. These considerations will largely account for the ease with which under Richard II a combination of a few powerful nobles was able to overbear the might of the Crown. The reign of Edward III was more over the period of that pseudo-chivalry, which, under a garb of external splendour and a factitious code of honour, failed to conceal its ingrained lust and cruelty, and its reckless contempt for the rights and feelings of all who were not admitted within the charmed circle; and it saw the beginning of that bastard feudalism, which, in place of the primitive relation of a lord to his tenants, surrounded the great man with a horde of retainers, who wore his livery and fought his battles, and were, in the most literal sense of the words, in the law courts and elsewhere,

Change in the system of military service.

Its results.

Pseudo-chivalry and bastard feudalism.

'Addicti jurare in verba magistri;'

while he in turn maintained their quarrels and shielded their

crimes from punishment¹. This evil, as we shall see, reached its greatest height during the Lancastrian period.

Power of the great lords increased by Henry IV's accession.

The independence of the great lords thus fostered by the tendencies of Edward III's reign and by the events which happened under Richard II, was still further increased by the accession of Henry IV. To some of them, the Percies and Arundels especially, Henry largely owed his crown. It is true that having a great stake in the maintenance of the government which they had set up the lords contributed considerable sums to the support of Henry². But this very feeling that they were necessary to him increased their sense of independence; and in 1404 they showed how they construed their obligations to the Crown, refusing to find Northumberland guilty of treason for his share in the rebellion of the Percies in 1403, and treating the matter as a mere case of private war between him and the Earl of Westmoreland. Even if this had been a colourable view to take of the affair, this sort of quasi-sanction given to private war, a curse from which England had been almost free from the days of Henry II³, was of evil omen. To a private war between these very families of Percy and Neville the annalist William Worcester traces the origin of the civil war⁴. Anyhow one cause of that war was this insubordination of the aristocracy, of which private wars were but one symptom among many. If, as Mr. Bright thinks⁵, the Commons looked to Henry as their champion against baronial disorder, they must have been grievously disappointed. The evil was aggravated by the French wars of Henry V. Causes came into operation similar to those which we have traced under Edward III; only here they acted with worse effect owing to the degeneration in character of the French wars themselves. The stern

The evil aggravated by the French Wars of Henry V.

¹ 'The livery of a great lord was as effective security to a malefactor as was the benefit of clergy to the criminous clerk;' S. C. H. iii. 533.

² P. P. C., I. xxvii, xxxiii, 102 ff.

³ See Allen on the Prerogative,

pp. 120 ff.

⁴ English in France, ii. [770]: 'Initium fuit maximorum dolorum in Anglia.'

⁵ Bright, English History, i. 277.

vindictiveness of Henry V left no room for any of that graceful chivalry which had thrown a glamour, however superficial, over the warfare of Edward III and his greater son. And things became worse, when to other debasing influences was added the fury which is born of failure. The English lords ousted from France returned to England at the head of bands of men brutalized by long warfare, demoralized by the life of camps and garrisons, and ready for any desperate adventure. Even during Henry V's lifetime this evil had begun to show itself¹, and it did not diminish under the weak rule of his successor². And these were the men by whom the battles of the civil wars were fought.

Many of the lords were moreover enormously rich. Their estates were concentrated in fewer hands, and the lands of a man like Warwick represented the accumulations of two or three wealthy families³. They engrossed offices as greedily as lands⁴, their pensions and annuities exhausted the revenues of the crown⁵, they made large fortunes out of the French wars which drained the royal exchequer⁶, and they were among the chief wool-growers and sometimes wool-merchants in the kingdom⁷. And this wealth of the great lords appeared all the more striking when contrasted with the poverty of the crown⁸: and the contrast comes out strongly in the demand made by Fortescue, that the king shall have for his extraordinary expenditure more than the revenues of any lord⁹, and in the exultation with which he declares, that if only the king's offices are really given by the king, 'the grettest lordes lived in Englande mey not suffice to rewarde so

Riches of the lords,

contrasted with the poverty of the Crown.

¹ See Political Songs, II. xxvii. for military service; Paston Letters, i. 358 ff.

² Cf. De Coussy, p. 183.

³ See notes to Chap. ix. below. ⁷ Cf. Rot. Parl. iii. 497, v. 13 a, 274 b; English in France, ii. 443.

⁴ See notes to Chap. xvii. ⁸ 'So pore a kyng was never seene, 'Nor richere lordes all bydene.'

⁵ See notes to Chap. vi. below. ⁹ Below, Chap. ix.

⁶ Cf. Rogers, Gascoigne, Introduction, p. xxvi, and the list of Fastolf's claims against the crown

many men, though he wolde departe hit every dele amonges is seruauntes¹. The riches of the lords enabled them to maintain their hosts of retainers, while their estates gave them enormous local influence.

Consolidation of the peerage as an Estate of the Realm.

But besides this increase in the general influence of the lords considered as a class, the Lancastrian period saw a sharper definition of their constitutional position as an Estate of the Realm. The idea of hereditary peerage now becomes definitely fixed, the numbers of the temporal peers become smaller and more regular, and the power which the kings had formerly exercised of summoning persons to the Upper House or omitting them at pleasure is practically eliminated. The sense of corporate existence in the Lords grows stronger, and the distance between Lords and Commons wider. Property and influence are concentrated in fewer hands; one result of which is that the spiritual Lords now for the first time acquire a permanent majority in the Upper House². But in interests, and often also in blood³, they were so closely connected with the temporal Lords, that their separate action in parliament is rarely distinguishable. The constitutional functions of the Lords in their corporate capacity acquired strength and definiteness from the events of Henry VI's reign, and they made good their claim to be considered the ultimate depositaries of political authority during the abeyance of the royal power, whether from infancy, as at the beginning of the reign, or from incapacity, as towards its close.

Dissensions among the lords.

But when the Lords had in these various ways gained possession of power, they began to quarrel among themselves for the exercise of it. It was much the same, to recur to a former illustration, after the revolution of 1688; only there the rivalries between the great lords took the milder form of party government. Here the rivalries of Gloucester and Beaufort brought England to

¹ Below, Chap. xvii.

² See the tables in Gneist, *Verwaltungsrecht*, i. 382 ff.

³ S. C. H. iii. 369, and vide

infra, p. 26. They were moreover often guilty of the same abuses, maintenance, &c. Cf. Paston Letters, iii. 478.

the verge of civil war. Suffolk's monopoly of power caused, as we have seen, a popular insurrection, while under Somerset and York the flame finally burst out, though here the personal issue was complicated with dynastic and constitutional questions, in regard to the last of which, York's position was far more defensible than that of Somerset¹. But the struggle was not confined to the central government; it was fought out in every shire and district, rising not unfrequently to the height of private war². That private war was separated by no very wide interval from rebellion we have already seen in the case of the Percies. But even where matters did not reach this height, the evils caused by this struggle for influence were very serious. One great object of the lords was to acquire the control of the local administration, to get into their own hands the nomination of all local officers. Fortescue complains bitterly of the way in which the great lords 'engrossed and broked' the royal offices in their neighbourhoods, in order to distribute them to their servants and dependants³. But whereas Fortescue thinks only of the loss to the crown and gain to the nobles in patronage and influence, the nobles themselves had a further object in

¹ The intensity of the party struggle is illustrated by the fact that the Queen and Somerset wrote to the Duke of Norfolk to dismiss certain of his dependants because they were favourable to the Duke of York; Paston Letters, i. 305. In 1454, at the time of the King's first illness when Somerset was struggling to maintain his power against York, we read: 'The Duke hathe espies goyng in every Lordes hous of this land;' ib. 267. In 1459, during the Parliament of Coventry, Henry wrote to the University of Oxford to dismiss certain Bedels who had spoken disrespectfully of the Queen and Prince. The command was obeyed; Munim. Acad. p. 756.

² For a list of the private wars which went on during the reign

of Henry VI, see S. C. H. iii. 271-2, and the references there given. The struggle between Egremont and Neville is the one to which William Worcester (u. s.) attributes the origin of the civil war. In 1428 it had almost come to a pitched battle between the Duke of Norfolk and the Earl of Huntingdon; Amundesham, i. 25; cf. P. P. C. iii. 36-7, 112. Occasionally the monotony of the proceedings on land was varied by acts of piracy at sea; Paston Letters, i. 268. On the necessity of repressing aristocratic dissensions, cf. *Ægid. Rom. De Regim.* III. ii. 15.

³ Below, Chap. xvii, and the notes thereto. Gascoigne complains of an analogous evil in the case of ecclesiastical offices; pp. 132-3.

Perversion of justice. view, namely, to pervert to their own ends the administration of justice, which was so closely connected with the system of local government. Justices of the Peace might be appointed, who would maintain the quarrels of the party to which they owed their appointments¹; sheriffs might be nominated, who could be trusted to impanel a jury favourable to their patron's views, sometimes consisting of his servants or liveried retainers². Should the sheriff prove less pliable than usual, the lord or his friends at court for him might obtain royal letters directing the sheriff to impanel such a jury³. Failing this, the jury might be intimidated⁴ or bribed, or at the last resort the proceedings might be broken up by force⁵, unless indeed the less heroic plan was resorted to of simply ignoring an unfavourable decision. In addition to whatever claims they might have of their own to assert, the lords bought up the doubtful claims of lesser men, or agreed to maintain them for a consideration⁶, or they obtained grants of lands which were not really in the hands of the crown⁷. And these claims, whether their own or others', were asserted with the

Purchase of doubtful claims

Juries.

Local officers

¹ In 1399 the Commons complained that 'maintainers' were made Justices of the Peace by 'brocage'; Rot. Parl. iii. 444 a. Cf. Political Songs, ii. 235-6:

'Now mayntenerys be made justys, . . .
'Now brocage ys made offycerys.'

² 'le Viscount . . . retourna un Panell des certains persons, dount ascuns furent famuliers, et ascuns tenauntz, et ascuns del fee, et del vesture de Adversaries le dit Suppliant;' Rot. Parl. iv. 288 a.

³ Paston Letters, I. lxiv. 208, 214-5. It was said that such letters could be obtained for a noble (6s. 8d.).

⁴ In one case the intimidation practised on the jury was so notorious and 'horrible,' that even the sufferers 'for pyte and remorse . . . wer lothe' to proceed against them for perjury; Paston Letters, i. 205; cf. ib. 241.

⁵ P. P. C. v. 35-9; Paston Letters, i. 212. In 1435 the Duke of Norfolk and the Earl of Suffolk had to promise in the Council that they would not hinder the investigation and punishment of a case of homicide; P. P. C. iv. 300-1.

⁶ These gifts and scoffments to great personages of lands of doubtful title, and the forcible entries which followed them, were forbidden by St. 8 Hen. VI. c. 9; cf. Rot. Parl. iv. 352 b; ib. iii. 497 a, b; St. 4 Hen. IV. c. 8; Paston Letters, ii. 80. cf. ib. 187, 'the Duck of Suffolk hath bought . . . the ryzt that on Bryghtlylth hath in Haylesdon,' &c. . . Cf. Whethamstede, i. 96, where the holder of lands which were claimed by St. Alban's threatens to enfeoff certain lords with them; ib. 203. This was also one of the subjects of Cade's complaints; Stowe, p. 389 a.

⁷ Paston Letters, ii. 331.

high hand. Forcible entry and disseisin with violence were everyday occurrences, and were almost restored to the position of legal processes which they had held before the invention of the grand assize¹. Houses were regularly garrisoned as for a siege, and small armies were brought into the field to attack them². If the aggrieved person appealed to the law, he might find that no counsel would venture to act for him³, and that no one in the county would dare to say a good word for a man who was known to be out of favour in high quarters⁴. In the numerous petitions which besought the intervention of the council or of parliament, the allegation that there was 'too great might' on the other side for the suppliant to be able to sue at the common law was often true enough. It is idle to worship the form and neglect the substance. Against offenders of this stamp the jury system was powerless to secure justice. Its partial and temporary supersession by the jurisdiction of the council, especially as organized in the later Court of

¹ Before the invention of the grand assize forcible disseisin was often the only process by which a tenant could be forced by a claimant to show his title to the lands he held. John Paston writes to his wife in 1465: 'As for that it is desyrid I should show my tytill and evydens to the Dewk, me thynkyth he had evyll counsell to entre in opon me, trusting I shuld shew hym evydens. . . . It is not profitabl[le] . . . that any gentilman shuld be compellid be an entre of a lord to shew his . . . tytill to his lond, ner I will not begine that exsample ne thrall-dam of gentilmen;' Paston Letters, ii. 209 f. For instances of forcible entry, cf. Rot. Parl. iii. 488, 512 b, 514 a, etc., and Paston Letters, i. 12 ff., ii. 248 ff., 253.

² The force with which Lord Molyne attacked John Paston's manor of Gresham was 'to the nombre of a thousand persones . . . arrayd in maner of werre;' ib. i. 106; cf. ii. xxvi. ff., xlv. f. The Duke of Norfolk brought

3,000 men to the siege of Caister Castle, which he claimed against Sir John Paston; ib. l. ff.

³ Justice Paston advises a friend not to go into court against a dependant of the Duke of Norfolk: '3yf thu do, thu xalte hafe the werse, be thi case never so trewe, . . . and also, thu canste [get?] no man of lawe . . . to be with the azens hym;' ib. i. 42; cf. p. 18. Cf. ib. 60, where there is a petition to the Chancellor that he would 'assigne and streytly comaund' certain persons to act as counsel for the petitioner. That the intimidation practised on lawyers was no idle threatening is shown by the fact, that in 1455 a party of men headed by the son of the Earl of Devonshire attacked and murdered an old man named Radford, 'whiche was of counseil with my Lord Bonvylye,' the Earl's great enemy; ib. 350-2.

⁴ 'Here dare no man seyn a gode wurd for 3u in this cuntre, Godde amend it.' Margaret Paston to her husband; ib. 113.

Forcible entries.

Impotence of the jury system.

Star Chamber, 'to bridle such stout noblemen or gentlemen,' as Sir Thomas Smith quaintly expresses it¹, was a national blessing.

Corruption
of the
judges.

Even the judges were not always above suspicion. They accepted solicitations and presents, and gave extrajudicial advice on matters which might very possibly come before them in their judicial capacity, in a way which was in direct contravention of the terms of their oath. Even if this did not affect their conduct on the bench, it was bad enough in itself; but they seem sometimes to have acted with the grossest partiality². Occasionally royal letters were sent to justices as to sheriffs ordering them to show favour to a particular person³. Often too the issue of a cause would depend in various ways on the question which party had at the moment the upper hand at Court. In the light of these abuses we can better understand the vigorous words of Cade's proclamation:—'the law servyth of nowght ellys in thes days but for to do wrong, for nothing is sped almost but . . . for mede, drede, and favor, and so no remedy is had . . . in eny wyse⁴.'

Arbitra-
tion.

Amid this general breakdown of law, arbitration was sometimes resorted to, but more often the best hope of an aggrieved person lay either in buying off the opposition

¹ De Republicâ Anglorum, bk. iii. c. 4. pp. 43, 188; and notes to chaps. vi. xv. below. In one case we find

² Cf. Paston Letters, i. 419 f.; ii. 201, 252-3. 'God reforme such parcialte,' writes Sir Thomas Howys to Fastolf after detailing the behaviour of Chief Justice Prisot; ib. i. 211-2; Amundesham, ii. 127, 143, 256. When Fortescue says of the judges (De Laudibus, c. 51), 'Nec unquam compertum est eorum aliquem donis aut muneribus fuisse corruptum,' he must have known that he was writing what was untrue. Ægidius Romanus (III. ii. 20) says, on the other hand, 'Judex de facili obliquatur.' Cf. Rot. Parl. iii. 626 b; Gascoigne,

pp. 43, 188; and notes to chaps. vi. xv. below. In one case we find a justice, Robert Tirwhit, guilty of the grossest turbulence and breach of the peace; Rot. Parl. iv. 649 f.; and cf. the case of Fortescue's own brother; Family History, pp. 46-7.

³ Paston Letters, iii. 428. The judges were sworn to do justice to all, 'etiãmsi rex per literas suas, aut ore tenus, contrarium jusserit;' De Laudibus, c. 51; cf. Rot. Parl. iii. 471 a, where this abuse is complained of, and reference is made to St. 20 Edw. III. c. 1.

⁴ Three Fifteenth Century Chronicles, p. 96.

of the great man who supported his adversary, or in getting some equally powerful nobleman to maintain his own cause¹. And for these services the greatest personages were not above receiving the most vulgar considerations. The transaction might be veiled under the name of a horse for my lord², or a kerchief for my lady³, or a book for a prince of a literary turn like Gloucester⁴. But in reality, if not in name, money was given for money's worth; for, as Sir John Paston cynically remarked, 'men do not lure hawks with empty hands⁵.' Nothing added more to a man's importance than the diffusion of a belief that he 'stood well in conceit,' as the phrase went, with men of influence in his neighbourhood or at court⁶; no greater disservice could be done to a man, than to prejudice a great man's mind against him, or, to use another contemporary phrase, to 'make him his heavy lord⁷.' 'Spende sum what of your good now,' writes an anonymous friend to John Paston, 'and get your lordshep, . . . quia ibi pendet tota lex et propheta⁸.' William Paston gives his brother similar advice, adding:—'omnia pro pecuniâ facta sunt⁹.' That great lords should

¹ 'Sondery folks have seyed to me that they thynk verily, but if ye haue my Lord of Suffolks gode-lorshyp (good-lordship), qhyll the werd (world) is as itt is, ye kan never leven in pese;' Paston Letters, ii. 132. 'The frere that cleymyth Oxned . . . seyde pleyntly . . . that he xal have Oxnede, and that . . . my lord of Suffolke . . . wol be his good lord in that mater;' ib. i. 81; cf. i. 96-8, 233, 323; ii. 206, 344-5, 392, &c. This interference with the course of law by 'pursuit to a great lord' is complained of in the petition cited above; Rot. Parl. iii. 471 a.

² Cf. Paston Letters, ii. 97.

³ 'I praye yow fynd the meny that my Lord have some reasonable meane profyrd, so that he and my Lady may undyrstand that ye desyr to have hys good lordshep;' ib. ii. 348-9. 'My

Lady must have somewhat of bye hyr kovercheff besyd my Lord;' ib. iii. 55; cf. ib. 64-5, 295.

⁴ Amundesham, II. lxxv. 295.

⁵ Paston Letters, iii. 65.

⁶ 'To th'entente that the cuntre shall thinke . . . that he hathe grete favour amonge the Lordes of the Counsell, and cause men to fere hym the more;' ib. i. 229; cf. ii. 97.

⁷ 'The seyde Walter by hese sotill and ungoodly enformacion caused the seyde Duke to be hevvy lord to the seyde William;' ib. i. 16.

⁸ Ib. i. 156; cf. ii. 72; and Gascoigne, p. 109.

⁹ Ib. i. 516-7. The party opposed to the Pastons in Norfolk offered Sir William Oldhall £2,000 (about £30,000 in our money) for his good lordship; ib. i. 151.

'Good-
lordship'
purchased.

Influence
on parlia-
mentary
elections.

use their local power to influence the parliamentary elections in favour of their own party was natural enough¹. But this again, apart from any political result, reacted on the local administration. The collectors of the tenths and fifteenths granted in parliament were nominated by the knights of the shire, and it is clear that the impartiality of these appointments and of the persons thus appointed was not above suspicion².

Com-
panies.

And this example of lawlessness and insubordination spread downwards through all ranks of society. The provisions of the Livery Statutes against companies maintained at their own charges would seem to show that this curse of continental life was not unknown in England³. Bands of armed men, often commanded by some person of good birth, and favoured secretly perhaps by still greater men, terrorized whole districts, levying black-mail, and committing every kind of outrage with impunity⁴. No age or sex or place was respected. Old

Outrages.

But this was in Oct. 1450, just before the meeting of the Yorkist Parliament of which Oldhall was Speaker, and the favour of so influential a Yorkist was well worth paying for. Norfolk seems however to have been *Warwickist* rather than strictly Yorkist; *ib.* i. 532, 536; *iii.* 478. The Pastons were in high favour during Henry VI's restoration; *ii.* 412. The Commons of Norfolk resisted an attempt of Edward IV to land there in 1471; Warkworth, p. 13.

¹ Paston Letters, i. 160-1. In 1455 the Duchess of Norfolk writes that it is 'necessarie . . . that my Lord have . . . in the Parlement suche persones as longe unto him, and be of his menyall servaunts'; *ib.* 337; *cf.* 339 ff.; *iii.* 53, 55, 431. Yet the Duke of Norfolk complained in 1454 that the election in Suffolk had not been fairly conducted; P.P.C. vi. 183. In 1455 the Sheriff of Kent was ordered to see that the elections were free, because of the

'besy labour made . . . by certaine persones'; *ib.* 246. Five years before Cade had complained that the elections in Kent were not free; Stowe, p. 389 b.

² Paston Letters, I. li.; Gascoigne, p. xxxiii. In one instance we find the Knights of the Shire nominating certain persons as collectors of the tenth and fifteenth, and then falling upon them and attempting to rob them; *Rot. Parl.* iv. 30-1. Cade complained that these nominations were regularly bought and sold; Stowe, p. 389 b.

³ *Rot. Parl.* iii. 600 b, 662 b; *St.* 7 and 8 Hen. IV. c. 14; 13 Hen. IV. c. 3.

⁴ *Rot. Parl.* iii. 445 b. For accounts of the doings of particular bands of ruffians, see *ib.* 630-2; *iv.* 32, 254 a. In Derbyshire certain lawless persons took to the woods, 'like as it hadde be Robynhode and his meyne'; *ib.* v. 16 b; Paston Letters, I. lxxxiii. ff., 231 ff., 276 ff.

men and old women of fourscore years were fallen upon and brutally ill-treated or killed¹; heiresses of tender age were forcibly abducted²; widows who had any property were from their unprotected condition specially exposed to molestation³. The priest was attacked in the chancel, the monk in his cloister⁴, and murders were attempted, Italian fashion, during 'the using of the mass⁵.' Conversely, we find priests and monks engaged in some of the worst of these transactions⁶. Outrage provoked retaliation, and cruel reprisals were taken, often not on those who had done the original harm, but on their innocent tenants and dependants⁷. And these things were done many times in broad daylight and in public places, without any attempt at concealment; the perpetrators calculating, generally correctly, that either by violence or chicanery they would be able to evade the consequences of their misdeeds. So in the same way that system of corrupt influence or 'brokage' which I have described descended from rank to rank of society. The object of every man was to curry favour with those above him, to win influence over those below; so that by a sort of ignoble caricature of the feudal system the whole structure of society from the apex to the base was knit together in a hierarchy of corruption.

Hierarchy
of corrupt
influence.

Nor was the influence of the great confined to the spheres of politics and law. They interfered in the private affairs of families⁸, in the inner economy of monasteries⁹, in the

Ecclesiastical influ-
ence of the
great lords.

¹ e.g. *Rot. Parl.* iii. 564 a; Paston Letters, i. 239.

² e.g. *Rot. Parl.* iii. 564 b: a child of nine years carried off. And this was done by the Sheriff, 'under colour of his office,' in order to marry her to his son. In 1454 complaint was made that the forcible abduction of women who had any property was becoming common; *Rot. Parl.* v. 270 b. On this petition was founded *St.* 31 and 32 Hen. VI. c. 9; *cf.* Paston Letters, i. 551-3.

³ e.g. *Rot. Parl.* iii. 520 b, 565-6;

iv. 92 b.

⁴ Paston Letters, i. 238-9, 279.

⁵ *Ib.* 237; *cf.* *ii.* 81, 251. On the frequency of robberies from Churches, *cf.* *Rot. Parl.* v. 632 b; Gregory, pp. 234-5.

⁶ *Rot. Parl.* iii. 518 a, 564 a.

⁷ Gascoigne, pp. 133-4.

⁸ Paston Letters, i. 129 f., 258, 294-6.

⁹ Whethamstede, i. 112. On the relations between the aristocracy and the monasteries, *cf.* also Pecock, Repressor, pp. 549 ff.

granting of academical degrees¹; they influenced church appointments from the lowest to the highest²; ecclesiastical patrons were glad enough to gratify them with grants of next presentations for their clerical dependants³, who often were their men of business⁴, and men were made bishops, not for any knowledge or virtue which they possessed, but 'because of the great blood they were of⁵.' The general condition of the English Church lies, as I have said, outside my subject. But it may here at least be recorded how heavily the days of aristocratic ascendancy told against its purity and independence, and how seriously the one great evil of the time, the lawlessness of the nobility, intensified the other, the corruption of the Church.

Semi-legal violence.

But besides all the illegal violence which undoubtedly existed, there was an immense deal of legal or semi-legal force called into play. Forcible ejections were followed by equally forcible recoveries. Violent distraints gave rise to no less violent replevins, and the line which separates legality from illegality was very easily passed⁶. Often too men were brutally attacked, merely because they had ventured to assert their rights by law⁷. Ambushes were laid for John Paston during the time that he had his various lawsuits on hand⁸, even in London he was not secure from attack⁹; while if his wife's fears were not exaggerated, it

¹ *Munimenta Academica*, pp. 206-8, 332.

² On this see Gascoigne, pp. 14, 19, 22, 25, 32, 55, 72, 132, 166, 180-1, 222.

³ *Amundesham*, ii. 370-1; *Whethamstede*, II. xxv. ff., and the references there given.

⁴ e.g. *Thomas Howys for Fastolf, James Gloys for the Pastons*, both priests; v. *Paston Letters passim*, and cf. *ib.* i. 299.

⁵ This phrase occurs with reference to the promotion to the see of Canterbury of Thomas Bourchier; *P. P. C.* vi. 168; cf. *Rymer*, x. 640; *P. P. C.* vi. 266 (with reference to George Neville, the brother of the King-maker); *Rot. Parl.* iii. 456, 460 a; *Gascoigne*, pp. 16, 22-3. On the increase in the number of noble prelates, see *S. C. H.* ii. 402, 449; iii. 368-9.

⁶ Cf. e.g. *Paston Letters*, II. xxv. ff., 183 ff.

⁷ *ib.* i. 73-4.

⁸ One plot was to waylay him and carry him off to some lord in the North; *ib.* i. 544; cf. ii. 26, 33, 39, 53.

⁹ 'Thow 3e ben at London 3e xul ben met with ther as wele as thow 3e were her; and ther for I pray 3u hertyly . . . have a gode felaschep with 3u qhan 3e xul walk owt'; *ib.* i. 112.

would seem that his enemies were capable even of attempting to poison him¹.

These various abuses were the subject of frequent complaints and enactments in Parliament². In the very first Parliament of Henry IV a statute was passed against livery and maintenance³. In 1401 another statute was made on the same subject⁴. In 1406 the Commons complained that bannerets, knights, and esquires gave liveries of cloth to as many as three hundred men or more to uphold their unjust quarrels, for maintenance, and in order to be able to oppress others at their pleasure. And no remedy could be had against them because of their confederacy and maintenance⁵. On this complaint a fresh statute was founded, and another was passed in 1411⁶. In 1414 a statute was passed against embracery, champerty, and maintenance⁷. In 1427 the Commons complained of the non-observance of the livery statutes⁸. In 1429 fresh provisions were made on the subject because the existing ones could not be carried out owing to maintenance⁹. In 1433 the plan was tried of exacting from the members of both

Statutes against livery and maintenance.

¹ 'For Goddys sake be war what medesyns ye take of any fysissyans of London'; *ib.* ii. 160; cf. iii. 474.

² On the earlier legislation on the subject of livery and maintenance, see *S. C. H.* ii. 485, 608; iii. 530-6.

³ *St. 1 Hen. IV. c. 7*; *Rot. Parl.* iii. 428 b.

⁴ *St. 2 Hen. IV. c. 21*; *Rot. Parl.* iii. 477 b.

⁵ *Rot. Parl.* iii. 600; *St. 7 and 8 Hen. IV. c. 14*. If the retinues of simple knights and esquires were so numerous, we can imagine what those of the greater lords would be. An adherent of the young Duke of Suffolk boasted that his lord was able to keep daily in his house more men than his adversary had hairs on his head; *Paston Letters*, ii. 184. According to Justice (afterwards Chief Justice) Billing, men often ruined

themselves by keeping up a greater retinue than their means would allow: 'That is the gyse of yowr contre men, to spend alle the goode they have on men and lewery gownys . . . and at the laste they arn but beggars'; *ib.* i. 297.

⁶ *St. 13 Hen. IV. c. 3*; *Rot. Parl.* iii. 662 a.

⁷ *St. 2 Hen. V. c. 3*; *Rot. Parl.* iv. 52 a.

⁸ *Rot. Parl.* iv. 329 b.

⁹ *St. 8 Hen. VI. c. 4*; *Rot. Parl.* iv. 348 a. At the same time a statute was passed against the prevalent murders, homicides, riots, &c.; *ib.* 356 a; *St. 8 Hen. VI. c. 14*. But it was one thing to pass statutes, another to get them observed. Cf. *Political Songs*, ii. 252:

'Many lawys, and lytylle ryght;
'Many actes of parliament,
'And few kept wyth tru entent.'

houses of Parliament an oath against maintenance and other kindred evils, which oath was subsequently extended to the whole country¹. But this measure proved no more effective than the others: and in 1459 the Commons complained that the most notorious evil-doers were maintained by men of great might². The same story is continued under Edward IV. Articles against livery, maintenance, etc. were issued by the king in his first Parliament³. In 1468 the previous legislation on the subject of liveries was confirmed⁴. Yet none the less the Commons in 1472 complained that murders, robberies, forcible entries, maintenance, etc. were still rampant⁵.

Legislation on the subject of sheriffs and juries. The legislation and petitions on the subject of oppressive and partial sheriffs and corrupt juries are equally voluminous⁶. For the latter evil a remedy was often sought in raising the qualification of the jurors, either for a particular case, or for a particular class of offences⁷. How little effectual such measures were likely to be is proved by the fact alleged by an anonymous correspondent of Sir John

¹ Rot. Parl. iv. 421 b, 455 b. In 1426 and 1430 a similar pledge had been exacted from the lords of the council; P. P. C. iii. 217; iv. 64. The Lords were not to receive or maintain evil-doers, nor by occasion of gift or feoffment support other men's quarrels by word, deed, or by message, or writing to judge, jury or party; or by taking the party into their service, or giving him their livery, nor were they to conceive indignation against any judge or officer for executing his office according to law. Cf. ib. vi. 319 f.; Rot. Parl. iv. 262.

² Rot. Parl. v. 367 b.

³ Ib. 487 b.

⁴ Ib. 663 a; St. 8 Edw. IV. c. 2.

⁵ Rot. Parl. vi. 8 a. For concrete instances, cf. ib. 35 a, 38 a.

⁶ Cf. Rot. Parl. iii. 513 b; iv. 11 a, 306, 328 a, 380 b, 403 a, 408 b, 448 b; v. 29 a, 110 a, 493 b; St. 4 Hen. VI. c. 1; 6 Hen. VI. c. 2; 9 Hen. VI. c. 7; 11 Hen.

VI. c. 4; 18 Hen. VI. c. 14; 23 Hen. VI. c. 9; 1 Edw. IV. c. 2; 1 Ric. III. c. 4. In 1426 the Council ordered that no lord's steward should be appointed sheriff, nor any 'man of lawe, for ever it is to suppose þat þai have oone parties matiere or oper in hande;' P. P. C. iii. 219-221. Cf. as to other local officers not being lawyers, Rot. Parl. iii. 504 b; St. 4 Hen. IV. c. 19. On the oppressions of sheriffs, see also notes to Chap. xv. below. As long as the jurors were really witnesses, it was fair enough to leave to the local authorities the power of choosing those persons who were most likely to be acquainted with the facts; but when the jury changed its character, this power became the source of those evils which I have been describing; cf. Palgrave, Essay on the King's Council, § xxii.

⁷ e.g. Rot. Parl. iii. 488 f., 597 b; iv. 501 b; St. 15 Hen. VI. c. 5.

Paston's, that there were men worth £100 per annum who had been induced to swear falsely against him¹. And these evils were sometimes so serious and notorious as to call for special notice in those curious discourses with which it was then customary to open Parliament².

But even more clearly than in the Rolls of Parliament do we see the state of the country and the ideas of the people mirrored in the Paston Correspondence, from which so many illustrations have been already taken³. Nothing is more curious than the way in which it is assumed that it is idle to indict a criminal who is maintained by a powerful person⁴; that it is useless to institute legal proceedings unless the sheriff and jury can be secured beforehand⁵; nothing can be more naive than the complaints as to the difficulty of being sure of jurymen⁶, because either they are 'ambidexter,' i. e. take bribes from both sides⁷, or they fear 'a turning world,' i. e. some sudden change in the relations of parties⁸. Very quaint too is the astonishment expressed by John Paston *not* at being attacked in an unprovoked manner at the door of Norwich Cathedral, so much as at being attacked by a dependant of the Duke of Norfolk who was his 'good lord'; for it is evidently

¹ Paston Letters, ii. 325. When Fortescue (De Laudibus, c. 29) talks of the impossibility of corrupting an English jury, he is saying what, with his judicial experience, he must have known to be untrue. See a curious case in P. P. C. iii. 313, where the judges advised the Council not to send a culprit before a jury, as it was probable that he would find means to corrupt them.

² For example in 1431, 1432, 1433, and 1442; Rot. Parl. iv. 367 a, 388 a, 419 a; v. 35 b.

³ Many of the most striking incidents are summarized in Mr. Gairdner's valuable introductions. But no summary however able can give the effect which is produced on the mind by a perusal of the Correspondence itself.

⁴ 'Ther kan no man indyte hym for Sir T. Todenham maynteynyth hym;' i. 190.

⁵ 'But of these and of many mo wers it is a gret foly to laboren in as for any indytements, but if ye be ryght seker of the sherefes office; for if he lyst, he may retorne men,' &c.; i. 191; cf. ii. 217.

⁶ 'Ye truste the jury of Suffolk; remembre what promyse Daubeny hade of the jury and what it avaylid;' ii. 182.

⁷ i. 192.

⁸ i. 198.

⁹ 'Whech was to me strawnge cas, thinking in my conseyth that I was my Lords man and his homagier, or Charlis [the assailant] knew hys Lordschipe, that my Lord was my god 'Lord,' &c.; i. 232.

regarded as a great scandal to a lord, that two of his dependants should be at feud¹. Bribes are offered and looked for as a matter of course², it is assumed that an officer will use his official position in favour of his friends³, and the only hope of redressing evils is considered to lie in the influence of the great. The issue of a lawsuit is bound up with the fate of parties⁴; and the aim of all is to be upon the stronger side⁵. We see here the almost royal style in which the great lords addressed and were addressed by their inferiors⁶; and we know from other sources that they occasionally imitated some of the worst abuses of the royal power, purveyance⁷, and the forest laws⁸.

Remedies
proposed
by Fortescue.

The measures which Fortescue would take for reducing the overgrown power of the great lords are,—first, to wrest from their hands the revenues of the crown by an act of resumption, and the patronage of the crown by restoring in all cases direct appointment to offices by the king; he

¹ 'Dysworschep to my Lord that tweyn of hys men schold debat so ner hym;' ii. 245.

² 'I proferid hym [i.e. the sheriff] if he wold make yow promys . . . ye wold geff hym in hande as he wold desire, . . . but he lokyth aftyr a gret brybe,' &c.; i. 215-6, cf. 207, 247, 311-2. 'I had founde the meane for to have ben quytte, for I whas through with the scheryff and panel made aftyr myn avice;' ii. 60. Amos (De Laudibus, pp. 81 ff.) says that a charge 'pro amicitia vicecomitis' was a regular item in attorneys' bills at this time. For efforts made to secure the appointment of a favourable sheriff, cf. Paston Letters, i. 158, 165-6, 171, 521; ii. 59, &c.

³ 'The Meyr . . . wull do anythng that he may for hym and his;' ii. 249.

⁴ Ib. i. 335.

⁵ Ib. 66.

⁶ The Duke of Norfolk e. g. is always addressed and spoken of

as 'right high and myghty prynce,' or 'his hyghnes;' i. 15, 143, 233, &c. He addresses his inferiors, 'right trusti and well-belovid . . . we consayled be the Lordes . . . and oder of our Consayle,' &c.; i. 337; ii. 247, &c.

⁷ In 1445 the Commons complained of the 'Purveours or Achatours of the Duk of Gloucestr', and of other Lordes and Estates of the Roialme,' contrary to the Stat. 36 Edw. III. c. 2; Rot. Parl. v. 115 a. On this complaint a new statute was founded; 23 Hen. VI. c. 14.

⁸ The way in which the Earls of Arundel had extended their rights of chase and warren had in 1415 thrown a great part of the Rape of Lewes out of cultivation. And trespassers on these alleged rights had been cruelly imprisoned and even tortured. The Earl of Arundel, against whom these charges were brought, was at that time Treasurer of England; Rot. Parl. iv. 78, cf. ib. 92 a.

would prevent the accumulation of estates by using the veto which the feudal system gave the king on the marriage of heiresses; and the accumulation of offices by enacting that no one should hold more than one office at the same time, or two at the very most. And last and most important of all, he would eliminate the influence of the nobles from the government, by excluding them almost entirely from the Privy Council, and transforming that Council on a purely official basis¹.

The fact that so much of the prevalent injustice was committed under, or indeed by means of, the forms of law is connected with another characteristic of the age, namely, its extreme litigiousness. Legal chicane was one of the most regular weapons of offence and defence, and to trump up charges however frivolous against an adversary one of the most effectual means of parrying inconvenient charges against oneself². The prevalence of false indictments and malicious suits is a frequent subject of complaint in Parliament³. Forgery of documents seems to have been common; and when statutes were passed against this practice, advantage was taken of these statutes to throw suspicion on genuine title-deeds⁴. False allegations of villainage were made in order to bar actions at law brought by those against whom the allegation was made⁵. Disseisins were followed by fraudulent feoffments, in order that the person disseised might not know against whom his

¹ See below, Chaps. x, xi, xiv, xv, xvii, and the notes thereto. On the condition of the English aristocracy, cf. also Pecock, Repressor, p. 429; Whethamstede, i. 222; Gascoigne, pp. 62, 218. The aristocratic theory of society is stated quite nakedly in the reply of 'Daw Topias' to the Lollard controversialist, 'Jack Upland.'

Just as in the body the hands must serve the head,

'Right so the comoun peple God hath disposid,

'To laboren for holi chirche and lordshipis also.'

Political Songs, ii. 45.

² Cf. Paston Letters, i. 107, 119, 240, 242, 244.

³ Rot. Parl. iii. 505 a, 511 a; iv. 120 a, 147 a, 305 b, 327 a (= St. 6 Hen. VI. c. 1); v. 109 b, 325 b; St. 33 Hen. VI. c. 6; cf. P. P. C. v. 215.

⁴ Rot. Parl. iii. 543 b; iv. 10 a, 119, 121 b, 378 a; St. 5 Hen. IV. c. 14; 1 Hen. V. c. 3; 7 Hen. V. c. 2. Cf. Paston Letters, i. 553; iii. 474, where we hear of title-deeds 'the seals of which were not yet cold.'

⁵ Rot. Parl. iii. 499 a; iv. 58 b. For a case of horrible ill-treatment of an alleged villein by Humphrey Duke of Gloucester, see ib. v. 448.

Litigiousness of the age.

Number of
lawyers.

action lay¹. One cause of these evils was thought to be the excessive number of attorneys, who stirred up litigation in order to make business for themselves. More than one statute was passed to reduce their number². The fifteenth century must have been indeed a golden age for lawyers. This litigiousness of the time comes out strongly, as might be expected, in the Paston Correspondence, especially in the letters of Sir John Fastolf, who, like his younger contemporary Commynes³, not only lived in a world of litigation himself, but left a handsome legacy of legal troubles to his successors. 'Every sentence in them refers to lawsuits and title-deeds, extortions and injuries received from others, forged processes affecting property, writs of one kind or another to be issued against his adversaries, libels uttered against himself, and matters of the like description⁴.' And Mr. Gairdner remarks very justly on the evidence which the Correspondence affords of the wide diffusion of legal knowledge among all classes, not only the men but even the women showing themselves perfectly familiar with the processes and terminology of the law⁵. And indeed in such an age some knowledge of the law was most necessary, and any one who had more than an average acquaintance with it might render very important services to himself and his neighbours⁶.

Diffusion
of legal
know-
ledge

¹ Rot. Parl. iii. 497 a; cf. iv. 39 a; vi. 110 a. This abuse was forbidden by St. 1 Ric. III. c. 1, 'Against privy and unknown feoffments.'

² Rot. Parl. iii. 504 a, 642 b (cf. 666 a); v. 326; St. 4 Hen. IV. c. 18; 33 Hen. VI. c. 7; cf. Paston Letters, iii. 478. On this multiplication of lawyers, and lawsuits, cf. Gascoigne, pp. 109, 202. Basin makes the same complaint of Normandy; ii. 32-3.

³ On Commynes' lawsuits, see the Introduction to Mdle. Dupont's edition; De Lettenhove, Lettres et Négociations; Fierville, Documents Inédits.

⁴ Paston Letters, I. lxxxvii.

⁵ Ib. lxxxvii. f. Cf. S. C. H. iii.

596: 'Every man was to some extent a soldier, and every man was to some extent a lawyer.'

⁶ 'Thynkk onis of the daie of youre fadris counseyle to lerne the lawe, for he seyde manie tymis that ho so ever schuld dwelle at Paston, schulde have nede to conne defende hym selfe;' Agnes Paston, widow of Justice Paston, to her son Edmund, i. 58. In one of the Appendices to Amundesham there is mention of a clergyman who had begun life as an apprentice at law. 'Hujus scientia et doctrina plurimos in necessitatibus et juris periculis eruebat a ruina;' i. 444. The legal acumen manifested by Clarence and Gloucester in their dispute about the

To return to the constitutional summary of the period which we quitted at the death of Suffolk. The disappearance of Suffolk worked no improvement in the situation. 'To pull down one bad man like Suffolk was merely to make room for another bad man like Somerset¹.' I have said² that in regard to the constitutional questions that were involved in the struggle between York and Somerset the constitutional position of the former was more defensible than that of the latter. And this I must maintain in spite of the opinion of Dr. Stubbs to the contrary³. It is quite true that the right of appointing ministers belonged technically to the crown. But Henry IV had promised to rule with the 'common advice, counsel, and consent' of the nation; and therefore on a broader view the maintenance of Suffolk and Somerset in spite of universal distrust and detestation, and the exclusion of York in spite of the general desire for his admission to power, was a breach of the original compact by which the house of Lancaster ruled, and reduced Suffolk and Somerset to the level of mere royal favourites. It is true again that the kingdom did not 'need a deliverer like Henry IV⁴,' but a minister like York, who was both a capable general and a firm administrator⁵, was precisely what it did need. That York's pedigree and popularity made him an object of suspicion to the court was no justification for his exclusion from power, for York's claims would probably have remained dormant if he had not been forced almost in self-defence to assert them⁶. It is true that, owing to the unconstitutional conduct of his enemies, York was forced into courses for which the constitution furnished no justification. But seeing that the court did not pay the slightest heed to the remonstrances of the nation constitutionally expressed in Parliament, he may well have thought that only by force could the country be rescued from the in-

Constitutional history after the death of Suffolk.

Position of York and Somerset.

York forced into unconstitutional measures.

Warwick inheritance astonished even professional lawyers; Cont. Croyl. p. 557.

¹ Gascoigne, Introduction, p. lviii.

² Above, p. 19.

³ Const. Hist. iii. 156.

⁴ Ib. 155.

⁵ 'The one sound administrator

left;' ib.

⁶ Cf. Eng. Chron. p. 99.

competent hands which ruled it. Had he been allowed to attain to power in the ordinary way, he would probably have been the means of conferring great advantages on England. This seems proved by the beneficial results of his rule when, as during his first Protectorate, he had a recognized constitutional position. His second Protectorate was too short to enable him to effect anything. But on both occasions he showed an anxious desire that his authority should be strictly defined and precisely limited, which was in striking contrast with the way in which Gloucester on a similar occasion grasped at an extension of his powers. For the final step taken by York in laying claim to the crown there is absolutely no justification on constitutional grounds, except in the eyes of those who hold a theory of royalty according to which there does not exist probably a single legitimate sovereign in the world. The right of the house of Lancaster as resting on prescription was far too strong to be set aside for a mere defect of genealogy¹. But York was forced into this step, partly because he had learned by experience that from the rancour of Margaret he could be safe only on the throne, partly because she had so thoroughly identified the dynasty with the misgovernment of a party, that a change of government implied a change of dynasty also. And though the agreement made with York as to the succession, and the subsequent acceptance in Parliament of Edward IV, wore the guise of a legitimist restoration, that was only the outward aspect of the change. The real grounds of it lay much deeper. It was made possible not by the goodness of the Yorkist pedigree, but by the badness of the Lancastrian government. And the Speaker of the House of Commons, in his address to the crown on the latter occasion, showed that the Commons were aware that

¹ This prescriptive right was well stated by the Lords in their reply to York's claim; Rot. Parl. v. 376 b. Better still, perhaps, by Henry himself in the touching words preserved by his panegyrist

Blakman, pp. 303, 305 (see them cited, S. C. H. iii. 201). It is well stated also by Hallam, M. A. iii. 195. Cf. Fortescue, De Titulo Edwardi, etc., cc. 9, 10, 13.

His claim to the crown indefensible.

The accession of Edward IV in form only a legitimist restoration

there were reasons for the change other than genealogical¹.

Nor can it be said that it was only by weakness that the house of Lancaster fell. From the death of Cardinal Beaufort in 1447 the rule of Henry VI, or rather of Margaret and her ministers, was not merely weak but flagrantly unconstitutional. It violated in the most essential points the compact by which the house of Lancaster came to the throne. By its steady maintenance of ministers whom the nation distrusted and abhorred, by its disregard to the wishes of the nation constitutionally expressed, by its attempts to tamper with the independence and liberties of Parliament², that house destroyed its own best title to the throne; and its fate, however melancholy, cannot be called undeserved. Dr. Stubbs has said from his own point of view that 'the acquittal of the house of Lancaster does not imply the condemnation of the house of York³.' From the point of view here taken it would be equally true to say, that the condemnation of the house of Lancaster does not imply the acquittal of the house of York. And yet the latter has been very unfortunate, in that it has

Later Lancastrian rule unconstitutional.

¹ Some extracts from this speech are given in the notes to Chap. xix.

² The imprisonment of Young in 1451 for proposing in Parliament that York should be declared heir to the crown was a flagrant attack on what Hallam justly calls one of the ramparts of the Constitution, freedom of debate. There was nothing illegal or unconstitutional in Young's proposal. The causing Parliament to meet in out-of-the-way places, and proroguing it frequently, till the members, out of very weariness, passed the court measures, is distinctly complained of by Gascoigne. At the Parliament of Leicester in 1450, 'dictum fuit in publico quod nisi communitas Angliæ articulis propositis consentiret, parlamentum non finiretur, et plures minas et a rege et a suis juvenibus consiliariis

sustinuit communitas istius parliamenti;' p. 189. But the climax was reached at the Parliament of Coventry in 1459, where the Yorkists were attainted, when 'no time was given for the [Yorkist] earls to pack the House of Commons; the knights of the shire were chosen on the nomination of the Lancastrian leaders;' S. C. H. iii. 179. (The italics are mine.) The petition of the sheriffs for indemnity was not merely, as Dr. Stubbs says, on account of the haste with which the elections were held, but because they had been made in virtue of letters of privy seal instead of writs under the great seal. The parliament was illegally summoned *ab initio*, and could not legalize itself; Rot. Parl. v. 367; cf. ib. 374; Eng. Chron. p. 83.

³ Const. Hist. iii. 286.

The House of York unfortunate in history.

Comparison of Edward IV with his father in character and position.

Edward IV obliged to seize the throne.

been judged in history for the most part not by Richard Duke of York, but by Richard Duke of Gloucester, and worse still by Edward Earl of March. The defeats of Wakefield and St. Alban's did no lasting injury to the Yorkist cause, but they caused incalculable harm to England. They gave her as king, instead of a tried and experienced statesman, who, whatever his ambition, or even (if the reader should so determine) unscrupulousness, always manifested ability and circumspection, a showy and self-indulgent youth, whose undoubted abilities were balanced by no corresponding sense of duty; but who might under his father's training have developed into something much better than what he ultimately became. The personal character of Richard Duke of York, his actual government in France¹, in Ireland², and in England during his first Protectorate, warrant us in believing that he would have ruled very differently from Edward IV. But further, he would have reigned under very different circumstances. Had the civil war been terminated by a conscientious adherence to the agreement made in the Parliament of 1460, there would not have been that weakening of the old nobility³, that weariness of anarchy on the part of the people, which gave Edward IV and the Tudors the opportunity they enjoyed of establishing a despotism. Edward himself after his father's death had no choice but to go forward. Margaret's proceedings had made it plain that only as king could he be safe. He must either succeed in that, or perish as his father had perished. It was absurd to

¹ S. C. H. iii. 153; English in France, II. xxix. ff.

² S. C. H. iii. 153. According to Hall (p. 219), it was openly said that if he who 'had brought that rude and savage nation to civile fashion . . . once ruled in England, [he] wolde depose euil counsaillers, correct euil judges, and reforme all matters amisse, and unamended.'

³ The Croyland Continuator speaks of the civil war as 'omnium

pene procerum regni luenda morticinis,' p. 529; and modern historians have repeated the statement. Mr. Oliphant has however proved that the Tudor axe had more to do with the extinction of the old nobility than Plantagenet dissensions; Duke and Scholar, pp. 139-149. Fortescue himself says, 'per bella intestina non paucis extinctis proceribus;' Works, p. 63*.

suppose that he could be bound by a compromise, which his opponents had been the first to break. And no one can therefore blame him for seating himself on the throne.

The reign of Edward IV is divided into two nearly equal periods by his exile and the brief restoration of his deposed rival (Oct. 1470-April 1471). The former period is marked by many of the characteristics of the late reign, whereas it is in the latter that we must chiefly seek for those indications of a newer state of things which led a brilliant modern writer¹ to break through the old-fashioned divisions of English history, and date the beginning of personal monarchy from the accession of Edward IV.

At first Edward seems to have been sincerely anxious that justice should be done². But partly because the evils were too deeply seated to yield at once to treatment, partly because Edward either did not possess, or would not exert himself to show, that administrative capacity for which his father had been so distinguished, the old bad state of things in the main continued³. There are the same local disorders, the same complaints of defective administration of justice, the same rivalries between the great lords, the same tendency to make use of personal influence to defeat the ends for which government ought to exist. The number of the great lords was somewhat diminished, but for the present their power was rather increased than lessened by being concentrated in fewer hands. Warwick's possessions are said by a contemporary to have been more than double those of any subject before his time⁴. The power of the Nevilles was in fact very oppressive to Edward. They were to him what the Percies had been to Henry IV, what Buckingham afterwards was to Richard III. Up to the time of the declaration of

¹ Mr. Green.

² See notes to Chap. xix. Cf. Waurin, ii. 299: 'il y sema raison et justice en lieu de rapine et desordonnance.'

³ Many of the examples given in the notes above (pp. 20-1,

23, 25, 29-30, 32) are from the reign of Edward IV. Cf. Three Fifteenth Cent. Chron. p. 181: 'Abundabant tunc in Anglia furti, homicidia et mala multa.'

⁴ Hearne's Fragment, pp. 299 f. Cf. notes to Chaps. ix. and xvii.

Edward's marriage in 1464 he was mainly in their hands; after that date he attempted to free himself from them by raising up his wife's relations as a counterpoise to them; a policy which led to the renewal of the former troubles, and ultimately to his own expulsion from the kingdom. We have the express testimony of Warkworth that the restoration of Henry VI was rendered possible by the disappointment felt at the performances of Edward IV¹.

Lancastrian restoration due to Edward's failure.

Of the action of the new government we can form no estimate. Its duration was too short, and most of the documents relating to it have perished². Fortescue, as we shall see, drew up for it a programme of reform which is closely connected with our present work³.

Change in Edward's government after his return.

After the restoration of Edward IV a distinct change for the worse takes place in his character and government. His administration was no doubt firmer, but also more cruel and suspicious. He was determined to indulge his love of ease and pleasure without disturbance, and he remorselessly crushed everything which threatened to become dangerous. The parties at the court continued and ran high, the Wydviles on the one side, the other nobles on the other. It is possible that it was Edward's deliberate policy to secure his own independence by balancing one party against the other⁴; but the ultimate outcome of this policy was the deposition of his son and the ruin of his dynasty. In all this Edward showed how inferior he was in real statesmanship to Henry VII, whom Mr. Green has put down as a mere imitator of Edward IV. It would not be far from the truth to say that Edward's government had all the faults of that of Henry without any of its merits. Common to both kings were the desire to be financially independent of parliament⁵, and many of the means which they took to secure that object. Both kings,

Comparison of Edward IV with Henry VII.

¹ See notes to Chap. xix.

² Chastellain, v. 489 f., says that Warwick used his power with great tyranny and cruelty.

³ Below; pp. 70, 89.

⁴ Ægidius Romanus reckons

this among the 'cautelæ' of a tyrant: 'Rex autem non procurat divisiones et partes in regno;' De Regimine, III. ii. 10; cf. Bacon's Essay, 'Of Faction.'

⁵ See notes to Chaps. v, xix.

to use Lord Bacon's words, made money out of their subjects for war, and out of their enemies for peace. Other sources of income which they had in common were the confiscated goods of opponents, benevolences, the fines resulting from the enforcement of obsolete statutes and rights of the crown, and the profits arising from mercantile speculations. These sources of income together with the grants of the clergy made Edward to some extent independent of his lay subjects, and the people so far attained the wish they had so often expressed, that the king should live of his own; with the result which might have been expected, that the voice of the nation was silenced, and the king did very much what he pleased.

Financial measures.

Common again to both monarchs was the system of repression and espionage which they adopted. This was necessitated in Edward's case by the disgraceful treaty with France, which caused so much discontent, that the Croyland Continuator believes that the people would have risen, if only they could have found a leader¹. The means and position of his humblest subjects were known to Edward in a way which reminds us not only of Henry VII, but of Burleigh and Walsingham². And besides these evils which were common to both systems, the rule of Edward IV had demerits which were all its own. But the simplest test of the relative merits of Edward IV and Henry VII is to compare the state in which they respectively left the kingdom at their death. Henry left a united kingdom, an assured succession, a crown independent and secure from foreign interference. Edward left two bitter factions which he had fostered in life and idly fancied he could reconcile upon his death-bed, a revolution and a change of dynasty, and a crown the prize of the first pretender who could gain some foreign help. I have said³ that the condemnation of the house of Lancaster

Repressive system.

¹ p. 559.

² lb. 562, 564. The Liber Niger of Edward IV curiously illustrates this point. The forty squires of the household are to be 'of sundry sheres, by whom it may

be knowne the disposition of the countries;' Ordinances, &c., p. 45. This again is a 'cautela tyrannica;' Æg. Rom. u. s.

³ Above, p. 35.

does not involve the acquittal of the house of York. Edward IV was probably the worst king, and certainly the worst man, who had occupied the English throne since John. And yet it is by him that the house of York is mainly judged in history. His father never had a fair chance; the reign of Edward V is merely the history of a revolution; while the government of Richard III, until it degenerated into a mere spasmodic attempt to maintain himself, was a conscious and somewhat theatrical reaction against Yorkist rule, rather than a specimen of it. Dr. Stubbs has truly and beautifully said, 'We cannot look without pity and sorrow on that generation of our fathers, whose virtues were exemplified in Henry of Lancaster, and its strength in Edward of York¹.'

The House of York mainly judged by Edward IV.

PART II.

LIFE OF SIR JOHN FORTESCUE.

Birth of Fortescue.

SUCH was the character of the period into which our author was born. Neither the place nor the date of his birth are known, but he belonged to a Devonshire family; and his descendant and latest biographer, Lord Clermont, combining a statement made by Fortescue himself in the *De Laudibus*², that no one could be made a serjeant-at-law till he had studied the law for sixteen years, with the fact that Fortescue became a serjeant in 1429 or 1430, places his birth about the middle of the last decade of the fourteenth century³. Mr. Foss on similar grounds places it 'about the close of the fourteenth century⁴.' His father,

¹ Const. Hist. iii. 286.

² c. 50.

³ Family History, 2nd ed., p. 51.

⁴ Judges of England, iv. 309. Unfortunately there are passages in the *De Natura Legis Naturæ*

which seem to conflict with the passage in the *De Laudibus*. In i. c. 43 Fortescue says, speaking of the laws of England, 'quarum peritiam studentes vix viginti annorum lucubrationibus adeo ad-

Sir John Fortescue, the second son of William Fortescue of Wimstone, Devon, fought at Agincourt under Henry V, and was made Governor of Meaux, the capital of La Brie, upon its capture in 1422. He seems to have died about 1435¹. He had by his wife, who was the heiress of the family of Norreis, three sons. Sir Henry Fortescue, the eldest, was for a short time (June 1426–November 1427) Chief Justice of the Common Pleas in Ireland²; the second, Sir John Fortescue, is the subject of the present memoir; the youngest, Sir Richard Fortescue, was killed at the first battle of St. Alban's in 1455, fighting on the Lancastrian side³. According to Tanner, the future Chief Justice of England was educated at Exeter College, Oxford. He certainly was a member of Lincoln's Inn, of which institution he was made a Governor in 1425, 1426, and 1429⁴. Fortescue's description of the mode of life and study in the Inns of Court⁵ has been so frequently quoted that I willingly refrain from repeating it here. It is tinged, like the whole of the work from which it is taken, with a very rosy colour.

Governor of Lincoln's Inn.

Equally well known is the description of the ceremony of making a serjeant-at-law⁶, a degree which Fortescue

Serjeant-at-law.

quirunt ut ad infimum gradum in legibus illis . . . eligi mereantur;' Works, p. 108. The 'infimus gradus' must be that of apprentice-at-law, and would of course precede that of serjeant-at-law. (On Apprentices, see Foss, u. s. p. 24.) Again, in ii. c. 10 he says: 'Hæc satis novit scriptor horum, qui plusquam quadraginta annis studuit ac se exercuit in Legibus Regni illius, et tandem Judiciario officio ejusdem terræ supremo diu functus est;' Works, pp. 124–5. If by this Fortescue means that he had studied and practised the English law for over forty years before his elevation to the bench in Jan. 1442 (and such certainly seems to be implied by the use of the word *tandem*), his birth would have to be thrown back at least as

far as 1385. If, on the other hand, the forty years of study and practice include the nineteen years of Fortescue's judgeship, he cannot have been born earlier than 1400. And this *of the two* is the more probable date.

¹ Family History, p. 45.

² Ib. 44.

³ Ib. 235.

⁴ Ib. 51.

⁵ De Laudibus, c. 49.

⁶ De Laudibus, c. 50. The dress which Fortescue describes seems not to have been peculiar to serjeants-at-law, but common to them with other serjeants. The serjeants of the Counting-house were to wear 'hoodes furred with whyte lambe and a coyfe of sylk, whyte;' Ordinances, p. 65.

took, as we have seen, in 1429 or 1430¹. It was an extremely costly process², but it had its compensation in the increased amount of practice which it brought. This seems to have held good in Fortescue's own case. It is only after he became a sergeant that his name begins to appear in the Year Books³. As a barrister he seems to have gone the Western circuit, which would perhaps be the natural one for a Devonshire man to choose. At least in the *De Laudibus*⁴ he mentions having been present on two occasions at the gaol delivery at Salisbury, on the first of which a woman was condemned to be burnt for the murder of her husband, while on the second occasion a servant of the murdered man confessed that he alone had been guilty of the crime. The judge, who was the same on both occasions, often declared to Fortescue that he could never overcome the remorse which he felt for the unjust condemnation of the woman. Fortescue characteristically uses the incident to prove that 'the law's delays' are not always prejudicial to the cause of justice.

Marriage.

He married before September, 1436⁵, Isabella or Elizabeth⁶, heiress of John Jamyss, Esquire, of Philip's Norton, near Bath, where in 1441 he acquired certain lands and messuages by grant of the prior and convent of Hinton-Charterhouse to him and his wife and the heirs

¹ The former is the date given by Mr. Foss, u. s. p. 309, the latter by Lord Clermont; u. s. p. 52.

² The expense had perhaps something to do with the unwillingness of apprentices to take the degree of sergeant. Cf. the oft-quoted case, Rot. Parl. iv. 107 b, where certain apprentices were summoned before Parliament because they had not obeyed the King's writ to that effect.

³ Foss, u. s.

⁴ c. 53.

⁵ His wife is mentioned in a deed of 14 Hen. VI, cited in the Biogr. Brit. iii. 1986. This regnal year extended from Sept. 1, 1435, to Aug. 31, 1436.

⁶ In the deed just mentioned, and also in that to be cited in the next note, Fortescue's wife is called Isabella. But she is called Elizabeth in the letters of fraternity granted to her and her husband by Christ Church, Canterbury, in 1447; below, p. 48. The two names were used as identical in the Middle Ages. This may have helped to cause the mistake (which Mr. Foss has not escaped) of confounding the wife of the Chief Justice with Elizabeth daughter of Sir Miles Stapleton, the second wife of Sir John Fortescue of Punsbourne; Family History, p. 53.

male of their bodies for ever, for a reserved rent of one mark annually. As one of these tenements was then occupied by his wife's mother, it may perhaps be conjectured that this was merely a re-grant to Fortescue and his wife of lands formerly held by the father of the latter. The grant was confirmed by the crown in 1443¹. He had previously acquired part of his father's property in Devonshire by grant of his elder brother Henry in 1435-6². In October, 1452, he acquired the manor of Geddynghalle and other lands in Suffolk³. In 1456 he purchased the reversion of the manor of Ebrington, in Gloucestershire, of Sir Robert Corbet for £151. He had not come into possession of this estate at the time of his attainder in November, 1461⁴. He had also before that date

¹ This confirmation embodying the original grant is printed in full by Lord Clermont, u. s., pp. 102-3.

² *Ib.* 50, note 3. Of these lands Fortescue divested himself in favour of his son, soon after the marriage of the latter in 1454.

³ Rot. Claus. 31 Hen. VI, memb. 32, dorso. This purchase was made from the same person, Sir Robert Corbet, and vested in the same body of feoffees as the reversion of the manor of Ebrington to be mentioned next. This was probably the same Sir Robert Corbet whose son married Fortescue's daughter Maud in 1455, but afterwards deserted her; Family History, p. 54.

⁴ In Rot. Claus. 35 Hen. VI, memb. 9, dorso, there is a release in Latin by Sir Robert Corbet of the reversion of the manor of Ebrington to John Fortescue and certain co-feoffees, dated the Feast of St. Margaret, 34 Hen. VI, i.e. July 20, 1456. This document is evidently alluded to in one given by Lord Clermont from Campbell's Chancellors, i. 373, and dated Dec. 5, 35 Hen. VI, i.e. 1456. The inquisition taken at Cirencester Nov. 4, 1467 (Inq. p. m. 7 Edw. IV, No. 50), records the grant of the manor

of Ebrington to John Grevill, Esq., and his wife Jocosa for their lives, with remainder to Guy Corbet, of the county of Suffolk, and his heirs. John Grevill was dead, but his wife was still alive. By the death of Guy Corbet the right of reversion descended to Sir Robert Corbet, his son and heir, who had by a fine levied before Prisot and other Justices on the morrow of the Purification, 34 Hen. VI, i.e. Feb. 3, 1456, granted it to John Fortescue, Kt., and the co-feoffees mentioned above; the grant being, as the jury affirmed, to the use of the said John Fortescue. On June 28, 1468, Edward IV granted to John Lord Wenlok certain lands which had belonged to Fortescue in the counties of Middlesex, Hertford (not Hereford, as stated in Cal. Rot. Pat. p. 314 a), Somerset, and Wilts, and the reversion of the manor of Ebrington after the death of Jocosa Grevill (not the manor itself, as stated in Cal. Rot. Pat. u. s.); Rot. Pat. 8 Edw. IV. Pat. i. memb. 4. I cannot therefore understand the statement in Atkyns' Gloucestershire, p. 425 (copied by Rudder, p. 434, and Lord Clermont, p. 59), for which no authority is given,

become possessed of property in Wilts, Herts, and Middlesex¹. In May, 1457, in conjunction with his son Martin and the latter's wife Elizabeth, he acquired land at Efford, in the parish of Holbeton, in Devonshire². So that at the time of his attainder Fortescue must have been a considerable landowner.

Life as a barrister.

If we may transfer to the case of Fortescue what we learn from the Paston Correspondence as to the mode of life of a barrister in those days, we may imagine him during this period of his life residing on one of his country estates, perhaps at Philip's Norton, going up to town for the law-terms³, where he may have had chambers in Lincoln's Inn⁴, and receiving perhaps, as opportunity

that in 7 Edw. IV the manor of Ebrington was granted to Sir John Burg or Brug, who died seised of it in 11 Edw. IV. The lands in Somerset would be Fortescue's wife's estate at Philip's Norton. How or when the property in Herts, Wilts, and Middlesex was acquired I do not know.

¹ See last note. The inquisition taken before the Escheator of Wilts (Inq. p. m., u. s.) is printed by Lord Clermont; u. s., p. 105. It mentions lands &c. at Kingston Deverill, Trowbridge, Hilper-ton, and Bradford-on-Avon. In Rot. Pat. 5 Edw. IV. Pat. i. memb. 9, there is a grant dated April 20, 1464, of certain lands late belonging to Sir John Fortescue at Great Linford, Bucks. But from Rot. Claus. 33 Hen. VI. memb. 15, dorso; ib. memb. 21, dorso, it is clear that this was a trust estate, and did not belong to Fortescue himself. Other instances in which I have found Fortescue's name as trustee or co-feoffee are Rot. Clause, 7 Hen. VI. memb. 6, dorso; ib. 13 Hen. VI. memb. 12, dorso; ib. 24 Hen. VI. memb. 20, dorso; ib. 38 Hen. IV. memb. 9, dorso; ib. 2 Edw. IV. memb. 21, dorso. (The document, though enrolled in 1462, is dated June 8,

1449.) On May 20, 1457, Fortescue and Thomas Yong, as executors of the will of John Burton, late of Bristol, merchant, obtained licence to endow a chantry at the altar of St. John the Baptist in the church of St. Thomas the Martyr in Bristol, with lands &c. held of the king in free burgage in Bristol. The inquisition *ad quod damnum* was taken on the Monday before St. Gregory the Martyr, 38 Hen. VI; Inq. a. q. d. 38 Hen. VI, No. 7. In Oct. 1441 Fortescue had become a co-feoffee of John Burton in certain lands &c. in Bristol; Rot. Claus. 20 Hen. VI. memb. 20, dorso. Another instance in which we find Fortescue acting as executor of a will is in Inq. a. q. d. 36 Hen. VI, No. 1.

² Rot. Claus. 35 Hen. VI. memb. 9, dorso.

³ Unless the law-courts happened to be suspended on account of the plague, as was the case in Michaelmas Term, 1434; P. P. C. iv. 282.

⁴ John Paston resided during term time in the Inner Temple, which in Paston Letters (i. 41) is called 'your college the Inner Temple.' Perhaps after Fortescue became a sergeant, and almost certainly after he became a judge

offered, supplies of provisions from his wife in the country¹. And when the chief industry of the country was agriculture, everything had to give way to the exigencies of harvest. The legal and academical long vacations, the parliamentary recess, all owed their origin to this consideration².

In 1440 and 1441 Fortescue acted as Judge of Assize on the Norfolk circuit, and in Easter Term, 1441, he was appointed a King's Sergeant³.

In January, 1442, he was made, without any intermediate

in 1442, he would have chambers in Sergeants' Inn. Mr. Foss is of opinion that the judges and sergeants first had an inn *in common* about 1440-1; u. s. p. 247.

¹ 'I have do purveyed in this wareyn xj^{xx} rabbits and sent up be the berer herof;' Margaret Paston to her husband, ii. 21. See Chap. xv. below, and the notes thereto.

² See S. C. H. i. 379. Cf. Paston Letters, i. 399: 'I suppose lerned men (i. e. counsel) wyll not be easy for to gete be cause of this besy time of hervest;' cf. ib. 243. In Aug. 1433 the king prorogued Parliament because autumn was approaching, 'in quo Magnatibus circa suos Recreationes et Deductus, ipsisque Communibus circa suarum messium congregationem intendere competebat similiter;' Rot. Parl. iv. 420 b, (and so frequently). For the effect of the harvest on the meetings of the Privy Council, see notes to Chap. xv. A glance at the Sylabus to Rymer's *Fœdera* will show that the documents dated during the long vacation are very sparse.

³ On Sergeants-at-law and King's Sergeants, cf. Foss, iii. 46-8; iv. 21-2, 195-8, 240-4. Coke says that in a general sense all Sergeants are King's Sergeants, as being called by the king's writ, and at first perhaps all Sergeants were called King's Sergeants. But at this time certainly there

were King's Sergeants who received their offices by patent. One of their duties was to assist poor suitors to the Council, which they were bound to do gratuitously; P. P. C. iii. 150, 217; iv. 63. They might also, like the judges, be summoned when the Council required advice on legal points; ib. iii. 117; v. 35, 44; cf. 77. They might similarly be called upon to assist the triers of petitions in Parliament; Rot. Parl. iii. 455 a, and passim. In one case we find a petition referred to them for consideration, and the matter adjourned to the next Parliament; ib. iv. 17 b; cf. v. 42 a, where the Lords, by the advice of the King's Sergeants, made an unauthorized addition to the answer to a petition in Parliament. The decision of the Lords in the case of Thorpe was communicated to the Commons by one of the King's Sergeants, 'for as moche as they were materes in lawe;' ib. 240 a. The Duke of York's claim to the throne in 1460 was referred to the King's Sergeants and Attorney, who tried to excuse themselves, but were told by the Lords, 'that they myght not so be excused, for they were the kynges particuler counsellors, and therefore they had their fees and wages;' ib. 376. In one case we find a King's Sergeant appointed 'hac vice tantum;' Cal. Rot. Pat. p. 296 a.

Fortescue
Judge of
Assize.

Chief Justice of the King's Bench.

step, Chief Justice of the King's Bench, in succession to Sir John Hody, with a salary of £120 and allowances of £8 13s. 6d. for robes at Christmas and Whitsuntide. In February, 1442, and May, 1443, he received grants of an annual tun of wine. In March, 1447, he received an annual addition of £40 to his salary¹. Sometime after his appointment as Chief Justice, and before May, 1443, he was knighted².

Sits on a special commission in Norfolk.

In October, 1442, he was required to certify the King's Council of the tenor of certain indictments brought maliciously, as was alleged, against Robert Wells, abbot 'of Tourhille beside London,' and others³. About the same time he and the other Judges of the King's Bench were ordered to 'committe to baille' 140 of the adherents of Sir William Boneville⁴. Early in 1443 he was sent with others on a special commission into Norfolk with reference to disturbances which had broken out in Norwich, in consequence of the attempt of the Prior of Christchurch, Norwich, to impose certain new ecclesiastical dues⁵. On March 4th, 1443, a special letter of thanks for 'his grete laboures' was ordered by the council to be sent to him in the king's name⁶. On the 14th he and the Chief Justice of the Common Pleas were ordered to send to the council 'the names of indifferent persones suche [as] may be maade justices of the pees and sherriefts,' in Norfolk⁷. On the 23rd, he and his colleague Westbury attended the meeting of the Privy Council and 'declareden alle there

¹ The patents of Fortescue's appointments and grants are printed in full by Lord Clermont; u. s. pp. 103-4. In the Resumption Act of 1455 exception was made in favour of 'the Graunte . . . to John Fortescu Knyght, of 11 Tunne of Wyne to be taken yerely in the Porte of London for terme of his lif;' Rot. Parl. v. 317 a. According to the Liber Niger the Chief Justice of the Common Pleas received two tuns of wine regularly in return for the legal assistance which he gave to

the royal household, of which he was reckoned 'a grete membre;' Ordinances, &c., p. 29.

² I find him mentioned as Sir John Fortescue first on May 8, 1443; P. P. C. v. 268. He seems not to have been a knight on Oct. 11, 1442; ib. 215. Some intervening notices of him in the records of the Privy Council are inconclusive on the point.

³ Ib. 215.

⁴ Ib. 221.

⁵ Ib. cxxiii ff.

⁶ Ib. 231-2.

⁷ Ib. 243.

demenyng at Norwiche and in Norffolke¹. Fortescue was present in the council on April 3rd and May 3rd, 1443², and on May 8th the council ordered a warrant to be made out for the payment of fifty marks to him for his labours and expenses in Norfolk³. Two days later the two Chief Justices were summoned to the council with reference to certain riotous attacks which had been made on Cardinal Kemp's estates in Yorkshire⁴, arising out of the manner in which he had exercised his spiritual jurisdiction as Archbishop of York; they were ordered to make their report to the council on the following day⁵. This they did in the presence of a very full meeting of the council and of 'alle the remenant of the Juges⁶.' In consequence of their advice Lords Dorset and Willoughby and the two Chief Justices themselves were a week later 'assigned to go and sitte in Yorkshire upon an oier and terminer⁷.' On July 11th Fortescue again attended the council, perhaps with reference to the termination of this matter⁸.

In January, 1444, we learn that Fortescue had for some time been suffering from sciatica, and his colleague William Paston being also unwell, the assizes at East Grinstead had to 'discontynue *puer noun venue dez Justices*⁹.' In the Parliament of February, 1445, Fortescue was appointed one of the triers of petitions; and was reappointed in every subsequent Parliament up to that of 1455 inclusive¹⁰. The next fact that we learn about Fortescue is his refusal to obey the king's command to deliver out of Walling-

¹ P. P. C. v. 247-9.

² Ib. 256, 266.

³ Ib. 268.

⁴ Writs to the Sheriff and Keepers of the Peace in Yorkshire, dated May 12, are in Rymer, xi. 27-8.

⁵ P. P. C. v. 269.

⁶ Ib. 270-1.

⁷ Ib. 273.

⁸ Ib. 304. These attendances at the Privy Council do not, I think, warrant us in speaking of Fortescue as a Privy Councillor, as

Lord Clermont does; u. s. p. 56. He merely attended in his capacity as Judge to give legal advice to the Council; cf. Chap. xv. below, and the notes thereto.

⁹ Paston Letters, i. 50.

¹⁰ See the Rolls of Parliament during those years. Fortescue's Summonses to Parliament may be found in the Lords' Report, i. App. i. Part ii. 909, 914, 919, 924, 928, 933, 937, 942, 946. They extend from 1445 to 1460.

In Yorkshire.

Ill of sciatica.

Trier of petitions in Parliament.

Refuses to deliver a prisoner.

ford Castle a prisoner named Thomas Kerver, who had been found guilty of high treason; the ground of his refusal being that what was demanded of him exceeded his powers. We know too little of the circumstances of the case to pass a judgement on Fortescue's conduct in the matter. But the evident desire of the king that the fact of the pardon should be kept secret is calculated to awaken suspicion¹. In the same year Fortescue and his wife received the privileges of fraternity from the convent of Christ Church, Canterbury². In 1447-8 he was concerned as arbitrator with the Chancellor and Chief Justice

¹ Excerpta Historica, pp. 390, 280.

² Archiv. Ecclesie Xpi Cantuar. Reg. S. fol. 172 a: 'Littera fraternitatis Johannis Fortescu Capitalis Justiciarii Dñi Regis ad placita coram Rege et Dñe Elizabethæ uxoris ejus.' I owe my knowledge of the existence of this document to Dr. Sheppard's report on the Canterbury MSS. in the appendix to the ninth volume of the Historical Manuscripts' Commission, while for a transcript of it I am indebted to Dr. Sheppard's liberality through the kind mediation of the Rev. Professor Rawlinson, Canon of Canterbury. After an exordium on the efficacy of prayer, which Dr. Sheppard informs me is common with slight variations to all the Canterbury letters of confraternity, the document proceeds as follows: 'ea propter tam salutaribus monitis pia ac sincera devocione pensatis devoti ac supplices in X^o. hujusmodi carismatum emulatores magnifice nobilitatis vir et miles egregius Dñs. Johannes Fortescu Capitalis Justiciarius Dñi. Regis ad placita coram ipso Dño. Rege, vir equidem justus quem omnes deserti justum discernunt obsequuntur venerantur et diligunt, cum et omnibus velit prodesse sed obesse nulli, nemini nocens sed nocentes prohibens, ac etiam

devotissima domina, Domina Elizabeth conthoralis ejusdem matrimoniali sibi federe copulata, propter Deum et singularem devocionem quam habent et diucius habuisse dinoscuntur ad perinclitum et preciosum martyrem, Beatum Thomam, cujus corpus in dicta sacrosancta ecclesia jacet tumulatum, nobis humillime supplicaverunt quatinus ipsos nostris oracionibus ceterisque piis meritum operibus communicato suffragio misericordissime uniremus. Unde devotis eorum precibus unanimiter inclinati, ac in Xpi gratia ejusque sanctissime matris et Virginis Marie, Beati Thome Martyris gloriosi ceterorumque prefate ecclesie patronorum meritis patrociniisque confisi, pro immensis beneficiis nobis et ecclesie nostre predictæ hactenus impensis ipsos Dominum Fortescu et Dominam Elizabeth conjugem suam ad plenum perpetue fraternitatis nostre consorcium . . . admittimus . . . per presentes. . . . Dat. in domo nostro Capitulari—die Mensis Octobris Anno Domini Millesimo CCC^{mo} XLVII^{mo}.' The character given of Fortescue is of great interest. The 'immense benefits' which he had conferred upon the monastery may have been in the way of legal advice and assistance.

of the Common Pleas in a dispute which had arisen between the Cathedral and Corporation of Exeter as to their relative jurisdictions. Fortescue seems to have shown himself very friendly to the city, the capital of his native shire¹.

In 1450 Fortescue was brought by his official position into connexion with the trial of the Duke of Suffolk. The Duke having admitted the existence of injurious reports against him 'almost in every Commons mouth,' the Commons petitioned the King that he might be committed to ward. This was on the 26th of January. The following day the Lords consulted the judges as to whether common rumour was a legal ground of commitment. Fortescue in the name of his colleagues drew a distinction between misprisions and trespasses on the one hand, and felonies and treasons on the other. In the case of the former rumour was not a sufficient ground of commitment; implying apparently that in the case of the latter it was. Upon this the Lords resolved almost unanimously that, as no definite charge had been made, Suffolk should not be arrested. The next day the definite charges followed, and Suffolk was sent to the Tower. On Saturday, March 14, Fortescue was sent by the King to ask the Lords what advice they would give the King in the matter. The Lords deferred their answer till the following Monday, when nothing was done; and on Tuesday the 17th took place that unconstitutional arrangement which has been already commented upon². In the Resumption Act which was passed this year Fortescue is twice specially exempted from its operation³.

From a letter written Aug. 19, 1450, we learn that Fortescue and all the judges were then out of town, with the exception of Danvers who had just been raised to the bench, and that Fortescue had accompanied the Lord Chancellor and the Duke of Buckingham, who had been

¹ See Letters of John Shillingford, Mayor of Exeter (Camd. Soc.), esp. pp. 9, 37. A sketch of the controversy is given in the preface; cf. Family History, pp. 57-9. ² Above, pp. 10-1; Rot. Parl. v. 176, 182-3. ³ Ib. 187 b, 199 a.

In danger
of assault.

sent into Kent to hold a special commission of oyer and terminer on those who had been concerned in the rising of Cade¹. On June 2, 1451, another correspondent writes that Fortescue had been expecting every night for a week to have been assaulted in his house, but nothing had come of it; 'the more pity' adds the unfeeling writer². Mr. Gairdner thinks that this was 'probably for no other reason than his high impartiality³.' Lord Clermont attributes the animus of the writer to Yorkist sympathies⁴, and we must attribute the threatened assaults to the same cause. Whatever may have been Fortescue's impartiality in purely legal matters, and there is no reason to doubt it, it is certain that in politics he was, as he himself confesses, 'a partial man⁵,' or, as we might say, a party-man. And there is conclusive evidence that about this time he had unfortunately identified himself so closely with the party of Suffolk and Somerset, as to become involved, whether justly or unjustly, in their unpopularity. In the proclamation issued by Cade in the name of the Commons of Kent at the time of their rising the King is requested to send 'some trew Justyce wyth certeyn trew lords and knyghts' into Kent, to enquire of all 'traytors and brybors.' And it is added: 'to syt upon this enqwyre we refuse no juge except iij chefe juges, the which ben fals to beleve⁶.'

He shares
the unpopularity
of the Court
party.

¹ Paston Letters, i. 139. The sentence is obscurely worded, but the above seems to be the sense of it. 'The Chief Justice is not here, ne noon other Justice, except Danvers is now made Juge of the Comune Place, and is forth into Kent with the Lords.' The words 'is forth' &c. must, I think, refer to Fortescue. Mr. Gairdner has here copied a strange mis-statement of Fenn's that Hody was at this time Chief Justice. We have seen that Fortescue succeeded Hody as early as January 1442.

² 'The Chief Yistice hath waited to ben assaulted all this sevenyght nyghtly in hes house, but nothing come as yett, the more pite;' *ib.* 185-6. Do the words 'hes house'

imply that Fortescue had at this time a private house in London? We have seen that he had property in Middlesex; above, p. 44.

³ *Ib.* lvii.

⁴ *u. s. p.* 59.

⁵ Works, p. 532.

⁶ Three Fifteenth Century Chronicles, p. 98. The other two 'Chief Judges' were Sir John Prisot, Chief Justice of the Common Pleas, and Peter Arderne, Chief Baron of the Exchequer. The fact that Prisot was, with the exception of Fortescue, the only one of Henry VI's judges who was not re-appointed on the accession of Edward IV, seems to confirm the idea that he was a strong Lancastrian partizan. What

In the satirical dirge upon the death of Suffolk composed about the same time Fortescue is introduced along with others of the court party as taking part in this parody of a funeral service¹. And his name occurs again in a list of unpopular persons indicted before the Chancellor (Kemp) and the Duke of Buckingham in August, 1451².

In February, 1454, the Lords consulted the judges with reference to the case of Thorpe. The answer given by Fortescue in the name of all his colleagues is well known. They refused to say anything which could be construed as a claim on their part to determine the privileges of Parliament, but they stated what the custom had been in previous cases³.

Consulted
on Thorpe's
case.

In May of the following year took place the first battle of St. Alban's, in which, as we have seen, Fortescue's younger brother Sir Richard Fortescue was killed⁴, an event which is not likely to have made him more favourably inclined towards the Yorkists. In June we hear that Sir William Oldhall the well-known Yorkist, who had been attainted in Parliament in June 1453, was waiting in sanctuary for the return of Fortescue to London, in order that he might sue in the King's Bench for the reversal of his outlawry. This he succeeded in effecting a few days later⁵.

Death of
his younger
brother.

In February, 1456, we find a dispute between Sir Philip

Arderne had done to make himself unpopular I do not know.

¹ '*Beatus qui intelligit* and *credit* also,

Seyth John Fortescw, all this fals treson.'

Three Fifteenth Cent. Chron., p. 102. In the shorter version of the same song printed by Mr. Wright, *Political Songs*, ii. 232 ff., the name of Fortescue does not occur.

² This list is printed by Mr. Wright, *Political Songs*, II. lvi. f. It is worth while to compare it with the song quoted in the last note. Very many of the names are the same in both. This list is dated August, 29 Hen. VI., i.e. 1451.

³ Rot. Parl. v. 239 b. On the question of privilege involved in Thorpe's case, cf. S.C.H.iii. 491-2; Rogers, *Gascoigne*, p. xxxvi; *Hatsell's Precedents*, i. 28-35. According to the precedents laid down by Fortescue, it would seem that the imprisonment of Thorpe was not a breach of privilege, and such is Mr. Rogers' opinion. But even on the most unfavourable view the breach was trifling compared with that of which the other side had been guilty in the case of Young, for Thorpe's imprisonment did not arise, as Young's did, out of his conduct in Parliament.

⁴ See Stowe, p. 399 b; above, p. 41.

⁵ Paston Letters, i. 336; cf. *ib.*

343-4.

An arbitration case submitted to him.

Summoned to advise the council.

Pacification of 1458.

Parliament of Coventry. Fortescue's activity.

Wentworth and Sir John Fastolf which had been submitted to arbitration referred by the arbitrators, by an arrangement not uncommon in those days, to the extrajudicial decision of Fortescue and Yelverton¹. It would seem from a later notice that Fortescue brought the matter before the House of Lords². In March, 1456, the judges were summoned to advise the council in regard to a difficulty which had arisen about the sheriffdom of Lincolnshire. Fortescue and Prisot for the rest declared, that the King had done wrong in appointing as Sheriff any but one of the three who had been nominated in the Exchequer in accordance with the Statute, and that any one thus illegally appointed could not be punished for refusing to serve. They advised compliance with the terms of the Statute, at once if possible, but at any rate at the next appointment of Sheriffs³. In May, John Paston was informed by a correspondent that some legal business of Sir John Fastolf's could not be proceeded with because Fortescue and almost all the judges were engaged at the Guildhall⁴.

The terms of the peace which Henry in 1458 succeeded in patching up between the Lancastrians and Yorkists are said in the document itself to have been drawn up after consultation with the judges among other persons⁵. We may therefore safely assume that Fortescue, both as the chief of the judges, and also as a prominent Lancastrian, was one of those who were consulted.

The next year, after the dispersal of the Yorkist Lords at Ludlow, the Lancastrian Parliament was held at Coventry, Nov. 1459. This was the first Parliament since 1445 in which Fortescue was not a trier of petitions; the reason

¹ Paston Letters, i. 378.

² *Ib.* 410. It is no doubt in connexion with this matter that we find in the accounts of John Paston, who was Fastolf's counsel, the following entry, 'For wine and spice with Fortescue and Wentworth, 23*d.*;' *ib.* 434.

³ P. P. C. vi. 331-2; cf. the

Statutes there cited.

⁴ Paston Letters, i. 384. This seems to refer to the special commission which sat to enquire into an attack made upon Italians resident in London. Of this commission Fortescue was a member: Fabyan, p. 630.

⁵ Whethamstede, i. 300.

probably being that his services were required for more important and less impartial work. For it seems clear from two references in the Paston Letters that Fortescue had a large share in drawing up the measures passed in that Parliament against the defeated Yorkists¹. He appears to have been in high spirits at the success of his party, for a letter written at Coventry during the parliament expressly notes that 'the Chief Justice is right herty².'

But the world, to use the contemporary expression, was soon to turn again³. The Yorkist victory of Northampton in July 1460 was followed by the Parliament of October in which the Duke of York claimed the crown. On this claim the Lords on Saturday Oct. 18th desired the opinion of the judges, but they on the following Monday utterly refused to meddle in a matter so much beyond their competence⁴. On this Dr. Stubbs remarks, 'Although Sir

'A turning world.'

The Judges consulted on the Duke of York's claim.

¹ The clearest of these passages is to be found at i. 535: 'A good thrifty man of this cuntre . . . told me . . . that he herd Doctor Aleyn seyn after the Parlement of Coventre that yf the Lords that tyme reynyng and now discessid myte haf standyn in governans, that Fortesku the justice, Doctor Moreton, Jon Heydon, Thorp and he, schuld be made for evir; and yf it turnyd to contrary wyse, it schuld growe to her . . . uttyr destruccyon; for why, the parlyows writing and the myschevous inditing was ymaginid . . . by . . . her most malicyows conspiracye ayens the innocent lords, knytis, gentilis, and Commonys, and alle her issu perpetuel,' &c. Cf. *ib.* 522, a somewhat enigmatical passage, but to the same effect.

² *Ib.* 499. In this Parliament Fortescue was appointed one of a new body of feoffees which the king created and enfeoffed with certain lands &c. for the carrying out of his will. Sir John Prisot was another; and among both the old and the new feoffees are many of the names which occur

in the song on Suffolk's death, and in the list of unpopular persons indicted at Rochester; above, p. 51. See the two lists of feoffees in Rot. Parl. v. 70 b; 355 b. The rancour of Margaret at this time is strikingly illustrated by a letter of De Brézé to Charles VII dated Feb. 24, 1460, in which it is said that if the negotiations which she was then carrying on with the French court should become known, her own party would combine with her enemies to put her to death. (Printed in Basin, iv. 358 ff.) In 1458, the year of the pacification with York, Margaret had been instigating Charles VII to send French troops to invade England; De Coussy, ed. Buchon, p. 209. On the political capital made by the Yorkists out of the French leanings of the court, cf. Basin, i. 296-7.

³ 'Res Anglicanae multis varietatibus, prout nimis nota experientia indies docet, subjectae sunt,' says the Croyland Continuator with reference to this very crisis; p. 549.

⁴ Rot. Parl. v. 376 a. It is to be

John Fortescue the Chief Justice afterwards wrote a treatise on the subject, the judges were not now prepared to answer¹. But it is very curious that the short tract now first printed² in its entirety from the thirty-fifth volume of the Yelverton manuscripts, is placed in that volume after 'The title and clayme of the crowne by Richard duc of York³,' and is entitled 'The replicacion made agenste the title and clayme by the Duc of Yorke to the Crownes and Reaumes of England and Fraunce.' The contents of the tract sufficiently show that it was written at a later period, especially the affecting allusion near the beginning to the author himself as 'the olde knyghte exiled.' Still the fact that the tract is so placed, and so entitled, may perhaps be taken as indicating that Fortescue wished it to be regarded as embodying the reply which he would have made, if he had been able to open his mouth on that occasion.

Was Fortescue present in the Parliament of 1460?

The fact however that there is no record of Fortescue's having presided in the Court of King's Bench after Easter Term 1460⁴ raises the question whether he may not have withdrawn with Margaret of Anjou to Wales and the North⁵ after the battle of Northampton; in which case

noted that Fortescue is not here mentioned as the spokesman of the judges, as is generally the case when the judges are consulted in their corporate capacity either by Parliament or the Council. It cannot therefore be positively affirmed that he was present on the occasion. He was however certainly summoned to this Parliament; Lords' Report, u. s., p. 946. And the assertion of the judges that 'the mater was so high, and touched the Kyngs high estate and regalie, which is above the lawe and passed ther lernyng,' may be compared with Fortescue's excuse in the 'Declaration upon certain Writings' that he had not 'labored or studied in any faculte except the lawes of this londe, in which the studientes lerne full lytell of the right of succession of Kyngdomes;' Works, p. 532.

¹ Const. Hist. iii. 185.

² Below, Appendix C.

³ This 'title and clayme' is printed in Rot. Parl. v. 378, under the title 'Concordia facta inter Regem et prefatum Ducem.' It is printed also in Davies' Engl. Chron. pp. 100 ff. To it are appended in all three places the awards by which Henry was to retain the crown during his life, and the oath taken by the Duke to him.

⁴ If I have rightly manipulated the tables in Sir H. Nicolas' Chronology of History, pp. 386-7, Easter Term in 1460 began on April 30th, and ended on May 26th.

⁵ Margaret and the Prince were still in Wales in the middle of October, 1460; Paston Letters, i. 525-6. In Scotland they were received by the widowed queen

we may imagine him to have been present at the battle of Wakefield and the second battle of St. Alban's¹, as he certainly was at the battle of Towton on March 29, 1461. Sometime between the two last-named battles at the latest Fortescue must have joined the forces of his royal master and mistress.

With our knowledge of the event which, it has been said, deprives the study of history of so much of its interest and value, we are inclined to regard the Lancastrian cause as finally lost after Towton. But that was by no means the contemporary view. The struggle was continued in the North almost without intermission till 1464², and the Lancastrians, as we shall see, had the largest schemes on foot. From the date of Towton moreover the fortunes and movements of Sir John Fortescue become so closely connected with those of the fallen royal family, that we must endeavour to follow these as far as the scanty and often

The Lancastrian cause not hopeless after Towton.

in the Abbey of Lincluden, Jan. 1461. The visit lasted ten or twelve days. The terms agreed upon seem to have included the marriage of Prince Edward to Princess Margaret of Scotland, and the surrender of Berwick; Exchequer Rolls of Scotland, ed. Burnett, VII. xxxv. In Basin, iv. 357-8, there is a bond dated York, Jan. 20th, 1460 (O. S.), signed by Exeter, Somerset, and other Lancastrian lords in Margaret's presence, in which they undertake to induce Henry VI to consent to the terms 'moeved and comoned at the College of Lyncludan . . . the v^{to} day of the saide moneth,' whence it appears that they anticipated some difficulty. The siege of Roxburgh, in which James II lost his life, had been undertaken in the Lancastrian interest; Exch. Rolls, u. s., VI. lxiii f., VII. xxxv. In 1460, before the battle of Northampton, Somerset, then at Guisnes, had offered to surrender that fortress to Charles the Bold. This was only prevented by the opposition of Philip the Good. There

seems to have been no English interest which Margaret and her party were not willing to betray in order to establish their own power.

¹ This is however not very likely; for the Act of Attainder which mentions the presence of Fortescue at Towton and elsewhere, says nothing of his having been at Wakefield or St. Alban's. On the whole I should surmise that Fortescue joined the Lancastrian forces when they began to withdraw towards the North, after the attitude of the citizens of London had made it clear that they could not safely attempt to enter the city; on which see Waurin, éd. Dupont. ii. 266. Hardyng (ed. Ellis, p. 405) says that Fortescue withdrew to the North after St. Alban's, but he does not say distinctly whether he was present at the battle or not.

² Cf. Gairdner, Three Fifteenth Cent. Chron. p. xxiv. As early as July 1463 there was a report in France that Henry VI had been restored; Waurin, u. s. ii. 317-8, note.

contradictory notices of the chronicles and correspondence of the time will permit.

The Lancastrians retire northwards.

After Towton the defeated Lancastrians retired northwards. A letter which reached London five days after the battle states that Henry, Margaret, and their son Edward with their adherents had fled to Scotland, but were being pursued¹. A fortnight later the news in London was that Henry, and perhaps also Margaret, Edward, and the Duke of Somerset, were besieged at a place the exact name of which the writer confesses himself unable to give, and the locality of which he has possibly mistaken, but which was perhaps Carham, on the borders of England and Scotland².

Agreement with the Scots.

From this place, wherever it was, the royal fugitives must have soon made their escape, for a week after the date of this letter the agreement was signed whereby Berwick was surrendered to the Scots, the Scots in return promising to assist in an invasion of England in the Lancastrian interest³. Accordingly, from another letter written about the beginning of May we learn that Berwick was full of Scots, with whom another battle was expected shortly⁴. Carlisle would have shared the fate of Berwick only it was better defended⁵. We may trust that Fortescue had nothing to do with ad-

¹ Paston Letters, ii. 5. According to Waurin (ii. 289 f.), Edward remained eight days at York, when it was agreed that as Henry and Margaret were already out of the kingdom, it was useless to pursue them.

² Paston Letters, ii. 7. 'I herd . . . that Herry the Sext is in a place in York schire is calle Coroumbr; suche a name it hath, or muche lyke. And there is sege leyde abowte, &c. . . Sum say the Qwen, Somerset and the Prince schuld be there.' Almost all the authorities seem to represent the Lancastrians as taking refuge in Scotland immediately after Towton. It seems therefore hardly likely that three weeks after the battle they would be still in Yorkshire. See especially Waurin quoted in the last note. Duclerq however confirms to some

extent the account given in the Paston Letters; Liv. iv. ch. xxiv (éd. Reiffenberg, iii. 119 f.). Cf. Monstrelet, iii. f. 84 d.

³ This is from the Act of Attainder, Rot. Parl. v. 478 a. Hardyng (p. 406) speaks of Fortescue's retirement into Scotland.

⁴ Paston Letters, ii. 9.

⁵ Rot. Parl. v. 478 b. According to Edward IV, Margaret had promised to give up seven 'sherifwicks' of England to the Scots, who with the French were to invade the kingdom, of which her uncle Charles of Anjou was to have the 'governance'; Halliwell's Letters, i. 123-130. This is of course an *ex parte* statement. Philip of Burgundy tried to break off the alliance of the Scots with Margaret, but in vain; Waurin, ii. 301-5; Monstrelet, u. s.; Duclerq, u. s.

vising this disgraceful compact¹. In the Act of Attainder, Henry and others, among whom Fortescue is expressly named, are charged with 'rearing war' against Edward IV at Ryton and Brancepeth on June 26th, 1461². This may have been an inroad assisted by the Scots in fulfilment of the agreement of April 25th. It was probably about this time that Somerset, Lord Hungerford, and Sir Robert Whitingham were sent to France to solicit aid for the Lancastrian cause. Their movements were disconcerted by the death of Charles VII, which occurred on July 22nd, 1461; and as the safe-conduct which Somerset held was made out in a fictitious name, he was arrested and imprisoned³. From a letter written by his colleagues on August 30th we learn that they were detained in Normandy, but were expecting to have an interview with the new king in a few

Embassy to France.

¹ He is not named in the Act of Attainder among those who advised the giving up of Berwick and Carlisle; though Hardyng (u. s.) says that the surrender was made 'by whole assent of his [Henry's] simple counsaill.'

² Rot. Parl. u. s. Lord Clermont regards this fighting at Brancepeth and Ryton as part of the skirmishing done by the retiring Lancastrians on their retreat to the border. I am inclined, for the reasons given above, to regard it as marking a new inroad. If this surmise is correct, it diminishes very much the period during which Fortescue could have been appointed Chancellor by Henry VI on English soil. The only period during which such an appointment could have been legally effective was the short interval between the battle of St. Alban's on February 17, and the proclamation of Edward IV on March 4. Still Lord Clermont, prolonging as he does the sojourn of Henry VI on the English side of the border till the end of June, thinks that there was a period of four months during which he was master of at least a part of his dominions, and during which his

appointment of a Chancellor would not be altogether devoid of reality. The question is not very important. Fortescue can never have been Chancellor in any effective sense. He cannot have had possession of the great seal in England. The seal which the Lancastrians used in exile must have been fabricated later. On the whole I am inclined to think that Fortescue was only Chancellor 'in partibus infidelium.' Selden's comparison of the case of Clarendon under Charles II before the restoration is extremely apt. It is some slight confirmation of this view that in the *De Naturâ Legis Naturâ* Fortescue, though as we have seen he mentions the fact of his having been Chief Justice, never alludes to himself as Chancellor, a claim which appears first in the *De Laudibus*. Selden has led Mr. Foss into error by asserting that in the 'Declaration upon certain Writings' Fortescue is addressed as 'Chief Chancellor' of the late king. The very phrase should have awakened suspicion. The true reading is 'Chief Counciller;' Works, p. 523.

³ Chastellain, iv. 65-6.

days¹. A month later the Lancastrian envoys were still detained in Normandy². Afterwards their prospects improved. Somerset was released at the special intercession of Charles the Bold, who, in opposition to his father, favoured the Lancastrian cause. He was present at the interview of Charles and Louis XI at Tours, Nov.–Dec. 1461, and received some help in money from the latter. Thence he had intended to return to Scotland, but hearing that Edward was on the look-out for him, he retired to Bruges³.

Lancastrian Plots. Early in the following year the air was full of rumours of intended invasions of England in the Lancastrian interest⁴. It was in connexion with these plots that the Earl of Oxford and his son lost their heads in Feb. 1462. This must have disconcerted the arrangements. In March, Somerset and Hungerford returned to Scotland instead of invading England⁵; the idea of an invasion was not however given up, and a fleet of French, Breton, and Spanish ships was assembling in the Seine⁶.

The Lancastrians in Scotland. On their arrival in Scotland the royal fugitives had been received first in the palace of Linlithgow; thence they proceeded to Edinburgh, where they were lodged in the convent of the Dominican Friars. They seem to have been in great poverty. We find Margaret borrowing money of the Queen Dowager of Scotland, and pledging to her a gold cup⁷; while from a subsequent letter of

¹ Paston Letters, ii. 45–7.

² *Ib.* 52.

³ Chastellain, u. s., pp. 66–9; Monstrelet, u. s., f. 91 a.

⁴ In Feb. 1462 secret intelligence had been received in Norfolk of an intended threefold invasion of England; Paston Letters, ii. 91. I am inclined to think that this is the same conspiracy as the one mentioned in *Three Fifteenth Cent. Chron.* p. 158; but the chronology there is very confused; cf. *ib.* 175; and the account has been grossly exaggerated either by Yorkist fears or Lancastrian hopes. Nine powers

are represented as engaged in the scheme, and the continental forces to be employed amount to over 300,000 men. Fortescue is expressly named as one of the party which was to land at Sandwich. Somerset was to be accompanied by Henry (read *John*) of Calabria, Margaret's brother, which is not improbable.

⁵ Paston Letters, ii. 93; Will. Worcester, p. 779.

⁶ Paston Letters, ii. 93–4.

⁷ Burnett, *Exchequer Rolls of Scotland*, VII. xxxvi f., and the references there given. Chastellain

Henry VI it would seem as if Fortescue himself had ministered to the necessities of his master at his own expense¹. Later in the year 1461 Henry seems to have gone to Kirkcudbright, leaving Margaret and her son with Fortescue and others at Edinburgh²; while early in 1462 the prince paid a visit to the Queen Dowager at Falkland³. In April, Margaret with her son and others set out for the Continent, in order to plead her cause in person. She embarked at Kirkcudbright, and landed in Brittany, where she was well received by the Duke, who gave her 12,000 crowns⁴. Thence she went to her father René in Anjou, and from him to the court of Louis at Chinon⁵. Here a treaty was negotiated between Louis and Margaret, which was signed at Tours, June 28th, 1462⁶. In July Louis and Margaret seem to have had another meeting at Rouen⁷. By this time Margaret had got together a considerable force, intending to return to Scotland and invade England from thence.

But meanwhile things were going badly there. A party among the Scotch lords, strongly opposed to the Lancastrian policy of Bishop Kennedy of St. Andrew's,

makes Margaret say: 'Donc . . . me suis fue en Escoche, là où vivant d'emprunt et reçue sous promesse de secours, portant mainte estroite povreté honteuse, Escochois en fin m'ont laidement déçue,' &c.; vii. 103; cf. *ib.* iv. 297.

¹ 'À ses despens nous a toujours entretenu notre estat.' In Waurin, éd. Dupont, iii. 169 f. Printed imperfectly and with a different date in *Family History*, p. 78.

² Paston Letters, ii. 46. I do not know why Mr. Burnett (u. s.) should doubt this.

³ *Exch. Rolls*, u. s. p. 85.

⁴ *Vid. Commynes*, éd. Lenglet-Dufresnoy, ii. 372.

⁵ *Will. Worcester*, pp. 779 f.; cf. Chastellain, vii. 105.

⁶ See *Commynes*, u. s., ii. 367–373. Margaret's commission is

dated Edinburgh, April 10. Whether Fortescue went to France with Margaret, or remained in Scotland with Henry, I have not been able to determine with certainty. If Mdlle. Dupont is correct in assigning Henry's letter of credence for Fortescue to Louis XI, cited above, to the year 1462, the question would be settled in favour of the former view. But it is against this that his name does not occur among the negotiators or signatories of the treaty with Louis XI, though less important men are mentioned. For other schemes of Margaret at this time, see an interesting paper in Dupont's Waurin, iii. 178–181. It is there said that many in Wales and in the South and West of England were ready to rise in Henry's favour.

⁷ *Commynes*, u. s., ii. 12.

which they said was ruining the country to please the king of France, entered into negotiations with Edward IV. A marriage was even talked of between him and the widowed Queen of Scots. It was said that Henry and his adherents were to be given up. In fear of this Henry withdrew with Bishop Kennedy, first to St. Andrew's, and then to another of his places on the sea, whence he ultimately sailed to join Margaret in Northumberland¹.

Loss of the Northern castles.

The negotiations between England and Scotland led however to no great result². Another blow which befell the Lancastrians at this time was the loss of Alnwick and the other Northern castles, which they had hitherto held³. Margaret however continued her preparations. A fleet of French, Spanish, and Breton ships, the same probably which had begun to assemble in the Seine in March, took the Channel in September. Margaret was at Boulogne, perhaps awaiting the issue of a naval battle, and hoping to be admitted into Calais, where the soldiers were on the verge of mutiny for want of pay. The alarm in England was considerable; all men between the ages of sixteen and sixty were ordered to be ready to follow the king at a moment's notice. But fortune again declared for Edward. The foreign fleet was defeated with great loss by Warwick, and Calais did not open its gates to Margaret⁴. Had it done so, it would very likely have shared the fate of Berwick, for the 20,000 livres which Margaret had borrowed of Louis XI were to be repaid within a year of the recovery of Calais, or in default Calais was to be ceded to France⁵. In October Margaret set out from France with her French

Expected invasion of England.

¹ On all this compare Paston Letters, ii. 110-1, with the interesting remonstrance addressed by Bp. Kennedy to Louis XI, in which he enumerates all that he had done for the Lancastrian cause; Waurin, u. s., iii. 164-175; also William Worcester, p. 779; Cont. Croyl. p. 551. According to Edward IV, Margaret had promised Kennedy the see of Canterbury; Halliwell's Letters, i. 123-4.

² Exchequer Rolls, VII. xli f. Their failure was mainly due to Kennedy; Waurin, iii. 167, 172.

³ W. Worcester, u. s.

⁴ On all this see Paston Letters, ii. 112-3, 117-9.

⁵ Printed in Waurin, iii. 176-7. The date is Chinon, June 23, 1462. According to Chastellain, iv. 226, Louis had thoughts of besieging Calais on his own account.

troops under the command of Pierre de Brézé, and recovered Alnwick, Bamburgh, and the other Northern castles. Here she seems to have been joined by Henry¹, but on the approach of Warwick and Edward in November they retired to Scotland with De Brézé, leaving Somerset in Bamburgh and Hungerford in Alnwick². On December 10th siege was laid to the castles in regular form³. On Christmas Eve Bamburgh and Dunstanburgh surrendered, and Somerset and Sir Ralph Percy submitted to Edward⁴. Alnwick fell on Jan. 6th, 1463. A relieving force under De Brézé did not venture to do more than bring off the garrison, though more than one contemporary is of opinion that with a little boldness a decisive blow might have been struck⁵.

Northern castles recovered.

Lost again.

Early however in 1463 Bamburgh and two other castles were recovered by the Lancastrians with a mixed French and Scottish force. And in May Sir Ralph Grey, who had been jealous that the custody of Alnwick had been committed by Edward IV to Sir John Ashley and not to himself, expelled the latter from the castle, and with it went over to the Lancastrian side. Ashley was captured by Sir Ralph Percy, who returned to the allegiance of Henry VI about the same time⁶. Newcastle might have

Recovered.

¹ See above, p. 60.

² W. Worcester, p. 780. Warwick set out for the North Oct. 30th; Paston Letters, ii. 120: Edward four days later; Worcester, u. s.; cf. Three Chron. pp. 156, 176.

³ On the siege of these castles, see Excerpta Hist. p. 365; Paston Letters, ii. 120-3; Three Chron. pp. 158-9.

⁴ Worcester, pp. 780-1; Gregory, pp. xxvii, 219. Somerset's pardon is dated March 10, 1463; Rot. Pat. 3 Edw. IV, memb. 18. As early as Sept. 1462 Somerset was said to be corresponding with Warwick with reference to a change of sides; Paston Letters, ii. 112-3.

⁵ Worcester, u. s.; Warkworth, p. 2; Three Chronicles, p. 176.

Hardyng, on the other hand, thinks that they acted wisely to attempt no more; pp. 407-8. These are the last events narrated by him. He strongly urges Edward to come to terms with the exiled Lancastrians, by granting Henry VI the Duchy of Lancaster. If they pass into France they will cause endless mischief; a prognostication which was amply verified; pp. 410-2. According to Chastellain, iv. 220-1, Louis XI did try to mediate an arrangement between the rival kings.

⁶ W. Worcester, pp. 781-2; Three Chron. p. 176. The latter Chronicle places the recovery of Bamburgh before the meeting of Parliament, April 29th, 1463; the date of the defection of Grey is

shared the fate of Alnwick but for the promptness with which Warwick sent his brother Montague to defend it. In June, Henry, Margaret, and De Brézé were together in Bamburgh¹. But in that very month Warwick himself was again sent to the North²; the Lancastrians dispersed once more, and Margaret retired to Scotland, closely pursued by Warwick³. About Christmas Somerset returned to his allegiance⁴. Early in 1464 the castles of Norham and Skipton in Craven were captured by the Lancastrians⁵, and a rising took place in Lancashire and Cheshire, always a stronghold of the party⁶. But all their hopes were overthrown by the crushing defeats inflicted on them by Warwick's brother Montague in the battles of Hedgeley Moor, April 25th, and Hexham, May 8th, 1464⁷. Somerset, Hungerford, and other prominent Lancastrians were taken and beheaded. Henry, who seems to have been awaiting the issue of the field in Bywell Castle, escaped thence, no one knew how or whither, but ultimately to Scotland⁸. In June Alnwick and Dunstanburgh surrendered to Warwick, and Bamburgh was taken by assault⁹.

Lancastrian successes.

Fatal overthrow.

fixed by a letter printed in Dupont's Waurin, iii. 159-161, which shows that the news of it reached London on May 31, 1463. Dr. Stubbs (C. H. iii. 199) places the recovery of the castles in 1464; but though Worcester *seems* to place the recovery of Alnwick immediately before the battle of Hexham, a whole leaf of the MS. is missing between the two occurrences. The letter cited above is quite conclusive.

¹ On all this see Waurin, u. s.

² 'After Pentecost,' says Three Chron. pp. 176-7. Whit-Sunday in 1463 was on May 29th. In Rymer, xi. 501, there is a commission, dated June 2, to Warwick and others to array the men of Westmoreland against the king's foreign enemies who have been stirred up by Henry, late king *de facto*. A letter written on Saturday, July 15th, 1463 (? 16th, July 15th in 1463 was on a Friday), says that War-

wick was in great force at Newcastle, and intending to go forwards to Scotland; that De Brézé, Grey, and others had been besieging a castle near Alnwick, but had retired on the approach of Montague; that Edward had left London on the previous Thursday week (July 7th), intending to follow Warwick in force; Waurin, u. s., iii. 162-4.

³ Waurin, ii. 319-321. This therefore would be in July; see last note.

⁴ Gregory, p. 223; Three Chron. p. 177. Warkworth (p. 3) places Somerset's return 'half a year' after his original defection.

⁵ Three Chron. p. 178.

⁶ Paston Letters, ii. 152.

⁷ Cf. Rot. Parl. v. 511 f.

⁸ Three Chron. p. 179. Many thought that he was dead; Chastellain, v. 22.

⁹ Three Chron. p. 179; Worcester, pp. 782-3; notes to Warkworth, pp. 36-9.

But almost a year before the final blow fell, Margaret and her son, with De Brézé, Fortescue, and others in her train, had quitted Britain for the Continent. It must have been just after the dispersal of the Lancastrians in the summer of 1463 that they set forth¹, for it was in the last days of July that they landed at Sluys. They were in extreme poverty, and dependent on the liberality of De Brézé for the very bread they ate². From Sluys Margaret despatched a messenger to the Duke of Burgundy, who was superintending the negotiations which were going on at St. Omer between the French and English, to beg for a personal interview with him. From this the Duke tried to excuse himself, but ultimately, with the magnificent courtesy which characterized him, yielded to Margaret's importunity. On her way to join him she was met by Charles the Bold at Bruges, who lent her money to supply her wants. Here she left her son and all her household, Fortescue no doubt among them, and proceeded on her

Margaret and her son go to the Continent.

¹ The English authorities are very obscure as to the time of Margaret's departure for Flanders. It seems commonly assumed that it was a consequence of the defeats of Hedgeley and Hexham. But the brief Latin Chronicle (Three Chron. pp. 179 f.) clearly places it before those events, for after relating them it says: 'Margareta has procellas *precauens*, incola elegit fieri transmarina.' And it may well have been thought desirable to place the heir of Lancaster in safety before the die was cast. All the foreign authorities, Chastellain, Waurin, Monstrelet, Duclerq, place Margaret's arrival in Flanders in 1463, and so does Worcester (p. 781), though the month he gives, April, is too early. Dr. Stubbs, citing Worcester, represents Margaret as going abroad early in 1463 and returning towards the end of that year. But Worcester clearly refers to the final departure of Margaret, for he speaks of her settling in her father's dominions, 'ut ibi expectaret

eventus mundi.' Worcester moreover makes her embark at Bamburgh. We have seen that Henry, Margaret, and De Brézé were there in June 1463, but the foreign authorities, especially Waurin, ii. 319 ff., clearly represent them as retiring to Scotland, where their presence seems to have been no longer welcome; cf. Basin, ii. 50; Chastellain, iv. 279; vii. 103. It would seem that it is to this period that we must refer the romantic story of Margaret's adventure with the robber, which she told the Duchess of Bourbon at St. Pol; see below, p. 64. From this point to the arrival of Margaret at St. Mighel in Barrois, I follow almost exclusively the authority of Chastellain, whose narrative is most minute, and whose position enabled him to obtain the most exact information. Compare also Monstrelet, iii. f. 96 a; Duclerq, Liv. v. ch. 1; Basin, ii. 50. Gregory, pp. 220-1, is very confused.

² Chastellain, iv. 279.

Interview
with Philip
of Bur-
gundy.

way alone. At Béthune the English made an attempt to capture her; but they were too late, and on August 31st she reached St. Pol in safety, where she was to await the Duke, who arrived the following day, and entertained her magnificently and gave her many comfortable words¹. The next day, September 2nd, the Duke departed, leaving his guest to the care of his sister the Duchess of Bourbon, whom Margaret entertained with the recital of her adventures. After his departure the Duke sent back a knight with a present of 2,000 gold crowns and a rich diamond for Margaret, and other presents for her attendants². The following morning, September 3rd, Margaret departed from St. Pol and returned to Bruges, escorted by a body-guard of the Duke's archers, to prevent her falling into the hands of the English. At Bruges she found not only Charles the Bold, but also the Bastard of Burgundy and Philip de Crèveœur and others. And in the entertainments that followed there was much stately conflict on points of etiquette, Charles insisting with somewhat ostentatious chivalry on treating his guests in accordance with their former rank, and not according to their present condition³. From Bruges Margaret and her followers were conveyed under Burgundian protection to the borders of Bar, where they were received by an escort sent by Margaret's father⁴, who assigned them as their residence the little town of St. Mighel in Barrois. Here they lived the usual life of exiles, in great poverty⁵, carrying on a feeble agitation at such foreign courts as they had access to, but sometimes in such straits for money that they could hardly pay a messenger to go on their errands⁶. Louis XI was constantly applied to. In 1464⁷, and again in the summer of

The Lan-
castrian
exiles re-
tire to
St. Mighel.

Negotia-
tions.

¹ Chastellain, iv. 280-6, 293-4.

² Ib. 298-9, 307; cf. Comynnes, éd. Lenglet-Dufresnoy, ii. 178.

³ Chastellain, iv. 309-314.

⁴ Ib. 332; vii. 105.

⁵ 'We buthe alle in grete poverte, but yet the quene susteynethe us in mete and drinke, so as we buthe not in extreme necessite.

Here highnesse may do no more to us thanne she dothe;' Fortescue to the Earl of Ormond. Family History, p. 72.

⁶ 'The berer hereof had of us but iij scutes for alle his costes towardses you, by cause we hadde no more money;' ib.

⁷ In the same letter Fortescue speaks of having been at Paris;

1465, Fortescue himself went to Paris. On the latter occasion he was accompanied by the Earl of Pembroke, Henry VI's half-brother, and was the bearer of a letter from Henry VI to Louis XI, dated Edinburgh, March 28th (? 1465)¹. Their chief hope however was in the kings of Portugal and Castile and in Charles the Bold, because of their connexion with the house of Lancaster. It was hoped that the first-named king would influence the Emperor Frederick III who had married his sister, and that the Emperor would bring pressure to bear on the Pope². The (titular) Earl of Ormonde, who had fled to Portugal after Towton, was now acting as Lancastrian ambassador at that court. It is from a letter of Fortescue to him, enclosing instructions from the Queen and letters from the Prince, that we learn most of the particulars given above³. This letter was written in December 1464. In the instructions it is stated that Henry is well and out of the hands of his rebels, and we have seen that in the following March he perhaps dated a letter from Edinburgh. But soon after this he must have left Scotland, which in the previous year had concluded a truce for fifteen years with Edward; and early in July⁴, while wandering in Lancashire among his secret friends, he was betrayed and

Fate of
Henry VI.

ib. 71. In the *De Laudibus*, c. 53, Fortescue alludes to a recent sojourn in Paris, but whether it was this or a later one cannot be determined.

¹ Printed by Lord Clermont, u. s. p. 78. More correctly by Dupont, u. s. iii. 169 f., who however assigns it to the year 1462, v. s. p. 59, notes. Henry's movements at this time are wrapped in mystery. We have seen (p. 62) that in July 1463 he retired to Scotland, where Margaret left him. Monstrelet and Duclerq (u. s.) represent him as being in a strong place, 'ou pays de Galles' (? Galloway), during her visit to Flanders. Chastellain, iv. 279, merely says that she left him in a secure place. In Jan. 1464 he seems to have been at Edinburgh; Exch. Rolls,

vii. xxxvii; Maitland's History of Edinburgh, p. 8. In March 1464 he was certainly at Bamburgh; Waurin, iii. 183. After Hexham he probably returned to Scotland, and if we may accept Lord Clermont's date for this letter he was at Edinburgh in March 1465.

² Instructions to Ormond, u. s. p. 74.

³ These documents are given by Lord Clermont, u. s. pp. 69-75, but he is mistaken in thinking that none of them have been printed before. The letters of Prince Edward and of Fortescue are in the *Archæological Journal*, vii. 170; cf. Foss, Judges, iv. 313.

⁴ The date given by most authorities is 'about the feast of SS. Peter and Paul,' i. e. June 29.

Relations
with Bur-
gundy and
France.

War of the
Public
Weal.

captured, and committed to the Tower, where he remained until his brief restoration. He does not seem to have been harshly treated, and full provision was made for the satisfaction of his religious wants¹. His life was valuable to Edward as long as his son remained at large. Of all the princely relatives of the house of Lancaster Charles the Bold seems to have been the one who took the most interest in its fate². And about this very time Edward found it impossible to come to a permanent agreement with Burgundy because of Charles's influence in favour of Margaret³. It is not therefore surprising that in this summer Louis XI and Edward IV made a truce for eighteen months, of which the terms were that Louis was not to assist Margaret, and Edward was not to assist Burgundy or Brittany⁴. For this year was the year of the War of the Public Weal in France, in which not only Brittany, but also John of Calabria the brother of Margaret of Anjou, and Edmund Beaufort the titular Duke of Somerset⁵, were among the confederates of Charles of Burgundy. And this may have had something to do with Charles's tenderness for the concerns of Margaret. These facts moreover lend an additional interest to Fortescue's reference to that war in the ninth Chapter of the present work, where, speaking of the perils of over-mighty subjects, he says: 'and in owre dayes we have sene a subgett off the Ffrench kynges in such myght þat he hath gyven bataill to the same kyng and putt hym to flight, and aftirward besegett hym beyng in Paris is grettest cete, and so keppid thair vnto þe tyme his said kyng hade made such ende with hym, his adherentes and fauctours as he desired.' But at the time no doubt the humiliation of Louis was a matter of jubilation in the Lancastrian camp. In June 1467 Charles the Bold became, by his father's death, Duke

¹ Issues of the Exchequer, pp. 489 f.

² That Charles really felt his connexion with the house of Lancaster is shown by the excuses which Chastellain (v. 22) thinks

it necessary to make for his intermarrying with the house of York.

³ W. Worcester, p. 784.

⁴ Ib. 785; Rymer, xi. 452 ff.

⁵ Hearne's Fragment, p. 295.

of Burgundy; and in the following year he married Margaret the sister of Edward IV¹. The Duke of Somerset was at the Burgundian court while the preparations for the marriage were going forward, and only left Bruges the day before the arrival of the bride, and having nothing more to hope for in that quarter retired to Queen Margaret². This change in Charles's attitude must have seemed at the time a great blow to the Lancastrians, but it had its compensations. The close alliance of England and Burgundy led Louis XI to look with greater favour on the cause of the exiles, and it occasioned the final breach between Edward and the Nevilles³. Even before this time the hopes of the Lancastrians had been raised by the attitude of Warwick⁴ and the general discontent with Edward's government. And now in the summer of 1468 Jasper Tudor was sent into Wales, where he exercised jurisdiction in King Henry's name⁵. A little later, Margaret, having been allowed to collect some forces in France, was waiting at Harfleur hoping for an opportunity of passing into England⁶. But the threat of invasion came to nothing, and Jasper Tudor was defeated by Lord Herbert, to whom his title of Earl of Pembroke was given. We do not know with what

Alliance of
Charles the
Bold with
Edward
IV.

Louis XI
begins to
favour the
Lancas-
trians.

¹ As early as May, 1467, the question of this marriage had formed the subject of wagers in England; Paston Letters, ii. 305.

² Paston Letters, ii. 319. He seems however to have entered into communication with some of the English who came over for the wedding. Two gentlemen of the retinue of the Duchess of Norfolk were executed for this; Hearne's Fragment, p. 297; Plumpton Correspondence, pp. 19-20; Gregory, p. 237.

³ Cont. Croyl. p. 551.

⁴ S. C. H. iii. 205. In Dupont's Waurin, iii. 186-196, there is a most interesting document dated Jan. 16, 1467 (O. S.), which throws great light on the attitude of Louis and Warwick at this time. It is from Louis's ambassador in Eng-

land, who says, the report that Louis is about to marry one of his daughters to Prince Edward of Lancaster has caused the utmost dismay in England. On Jan. 7th Edward sent for Warwick, who refused to come unless his mortal enemies Herbert, Scales, and Wydville [Rivers] were removed. In Suffolk 300 men had risen and chosen a captain, 'Robin,' but on their sending to Warwick he told them that it was not yet time to move ('besoigner'). Warwick is loyal to Louis, and though timid cannot dissemble much longer. He is going northwards to meet his brother Northumberland, and if the king pursues him he will defend himself.

⁵ Gregory, p. 237; Worcester, p. 791.

⁶ Ib. 792.

feelings the exiles received the news that in August 1469 Edward was a prisoner in the hands of the Nevilles, and that the King-maker had thus two captive kings in his custody. But if they augured from it a speedy restoration of Henry VI, they were destined to be disappointed for a while. Warwick was not yet prepared for a Lancastrian restoration, and Edward was allowed to go free. It was not till after the expulsion of Warwick and Clarence from England in March 1470 that the alliance between Margaret and the former was brought about by Louis XI¹.

Louis's policy in the matter was very simple. As long as England did not interfere with his plans, it was a matter of great indifference to him who was king there. If Warwick had succeeded in carrying Edward with him in his policy of friendship with France, he would have been quite content. That having failed, he was resolved to use Warwick as an instrument to overturn Edward². The negotiations between Margaret and Warwick took place at Angers under the personal superintendence of Louis, and lasted from the 15th of July till the 4th of August, 1470³. It was with the utmost difficulty that Margaret was brought to consent to the unnatural alliance⁴. Fortescue, on the other hand, seems to have thrown himself into the new combination with ardour. He plied Louis XI with memorandums and state-papers⁵, on the claims of Edward IV to the crowns of England and France, on the impossibility of peace with Edward, on the certainty of

¹ Louis sent to summon Margaret in May 1470; Comynnes, éd. Lenglet-Dufresnoy, iii. 124; cf. Basin, ii. 223.

² Kirk, Charles the Bold, i. 419.

³ An agreement had however been practically come to by July 25. See Louis's letter of that date in Duclos, iii. 294. The treaty in which Louis's brother the Duke of Guienne promised to espouse the Lancastrian cause, dated July 30th, speaks of the marriage of Prince Edward and Warwick's

daughter as already arranged; MS. Cotton. Vesp. F. iii. f. 32; cf. 'The maner and guyding of Quene Margaret and the Earle of Warrewick,' in Ellis's Letters, II. i. 132-5, or White Rose, pp. 229 ff.

⁴ Chastellain, v. 467-8; Basin, ii. 223.

⁵ None of these documents have been as yet discovered, but a paper containing an abstract of them is printed by Lord Clermont, u. s. pp. 80-2. The original is in the National Library at Paris.

alliance between Margaret and Warwick.

Fortescue's zeal for the alliance.

peace with Henry; on the threats of invasion uttered in the last English Parliament, and the means of stirring up troubles in England which would oblige Edward to remain at home until he should be unseated altogether. Finally, with more particular reference to the meeting at Angers, he submitted a memorandum embodying the following points: the desirability of the marriage between Prince Edward of Lancaster and the daughter of the Earl of Warwick, and of entrusting the government of England to the Earl; the means of reconciling Edward to the revolution, the establishment of the Staple of English wools in France at Calais¹ or Rouen, the extension of English trading privileges in Guienne, and the means of providing for the necessary expenses. Events moved rapidly after the conclusion of the agreement². In the middle of September Warwick landed in England³, on the 3rd of October Edward fled to Flanders, on the 5th Henry VI was taken from the Tower⁴, and the machinery of government went on once more in his name, the real power being in the hands of Warwick, who styled himself his lieutenant⁵. Archbishop Neville, Warwick's brother, was made Chancellor, no regard being paid to Fortescue's claims to that office⁶. Parliament

Lancastrian restoration.

¹ Does this mean that Calais was to be given up to Louis? If not, it is difficult to see why any new agreement was necessary. The Staple of English Wools had long been at Calais. We have seen (p. 60) that Margaret had once before signed an agreement which came perilously near to an agreement to give up Calais. It is not uncommon for exiles to think that the first duty which they owe their country is their own restoration. Warwick however was not likely to consent to the surrender of this stronghold of his own power. It is also somewhat strange that Fortescue, who in the present work insists so strongly on the necessity of reducing the power of the nobles, should have been

willing to surrender the government to Warwick.

² For this summary of events see S. C. H. iii. 204 ff.

³ He had been expected earlier; Paston Letters, ii. 406.

⁴ Warwick's letter announcing this to Louis, dated October 8th, is in Waurin, iii. 43-4.

⁵ Arrival of Edward IV, p. 1. The editor (Mr. Bruce) has questioned this on the authority of Polydore Vergil. But Warwick so styles himself in a document preserved in MS. Yelverton, No. 35, f. 127, r^o, and copied by Stowe, MS. Harl. 543, f. 171, v^o: 'Richard Erle of Warwike and Salisbury... lievetenaunt to... Kynge Henry the sext.'

⁶ A lay Chancellor was however still at this time a rare exception.

met in November; it settled the crown on Henry and his son with remainder to Clarence¹, and reversed the Lancastrian attainders, thus enabling the Dukes of Somerset and Exeter, and the Earls of Pembroke and Richmond, to return to England early in 1471. Meanwhile Margaret and her son, with Fortescue and others in their train, were still detained in France². Mr. Kirk has suggested that the delay was due to Louis, who wished to give his especial ally Warwick time to establish himself firmly before allowing the genuine Lancastrians to depart³. If this was his object, his astuteness, not for the first time, over-reached itself. The delay was fatal. It must have been during this interval that Fortescue drew up the state-paper now printed for the first time⁴, and entitled 'Articles sent from the Prince to the Earl of Warwick his father-in-law.' That it is by Fortescue cannot be doubted by any one who compares it with the present work, its precise relation to which will be discussed later⁵. In it he advised that all claims for reward and compensation should be reserved for the consideration of the Council, and that the King should forbear for the first year to keep the usual royal household. The other points are all embodied in the present work and are discussed in the notes. Whether the paper had any influence on Warwick's policy cannot be determined.

At length, on Easter-Day, April 14th, Margaret with her son and Fortescue⁶ landed at Weymouth, only to learn on the morrow that on the very day of their landing Warwick had been overthrown and slain by Edward at Barnet, and that Henry was once more a prisoner. To Fortescue, who had done so much to bring about the alliance

¹ This can hardly have been, as Lord Clermont suggests (u. s. p. 80), Fortescue's means for reconciling Edward IV to the revolution. To him the succession of Clarence would have been a very poor consolation.

² In November-December 1470 they seem to have been with Louis at Amboise; Waurin, iii. 41-6.

Thence they went to Paris; Comynnes, u. s. ii. 88. In February Henry sent to fetch his wife and son, but in vain; Rymer, xi. 693.

³ Charles the Bold, ii. 85.

⁴ Below, Appendix B.

⁵ Below, pp. 89, 95.

⁶ They were proclaimed traitors April 27th; Rymer, xi. 709.

with Warwick, the blow must have been particularly severe. Somerset however, and others who joined them at Cerne Abbas after their arrival, maintained that the removal of Warwick was a source of strength rather than of weakness to their party¹. It was resolved to persevere, and if they had been able to carry out their plan and gain the strongholds of their party in the North, the issue might yet have been doubtful. But the rapidity of Edward's movements made this impossible, and at Tewkesbury, on the 4th of May, the Lancastrian cause was finally overthrown. Prince Edward, the hope of the house, was slain. Margaret, now childless and soon to be a widow, was reserved to grace the conqueror's triumph². She remained a prisoner till 1475³, when she was ransomed, and she died in 1482, too soon to see the downfall of the house against which she had striven so long. Within three weeks of the battle of Tewkesbury perished Henry VI. His life was no longer valuable, and he died. His virtues and his misfortunes had deeply touched the heart of England, and his death gave them the final consecration. Much as England had suffered under him, she held him guiltless⁴, and the voice of the people decreed to him a canonization more real than any which Popes or Churches have it in their power to bestow⁵. Fortescue was among the prisoners of Tewkesbury, and his life was spared⁶. Now that his cause was expired and his master

¹ 'For that los, theyr partye was nevar the febler, but rather strongar.' Arrival of Edward IV, p. 23.

² 'Servata incolumis, ut ante Regem triumphantem curru veretur Londonias; quod et factum est;' Cont. Croyl. p. 555. On Dec. 16, 1470, she had also lost her brother, John of Calabria.

³ The articles for her delivery, signed 'Loys,' are in MS. Cott. Vesp. F. iii. f. 30.

⁴ 'And alle bycause of his fals lordes and nevere of hym;' Warkworth, p. 12. 'The kyng knoweth not alle;' Political Songs, ii. 230. It must be confessed however that

foreigners speak with much less reserve of Henry's incapacity as a ruler; cf. e. g. Chastellain and Waurin.

⁵ 'Unde et agens tyranni, patiensque gloriosi martyris titulum mereatur,' says the Yorkist Croyland Continuator, p. 566; cf. the hymn to Henry in Warkworth, p. xxi.

⁶ In Paston Letters, iii. 9, Fortescue (under the name of 'Lord Foskew') is mentioned among those beheaded after Tewkesbury, though a note is added to say that he and Sir William Grymesby were still alive. The latter was executed; Warkworth, p. 18. It

Margaret detained in France.

Scheme of reform drawn up by Fortescue.

Landing of Margaret.

Battle of Tewkesbury.

Death of Henry VI.

Fate of Fortescue.

Required to write in favour of the Yorkist title.

dead¹, Fortescue cannot be blamed for accepting the clemency of the conqueror. There was in fact nothing left to fight for. In October, 1471, his pardon passed the Great Seal, and soon after he was made one 'of the King's Council².' But before obtaining the reversal of his attainder and the restoration of his estates, he was required to write in favour of the king's title, and refute the arguments which he had formerly brought against it³. How he executed this task will be told later⁴. In October, 1473, he petitioned the king in Parliament for his restoration on the ground that this had been done. His petition was granted⁵. An exemplification of this petition and the answer to it passed the Great Seal in February, 1475. The restoration of his estates was no doubt facilitated by the fact that the bulk of them had been granted to Lord Wenlok, who joined Warwick against Edward, and fell at the battle of Tewkesbury⁶. Fortescue resided at Ebrington after his restoration to his estates, and is buried in the church of that parish. The last notice of him which has been discovered belongs to February, 1476, when he delivered into the Exchequer an Assize which had been taken before him when he was Chief Justice⁷. He is said to have lived to the age of ninety, but even if this tradition could be relied on, the uncertainty which as we have

Date of his death unknown.

would seem therefore that Fortescue's execution was considered a certainty at the time. Fortescue is called 'Lorde Foschewe' also by Gregory, p. 217.

¹ These are Fortescue's own expressions in the 'Declaration on certain Writings,' Works, p. 532.

² *Ib.* 533.

³ There is no evidence for the story told by Lord Campbell and repeated by Lord Clermont that the imposition of this condition was due to Fortescue's successor Chief Justice Billing. See Foss, Judges, iv. 417-8. That Fortescue should under the circumstances have complied with this condition merits no particular blame. But we certainly cannot make it a

matter of special praise as Coke does. (Cited, Family Hist. p. 49.) Fortescue himself evidently thought it savoured of 'doubleness' and required an apology; Works, p. 532.

⁴ Below, pp. 78-9.

⁵ Rot. Parl. vi. 69 a.

⁶ As early as 1468 Wenlok was charged with corresponding with Margaret; W. Worcester, p. 790; cf. Waurin, iii. 189 f. For the grant of Fortescue's lands to Wenlok, see above, p. 43, *note*; cf. Rot. Parl. v. 581 b. Between the grant to Wenlok and Fortescue's restoration must have fallen in; v. s. p. 43.

⁷ Kal. Exch. iii. 8, in Foss, u. s. p. 314.

seen hangs over the date of his birth¹ would make it valueless for the determination of the date of his death. But on any computation his days must have exceeded the allotted threescore years and ten. Of his wife I have found only one notice after 1447, and from this it appears that she was alive in September, 1455, and died before May, 1472²; nor have I discovered whether she or any of his family accompanied him in his wanderings. He had one son and two daughters, all of whom had married before the time of their father's exile³. His only son Martin however died before him, Nov. 11th, 1471⁴, at a time when political disappointments must have rendered this heavy private bereavement additionally hard to bear. In favour of this son Fortescue had in 34 Henry VI, by means of a fine levied in the Court of Common Pleas, divested himself of the estates in Devonshire, which as we have seen he had himself received from his brother Henry⁵. Martin Fortescue left two sons, of whom the elder bore his grandsire's name of John, while the younger was named William. From the former is descended the present Earl Fortescue, the latter is the ancestor of Lord Clermont and his brother Lord Carlingford. To the elder line belonged Lord Fortescue of Credan, who acted as judge in all three Courts of Common Law, and was the first editor of the present work; to the younger line belonged William Fortescue, the friend of Pope, who after sitting in the Exchequer and Common Pleas, became ultimately Master of the Rolls⁶. So that in Fortescue's case his own remark has been amply verified, that from the families of judges often descend nobles and great men of the realm⁷.

His wife and family.

His descendants.

¹ Above, pp. 40-1.

² This is the inquisition taken after the death of her son Martin: from which it appears that she was alive in 34 Hen. VI, but dead on May 12th, 12 Edw. IV. Printed by Lord Clermont, Family History, pp. 144-6.

³ *Ib.* 53-4.

⁴ Not Nov. 12th, 1472, as Lord Clermont says; *ib.* 94, 127-8. See the document cited in the last note but one.

⁵ Above, p. 43.

⁶ See Lord Clermont's Family History, and the pedigrees there given.

⁷ De Laudibus, c. 51.

PART III.

WRITINGS, OPINIONS, AND CHARACTER OF SIR JOHN FORTESCUE.

Fortescue as a writer.

WE must now turn from Fortescue the lawyer, the judge, the ardent and faithful adherent of the Lancastrian cause, to Fortescue the publicist and writer. But the political and the literary activity of Fortescue are closely connected. It was in the service of the house of Lancaster that he first wielded both sword and pen. His writings may be divided according to their subject into three classes:—1. Works on the dynastic question of the rival claims of the houses of Lancaster and York. 2. Constitutional Treatises. 3. Miscellaneous writings.

Divisions of his writings.

The first class comprises several short tracts on the Succession question, and the second book of the treatise *De Naturâ Legis Naturæ*. The second class comprises the first book of that treatise, the *De Laudibus Legum Angliæ*, and the present work. The third class comprises one genuine tract and some others of which the authenticity is, I think, extremely doubtful.

Tracts on the Succession.

The class which I have placed first is also in the main the first in order of composition. In it the first place belongs to the short tracts which Fortescue wrote in favour of the Lancastrian Title. Of these there have come down to us, either in whole or in part, the following:—

1. *De Titulo Edwardi Comitis Marchiæ*¹. (Latin. Complete.)
2. Of the Title of the House of York². (English. Fragmentary.)
3. *Defensio Juris Domus Lancastriæ*³. (Latin. Fragmentary.)
4. A Defence of the House of Lancaster: otherwise

¹ Works, pp. 63*-74*.² *Ib.* 497-502. In Appendix D I have printed what I believe to be the beginning of this tract from

MS. Cotton. Vesp. F. ix. f. 122. The tract is still however incomplete.

³ Works, pp. 505-510.

called, A replication to the claim of the Duke of York¹. (English. Complete.)

In the tract which he afterwards wrote to refute his own arguments, Fortescue says that there were many writings made in Scotland by other men which were fathered upon him without his consent and knowledge; others were drawn up by Henry's council, and passed by a majority of votes, though to some of them he himself was 'not well willing.' Others were his own composition². Among the works which Fortescue denies to have been his was one embodying the absurd story, first set about at the time when John of Gaunt was thought to be aiming at the succession, that Edmund Crouchback was really the elder brother of Edward I³. It is to Fortescue's credit that he rejects this fable. But, on the other hand, he had no motive for accepting it. Any claim derived from Edmund Crouchback must have come through Blanche of Lancaster, the wife of John of Gaunt, and the whole of Fortescue's argument rests on the exclusion of all claims derived through females⁴. There is however no reason to doubt the authenticity of any of the four tracts enumerated above. They are consistent with one another, and with what we know from other sources to have been Fortescue's views, and the arguments which they contain are those which are refuted in his subsequent recantation. But the fact that they and also the second part of the *De Naturâ Legis Naturæ* have only

Other writings on the Succession question.

¹ Works, pp. 517-8, under the former title; below, Appendix C, under the latter. This tract seems clearly referred to in the 'Declaration,' &c., Works, p. 536.² *Ib.* 523-4.³ Capgrave however accepted it. See Illustr. Henr., pp. xv, 107.⁴ That the idea of female succession was not wholly strange in England at this time is proved by the charges against Suffolk of intending to marry his son to Margaret Beaufort with a view to the succession to the crown; Rot. Parl. v. 177 b. Warkworth

again (p. 4) says that there was an idea of marrying Edward IV's eldest daughter to the son of Warwick's brother Montague; 'whiche, by possibylite, shuld be kynge of Englonde.' Fortescue's views are however confirmed by an entry on the Close Roll of 13 Hen. III, memb. 15, dorso: 'non est consuetudo vel lex in terra nostra Angliæ, quod filia fratris alicujus primogeniti fratrem juniorem patri suo succedentem hæreditarie super hæreditate sua possit vel debeat impetere;' cited by Hardy, Preface to Close Rolls, p. xxxvi.

Other tracts of Fortescue probably lost.

come down to us for the most part in single copies¹, makes it extremely probable that Fortescue wrote other fugitive pieces on the same subject which have perished². Under the repressive and inquisitorial system which Edward IV established after his restoration it was no doubt dangerous

¹ The only known copy of both parts of the *De Naturâ Legis Naturæ* is the Lambeth MS. 262. A copy of the first part, which does not trench upon the Succession question, is among the Laud MSS., No. 585. There was a copy of this work among the Worsley MSS. (see *Catalogus Librorum Manuscriptorum*, ii. 213 a), but whether this contained both parts or not I cannot say. Of the other tracts mentioned in the text, No. 1 exists only in the Yelverton MS., vol. 69. The fragments of No. 3 come from two sources, but both are derived from the one copy which perished in the Cottonian fire. Nos. 2 and 4 are partial exceptions to the rule. No. 2 was printed by Lord Clermont from MS. Cotton, Julius F. vi. There is another copy in MS. Lansdowne 205, f. 137. A preliminary note, dated 1581, states that it was copied from 'certayne leves of a booke . . . found in a bookbynder's shoppe, whereas the said book ignorantly had been putt to profane uses.' This copy corresponds exactly with the Cottonian MS., so that either the latter contains the 'leves' in question, or both MSS. copied the same 'leves.' Of No. 4 I have found one complete copy among the Yelverton MSS., and there is an incomplete copy in the Phillips collection. Not having seen the latter I cannot say whether it is derived from the former. It is the one which Lord Clermont has printed. Stowe has made two transcripts of the Yelverton copy: Harl. 543, f. 163, and Harl. 545, f. 136. But all these have escaped Lord Clermont.

² We are not left wholly to conjecture on this point. In the *De Titulo Edwardi*, &c., Fortescue speaks of 'codicum illum originale qui de his latius continet in vulgari scriptum;' Works, p. 63*. This might be the English tract on the Title of the House of York (No. 2, above), but I have given reasons lower down for thinking that that is later, not earlier, than the *De Titulo Edw.* Again, at the end of the latter Fortescue announces his intention of compiling another work on the subject, which was to embody certain documents; Works, pp. 73* f. This work also, if it was ever written, has not been found. Of the cause of this scarcity there can be no doubt, when we compare the numerous copies which exist of the one tract which Fortescue wrote in honour of the House of York. Besides the five MSS. enumerated by Lord Clermont (Works, p. 520), I have come across the following: two copies in the Yelverton MSS., vols. 21 and 86; a second copy (besides the one cited by Lord Clermont) in MS. Harleian, 1757; and MS. Digby, 198, which last is the most ancient of all, but is unfortunately incomplete. How much the insecurity of the time contributed to the destruction of papers &c. may be seen from the frequent requests made by correspondents that their letters may be destroyed as soon as read; cf. Rymer, ix. 680; Paston Letters, i. 229, 346, 396, 433; iii. 487; Bekynton, i. 268. Another symptom of the time is the number of anonymous letters; see Paston Letters, iii. 515.

to be found in possession of tracts which favoured the claims of the house of Lancaster. Of these four tracts the last is only a short piece intended to prove the illegitimacy of Philippa the reputed daughter of Lionel Duke of Clarence, through whom the line of York derived their claim, a point which is also discussed, though more briefly, in the first two pieces. The first three all cover much the same ground, and by tabulating their contents and comparing the refutation of them in the 'Declaration upon certain Writings' we could restore with an approach to certainty the missing parts of Nos. 2 and 3. These last are practically identical with one another, one being in Latin and the other in English. It is impossible to say whether the English or the Latin version was composed first. But there can be little doubt that No. 1 is the earliest of the group, both because the arguments there brought forward are much less elaborated than in the corresponding portions of the other tracts, and also because it contains inaccuracies which are corrected in the latter¹. To the same class belongs, as I have said, the second part of the *De Naturâ Legis Naturæ*. The difference between it and the preceding tracts consists, not only in its greater length (it occupies seventy large quarto pages in Lord Clermont's edition), but in the fact that while they deal openly and avowedly with the concrete case of the English Succession as disputed between the houses of York and Lancaster, this is in form purely abstract. It is cast into the shape of an argument, conducted before Justice as judge, between

Character of the existing tracts.

The second part of the *De Naturâ Legis Naturæ*.

¹ Thus in the *De Titulo Edwardi*, c. 3, Fortescue makes Margaret, wife of Malcolm Canmore, the daughter of Edmund Ironside. In the *Defensio* he makes her rightly his granddaughter; Works, p. 506. Again, in the *De Titulo*, c. 13, Fortescue from Edmund Mortimer Earl of March passes immediately to Richard Duke of York, omitting all notice of the latter's father, Richard Earl of Cambridge, through whose marriage with Mortimer's sister Ann the claims of the Mortimers passed to the House of York. This omission (it is not a mistake) is supplied in the 'Title of the House of York,' Works, p. 500; and in the *Defensio*; ib. 509. The date of the *De Titulo* is approximately fixed by the mention of Louis XI as 'nuper unctus;' ib. 74*. Louis XI was crowned August 15, 1461.

three claimants of a kingdom, viz. the brother of the deceased monarch, who is described as 'King of the Assyrians and Monarch of the whole of Greater Asia¹,' his daughter, and the daughter's son. The grandson maintains that though a woman cannot reign she can transmit a claim to the kingdom, the brother denies that she can do either, the daughter affirms that she can do both. It is needless to say that the judgement is in favour of the late king's brother. The arguments are of great subtlety and of interminable length. Men were more patient of length and dulness in the Middle Ages than we are now; still one is inclined to pronounce that, considered as a political pamphlet, the work lacks the primary condition of success, namely readableness. All these works were written in Scotland during the time of the author's exile there, that is between April 1461 and July 1463. Lastly, to this class must be assigned the tract which Fortescue wrote to refute the foregoing works, in order to obtain the reversal of his attainder. It must therefore have been written between October 1471 and October 1473, and is consequently, with the possible exception of a portion of the *Monarchia*, the latest of Fortescue's works; and we may therefore say, without very much risk of serious error, that his literary activity begins and ends with the question of the Succession. This piece is entitled 'The Declaracion made by John Fortescu, knyght, upon certayn Wrytinges sent oute of Scotteland, ayenst the Kinges Title to the Roialme of England².' In it he refutes many of the historical arguments which he had used in his previous writings, by saying with sufficient plausibility that since his return to England he has had the opportunity of informing himself better by consulting documents and chronicles to which he had no access in exile. But his ingenuity is chiefly displayed in getting over the force of the text, 'Eris sub potestate viri, et ipse dominabitur tui³,' on which he had based so much of his argument against female succession. This, he now says, does not mean that

The 'Declaracion upon certayn Wrytinges.'

Fortescue's change of front on the Succession question.

¹ Works, p. 116.

² Ib. 523-541.

³ Genesis iii. 16.

a woman must be under the power of every man, but only that she must be under the power of some man. Now every woman is under the power of the Pope. Therefore the text in question does not prove that a woman may not reign, and is no bar to the king's title either to England or France¹. It was fortunate for Fortescue that he had not to write his recantation in the days of Queen Elizabeth².

I shall speak next of the miscellaneous writings of Fortescue, leaving the constitutional works, as the most important, to be dealt with last. In this class the most important tract is the 'Dialogue between Understanding and Faith³.' It is moreover the only one the authenticity of which is tolerably certain. It is a touching and beautiful little tract, and deals with the old question which has perplexed men's hearts ever since the days of Job; the prosperity of the ungodly and the affliction of the righteous, with special reference however to the revolutions of kingdoms. Understanding, like David, is 'grieved at the wicked.' 'Alas!' she cries, 'howe many just and peasible creatures have borne the payne and angwisssh of this werre! Also howe many men of honest livyng have suffred dethe!

Miscellaneous writings of Fortescue. 'Understanding and Faith.'

¹ Works, pp. 533-4.
² Lord Carlingford (Works, pp. 366* f.) is able to illustrate several of Fortescue's arguments from John Knox's writings against the 'regiment of women,' which, though primarily directed against Mary Tudor, gave scarcely less offence to Queen Elizabeth. It is fair to add that there are some passages in the *De Naturâ Legis Naturæ* which prepare the way for this change of front, and somewhat lessen the amount of inconsistency. Thus in ii. c. 46 he says, 'Non tamen omnis aut aliqua mulier sub omnis viri potestate vivere jubetur, . . . sed indefinite [Dominus] ait, "Eris sub potestate viri," quo si sub alicujus viri potestate ipsa fuerit, judicii illius censuram illa non declinat; proposito namque indiffinita vera

est, si in uno supposito ipsa sit vera;' Works, p. 164. This passage seems clearly alluded to in the 'Declaracion,' u. s.; cf. also ii. c. 23. These passages however refer to the case of women who are under some temporal dominion. The idea that the necessities of the case were satisfied by subjection to the spiritual authority of the Pope had not then occurred to Fortescue. Fortescue's own submission to Edward IV is amply justified by the principle which he lays down in the *Defensio*, that on the failure of the male line one who is connected with the royal family only through females may be elected 'per Dominos et comunitatem regni,' rather than a complete stranger; Works, p. 508; cf. ib. 153.

³ Ib. 483-490.

And moche good truly gotyn hath been wikkedly ravished and taken away. I se the naughty and reprobable people helped with riches, and the good honest people beggars and nedy. Also chastite that hath be kept in worship, nowe is constraigned and brought into myschevous vylanye. So then thorowe myscheve, necessite, and outrage, man can nat have that is his; nor no good dede may receive the reward after the vertu therof; but strength maykyth right after his owne opynyoun, and overpride usurpeth to have worship without any desert. Where is then the Divyne Justice, or to what tyme is she reserved, when she may nat helpe us nor amende our myscheves when we have moost neede unto her¹?' For Understanding too, as for David, the problem is 'too hard,' and the solution is sought in the 'sanctuary of God,' in the higher sphere of faith and religion. There is nothing in the work which can fix its date with any precision. All we can say is that it was written at a time of depression and discouragement, and the references to the triumph of wrong, and to the fact that God sometimes punishes the sins of men by raising up yet greater sinners, seem to prove that it was written after the triumph of Edward IV, though whether after Towton or Tewkesbury cannot be decided. If the latter were the period of its composition, private bereavement may have combined with political disappointment to throw Fortescue for comfort on the consolations of religion².

There is, as far as I can find, no evidence for attributing the tract on 'the Commodities of England³' to Fortescue beyond the fact that it is found in the Laud MS. which contains the oldest copy of the *Monarchia*. But as the latter is mutilated at the end, there is nothing to prove any connexion between the two. Though they are in the same handwriting, this proves nothing, for the copy of the *Monarchia* is not an autograph. By parity of reasoning we might assign to Fortescue the remaining tract in this

¹ Works, p. 490. The thoughts and even the expressions are strikingly like those of Shakespeare's Sonnet lxvi.

² Above, Part II. p. 73.

³ Works, pp. 549-554.

MS., entitled 'This is the rule to know all the wardis of the townshippe of Stebynhithe (Stepney).' My own judgement is strongly against assigning the authorship of 'the Commodities' to Fortescue, until some external evidence be produced to show that it is his. The internal evidence is quite insufficient. It is true that it contains passages which have some relation to parts of the *De Laudibus* and *Monarchia*; but Fortescue was not the only person who wrote on such subjects; and it is far more closely related to such works as the 'Libel of English Policy,' &c. If it were Fortescue's, it would be the earliest of his extant works, for it must have been written before the loss of Guienne in 1451.

There is equally little evidence for attributing to Fortescue the tract on 'The Twenty-two Righteousnesses belonging to a King¹.' In Stowe's MS., and in the Yelverton MS. from which Stowe copied, it follows the *Monarchia*. But it certainly is not true, as Lord Clermont asserts², that in Stowe's MS. it forms 'the last chapter' of that work; for at the end of the *Monarchia* is written, 'Explicit (?) Ser John Fortescu upon the Governauce of England,' and then follows the other tract without any hint as to its author. It is also clearly separated from the *Monarchia* in the Yelverton MS. It is quite unworthy of Fortescue, the thoughts being commonplace and poor.

'Advice to Purchasers of Land³' is a rhyming enumeration of the points to be attended to before buying an estate. The authority for assigning this to our author is the heading 'Secundum Fortescu' in the Rawlinson copy⁴. But it seems more probable that it is a mere *memoria technica* which was current in the Middle Ages, for Mr. Gairdner has printed⁵ a slightly different version from the Lambeth MS. 306, which gives no hint of its being by Fortescue. The only point of any interest is the estimate given of the

¹ Works, pp. 477-8.

² Ib. 447.

³ Ib. 543-4.

⁴ Rawlinson MS. B. 252.

⁵ Three Fifteenth Cent. Chronicles, p. xxvi.

value of land, which in the former version is calculated at fifteen, and in the latter at ten years' purchase.

Constitutional works of Fortescue.

The second class of Fortescue's works is the most important, and it is to these works that he owes the permanent place which he has earned among constitutional writers. The works of previous English lawyers like Glanville and Bracton were legal rather than constitutional, while the political treatises of other mediæval writers have little reference to any existing state of things. Dr. Riezler has remarked¹ that in none of them is there any attempt to give a theoretical analysis of feudalism, the political system under which the Middle Ages actually lived. The writers are content for the most part to borrow from or comment upon Aristotle, and except when they touch upon the great question of the relation between the secular and ecclesiastical power, whether in its abstract form or in reference to the concrete instances which from time to time arose, they have little to say that bears upon practical politics². Mediæval political theorizing is too much in the air, and this gives a certain character of unreality to even the most ingenious and interesting speculations. Fortescue first of mediæval writers brings down political philosophy from the clouds to earth by basing his theoretical analysis upon observation of existing constitutions. He borrows some of his terminology and many of his illustrations from previous writers, but the most valuable part of his speculations is derived from his own experience of the government of England³; and on the basis of that experience he analyses the nature of constitutional monarchy. The earliest work in which he attempted this task was the former part of the *De Naturâ Legis Naturæ*. Setting out from the proposition

Unpractical character of mediæval political philosophy.

Fortescue the first to base his political theories on observation and practice.

¹ Riezler, *Die literarischen Widersacher der Päpste*, p. 131.

² The Italian writers form perhaps a partial exception to this rule. The feudal system never had much hold on Italy, and the circumstances of the Italian Republics of the Middle Ages sufficiently resembled those of the Greek cities to make the applica-

tion of arguments derived from the latter less of an unreality in their case than in that of most mediæval governments. And some of the greatest publicists of the Middle Ages were Italians; e.g. St. Thomas Aquinas and Marsiglio of Padua.

³ For the proof of this statement, see the notes to Chap. i.

that it is by the Law of Nature that the question of the right succession to kingdoms must be determined, he proceeds to discuss the nature of that law, and in the course of his argument he is led, by not very obvious links of connexion, to dilate upon the origin of government and its various kinds. These are three in number:—*Dominium Regale*, or absolute monarchy; *Dominium Politicum*, or republican government; and the mixture of the two, *Dominium Politicum et Regale*, which is constitutional monarchy. The difference between the first and the third class of governments is, that in the latter the subjects are not bound to obey any laws, or pay any taxes, to which they have not given their consent¹. To this distinction Fortescue remains faithful throughout all his political writings. There is however in the *De Naturâ* a passage² not found in the later works, in which Fortescue admits that even a politic or constitutional king may sometimes be obliged to rule absolutely (*regaliter*). All cases cannot be determined by statutes and customs, and something must be left to the king's discretion (*arbitrium*); especially the mitigation or remission of pains and penalties, when not contrary to law or the well-being of his subjects³. So too a sudden out-

The *De Naturâ Legis Naturæ*, Part I.

Divisions of Governments.

¹ c. 16; Works, pp. 77-8.

² cc. 24 sq.; Works, pp. 85-7.

³ As this passage is rather important as bearing on the question of the dispensing power of the crown, I give Fortescue's exact words: 'ad libitum etiam tuum tu semper regis omnia criminalia, et poenas cunctas moderaris vel remittis: dummodo sic facere poteris sine subditorum iactura, et offensa consuetudinum et statutorum regni tui;' u. s. p. 85. On the dispensing power of the crown during the Middle Ages, see S. C. H. ii. 573, 579-582. The exercise of this power was more frequent in the Middle Ages than we should consider consistent with constitutional government, but it was often rendered necessary by the unwise minuteness of many mediæval statutes.

These exemptions were often granted in the Privy Council. Among the statutes dispensed with most frequently are the Statutes of the Staple; P. P. C. iii. 115, v. 280, 316, vi. 117-8; Rot. Parl. iii. 661 a, &c. [These exemptions were often complained of in Parliament; e.g. Rot. Parl. iii. 661 a, and were forbidden by Stat. 14 Hen. VI, c. 2; cf. Rot. Parl. iv. 332 b, 490 a]; the Statute of Mortmain; P. P. C. iii. 37, 53, 124, 130, iv. 154-5, v. 274; the Statutes forbidding the export of coin, &c.; ib. iv. 118-9, 120-1, 152-4, &c.; those placing restrictions on the royal power of making grants; ib. ii. 305, 308; Rymer, ix. 217, x. 802, xi. 529, &c.; cf. notes to Chap. xix. below; and that forbidding the practice of alchemy; ib. xi. 128, 240, 637,

break of foreign war or domestic rebellion may oblige the king to act despotically, simply because there is not time to observe the usual legal and constitutional formalities; and then, says Fortescue, in language which recalls the words of Edward I¹, the king may be forced to seize the goods of his subjects, and expose some of them to danger for the sake of the safety of the whole; but, he adds, the king is bound to expose himself to danger for the sake of his kingdom most of all. The *De Naturâ* was written, as we have seen, in Scotland, i.e. between 1461 and 1464. It was intended specially for Prince Edward of Lancaster, as we learn from the *De Laudibus*².

Date.

The *De Laudibus Legum Angliæ*.

Origin of Governments.

In the last-named work Fortescue maintains the distinction between absolute and limited monarchy laid down in the *De Naturâ*; but he adds an account of the different origin of the two forms of government which is new, and is probably derived from Vincent of Beauvais³. The origin of the former kind of monarchy he traces to conquest; that of the latter to the consent and election of a body of men desiring to form themselves into a state⁴. Thus in a constitutional monarchy the royal power is derived from the people⁵. The travels of Fortescue have moreover enabled

&c. (For the Statute itself, cf. St. 5 Hen. IV, c. 4; Rot. Parl. iii. 540 a.) In the case of the Statutes of Provisors the dispensing power was sometimes specially conferred upon the crown by Parliament; e.g. Rot. Parl. iii. 428 b, 458 b; cf. 460 b, 595 a. Henry IV made a most liberal use of this power, granting to all graduates of Oxford and Cambridge permission to sue for Papal Provisions; Rymer, viii. 339. Perhaps in consequence of this, the power was withdrawn from the crown by St. 9 Hen. IV, c. 8; Rot. Parl. iii. 621 a. But in 3 Hen. V the Commons complained that the Universities were ruined by the enforcement of the Statute of Provisors; cf. Lenz, König Sigismund, pp. 147 f.

¹ Matt. Westm. p. 430; Stubbs,

Select Charters, p. 442.

² 'Opusculum, quod tui contemplatione de *Naturâ Legis Naturæ* exaravi;' De Laud. c. 9. It should be noted that the title *De Naturâ &c.* applies in strictness only to the first part of the work; that of the second part being *De Jure Succedendi in Suppremis Regnis* (see Works, pp. 64, 115); while the full title of the whole work is 'De Naturâ Legis Naturæ, et de ejus Censura in Successione Regnorum Supprema;' ib. p. 65.

³ De Morali Principis Institutione, cc. 2-4. See notes to Chap. ii. below.

⁴ cc. 11-13.

⁵ 'Ex populo erumpit regnum; Potestatem a populo effluxam ipse (rex) habet;' c. 13.

him to add Scotland to the number of constitutional monarchies¹, and to give a striking picture of the state of France under Louis XI², which now becomes for him the type of an absolute government. The part of the *De Laudibus* which is not directly constitutional consists of exhortations to Prince Edward of Lancaster, to whom the work is addressed, to study the laws of the country which he will one day have to rule, of discussions of some points in which the English and the civil law are at variance, and of descriptions of English social life, of the mode of life in the Inns of Court, the ceremonies customary on the appointment of a Serjeant-at-Law, a Judge, etc. All these have been so frequently quoted that there is no need to analyse them minutely here. The *De Laudibus* is in fact by far the best known of Fortescue's works. It was first printed in 1537, and has been reprinted more than a dozen times since³. Until 1714 it was the only one of Fortescue's works in print. Selden was acquainted with the *Monarchia*, and the 'Declaration upon Certain Writings,' &c.⁴ The *De Laudibus* was written, as the author himself informs us,

The *De Laudibus* the most popular of Fortescue's works.

Date.

¹ c. 13.

² c. 35.

³ Lord Clermont has given a list of the editions; Works, pp. 335-6. He does not however mention the curious Commentaries on the *De Laudibus* by Waterhouse (folio, London, 1663). They are however noticed by Gregor in the Preface to his edition, who calls them 'very jejune and tedious, both as to matter and style.' Tedious they certainly are, and they are written in the most acutely latinized style of the seventeenth century. But amid all the pedantry and prolixity there is much genuine learning. The author is however continually hampered by his attempt to make Fortescue talk the language of the Caroline restoration. Thus, on the passage cited above on the popular origin of constitutional monarchy he says: 'I shall vindicate our Chancellour from any

intendment here to approve popular Governments or the insolencies of them . . . (He) is not to be understood as applying these words in their strictness to the Government of England, which is an Imperial Crown, and is not alloyed by the politique admissions into it;' pp. 199 f.

⁴ Selden's Preface to the *De Laudibus*. Selden must also have known the *De Naturâ, &c.* The Lambeth MS. 262 which contains all three tracts formerly belonged to him; below, pp. 90-1. But though Fortescue in the *De Laudibus* cites the *De Naturâ* five times, Selden in his notes to the former work never once shows his knowledge of the latter. But, as Gregor has remarked, Selden's notes seem to have been written hastily, 'to gratify the importunity of a book-seller, and thereby to recommend a new edition;' Preface, p. iii.

during the stay of the Lancastrian exiles at St. Mighel in Barrois, and the evident reference in the twenty-second chapter to the case of Sir Thomas Coke in the eighth year of Edward IV¹ fixes the date of its composition to the years 1468-1470.

The *Monarchia*, its interest.

Its scope.

The remaining work of Fortescue in this division is the one now presented to the reader. Apart from the intrinsic value of the work, it has a special interest as being the earliest constitutional treatise written in the English language. The theoretical portion of the work² is little more than a translation and recasting of the corresponding portions of the *De Laudibus*. Strictly speaking, it is only to this first part of the work that the title adopted by its first editor, 'The Difference between an Absolute and Limited Monarchy,' can be said to apply. The remainder of the work travels far beyond this purely speculative question, and dealing with the actual evils of the time, attempts to find a practical remedy for them. The scope of the work is much better described by the title which it bears in the Yelverton MS., 'Sir John Fortescue on the Governance of England;' while its contents are well summarized in the preface which the scribe of the Cambridge MS. has prefixed to it, 'A Treatise intituled *Jus Regale* and *Jus Politicum et Regale*, comprehending for good Example memorable Councells of Estate Affaires: Namelie as touchinge the King's charges ordinary and extraordinary, Enlarginge of the Revenewes of the Crowne, disposeinge of Offices and Rewardes for Service, Ellecting of Councelloures, and the disposinge and orderinge of all other affaires of the Kinge, Kingdome and Court.'

Thus though the *Monarchia*³ is much less known and read than the *De Laudibus*, its historical interest is in some ways very much greater. The subjects discussed in the treatise and their relation to the history of the time are so

¹ On this see Gairdner, Collections of a London Citizen, pp. xxxiii. ff.; Biog. Brit. iii. 1992.

² cc. 1-3; or perhaps 1-4. See

notes to Chap. i. below.

³ I cite the present treatise under this title for the sake of shortness.

fully discussed in the notes and in the first part of this Introduction, that it is unnecessary to recapitulate them here. A reference to the notes will show that many of the remedies proposed by Fortescue had been already suggested or tried in Parliament, though Fortescue no doubt extends and systematizes these suggestions. The point in which he shows the most boldness and originality is in his scheme for the re-organization of the Privy Council. In this, and in his proposals for permanently endowing the crown and reducing the power of the nobles, he certainly prepares the way, however unconsciously, for what it is the fashion to call the New Monarchy. I am therefore unable to regard Fortescue's scheme of reform, as Dr. Stubbs apparently does¹, as being in the main an exhortation to Edward IV to revert to the Lancastrian system of government. I would rather say that Fortescue, while remaining true to the great constitutional principles which he had previously enunciated, urges the king to avoid the main weaknesses of Lancastrian rule, its unsound finance, its subserviency to aristocratic influence, its lack of 'governance' and justice.

Fortescue's suggestions, how far original.

He prepares the way for the New Monarchy.

But was the king to whom the *Monarchia* was addressed certainly Edward IV? The answer to this question depends mainly on the reading to be adopted in a passage at the end of Chapter xix. It is therefore necessary, as a preliminary, to give some account of the manuscripts in which the *Monarchia* is preserved. These, as far as I know, are ten in number². I have collated them all.

To whom was the *Monarchia* addressed? The MSS.

1. Laud 593. (Cited as L.) This is the MS. on which the text of the present edition is based. It is dated by Mr. Macray about 1480-1490. It is a small thin folio, and contains besides the *Monarchia* only the tract 'On the Commodities of England' noticed above, and a list of 'the wardis of the townshippe of Stebyn hithe' (Stepney).

Laud.

¹ Const. Hist. iii. 243-6.

² Four in the Bodleian, viz. Laud 593, Digby 198, Digby 145, Rawlinson B. 384; three in the British Museum, Cott. Claud. A. viii, Harleian 1759, Harleian

542; one at Lambeth, 262; one in Lord Calthorpe's possession, Yelverton MSS. vol. 35; and one in the Cambridge University Library, ll. 3. 11.

The MS. is well and correctly written. Here and there it has been retouched by a later hand with different coloured ink. But the changes made are for the most part only orthographical; and the original reading is nearly always recoverable. The most frequent alterations are of *u* into *v*, *i* into *y*, and vice versâ; the changes being generally in the direction opposed to modern usage. This MS. seems to have belonged to a family of the name of Bedingfield, who were merchants; and the names of various members of the family, Francis, Mary, Edmund, Henry Bedingfield are scrawled on the margins of several leaves. It came into the possession of Archbishop Laud in 1633. This MS. seems to stand quite alone among the MSS. of the *Monarchia*. It has peculiarities, especially in the division of the chapters, which are not reproduced in any of the other MSS. It is not however Fortescue's autograph, for it has some small omissions and mistakes, which could hardly be made by a man writing down his own thoughts, though quite possible to a copyist. Unfortunately it is mutilated at the middle of Chapter xix, so that on the most interesting problem raised by the text this MS. is for us silent.

Cotton. 2. Cotton MS. Claudius A. viii. (Cited as C.) This is a miscellaneous volume relating to English history. It is in quarto, and the *Monarchia* occupies ff. 172-194 according to the old foliation. The handwriting according to Mr. Maunde Thompson, the head of the MS. department of the British Museum, is of the reign of Henry VII, about the end of the fifteenth century. This is also a very correct and well-written MS., and might perhaps dispute with L the claim to be made the basis of the text of an edition. Of the orthographical and other peculiarities of this MS. the reader will be able to judge for himself, as the concluding portion of the work which is wanting in L is here supplied from C. Unfortunately it has been a good deal cropped by the binder, and thus many of the titles of the chapters, which in this MS. are written in the margin, have been mutilated. At the top of the first page is the following:

'[This discourse] was wrighten to King Henry the Sixt by Sr John Fortescue, Lord Chancellor.'

3. Yelverton MSS. vol. 35. (Cited as Y.) This is a Yelverton. volume consisting mainly of documents relating to English history. It is in small folio. Some additional leaves have been inserted at the beginning, middle, and end of the volume. With the exception of these additions the whole of the volume is in the same small and neat hand. Owing to the fact of this MS. being in a private collection I was unable to obtain the judgement of an expert as to the age of the handwriting. I should be inclined to assign it to the first half of the sixteenth century. But whatever the exact date of it may be, the volume is of very great interest. In the first place it is certainly the source from which the chronicler Stowe derived not only his transcript of the *Monarchia*, but also many other documents which he has inserted in his Annals, or which others have published from his MSS. The *Monarchia* occupies ff. 130-145, according to the old foliation, which has been deranged by the insertions alluded to above. It is preceded by the chapter entitled 'Example what good counsell helpith' &c., and followed by the 'Twenty-two Righteousnesses of a King.' The latter of these is as we have seen probably not by Fortescue, the former looks like an alternative version of Chapter xvi. of the present work¹. But this MS. contains another document no less closely connected with the *Monarchia*; viz. 'The Articles sent from the Prince to the Earl of Warwick' in 1470². No one who compares them with the *Monarchia* can doubt that they were drawn up by Fortescue, and the evidence which they afford must be taken into account in attempting to determine the occasion and date of the composition of the *Monarchia*. The text of the latter work in MS. Y presents very many resemblances to that of C³, so that I am inclined to think that either Y is taken from C, or that both are derived

The 'Articles sent from the Prince.'

Drawn up by Fortescue.

Relation of Cotton and Yelverton MSS.

¹ See it printed in Appendix A. similar statements, the reader is

² See it printed in Appendix B. referred to the Critical Notes.

³ For the proof of this and

from a common source, probably the latter. But the differences are even more striking than the resemblances; for while C has reproduced the original with great fidelity, Y has dealt extremely freely with it, sometimes compressing, more often expanding and amplifying expressions, and in especial dividing and naming some of the chapters in a way wholly peculiar to itself and the MSS. derived from it. Moreover, in Chapter xix. the name of Henry VI occurs where the other MSS. have Edward IV. The significance of this will be discussed later. Of the orthographical and other peculiarities of this MS. the reader may form a judgement from the Appendices A and B, which are printed from it.

Harleian I. 4. Harleian MS. 542. (Cited as H¹.) This is a small quarto volume containing part of Stowe's historical collections. The *Monarchia* occupies ff. 125-140, and is entirely in the handwriting of Stowe himself. I place this MS. next to Y because it is unquestionably copied from it. It agrees with Y in all the points which have been enumerated above as distinguishing Y from other MSS. The only differences are those due to Stowe's peculiar orthography, and to the occasional modernization of a phrase. Except where the contrary is stated, it may be assumed that the readings of H¹ agree with those of Y, and therefore they are not separately given.

5, 6, 7. We now come to a group of three MSS., which agree so closely in many minute points that the conclusion is irresistibly forced upon us that they have some common source. On the other hand no one of them is copied from either of the other two, for each of the three has important lacunæ which do not occur in the remaining pair. The three MSS. are as follows:—

Lambeth. 5. Lambeth 262. (Cited as Lb.) This is a folio volume consisting entirely of Fortescue's works. It contains the *De Naturâ Legis Naturæ*, the *Monarchia*, and the 'Declaration upon Certain Writings,' &c., the first-named work being, I think, in a different hand from the two last. The volume formerly belonged to Selden; on the top margin

of the first folio is written: 'περὶ παντὸς τῆν Ἐλευθερίαν. J. Selden.' The *Monarchia* occupies ff. 106-128. It is I think all in the same hand, though the character of the hand changes slightly about half way through, becoming rather less formal. The handwriting is assigned to the sixteenth century, and I should be inclined to place it rather early in that century. The MS. is well and clearly written, and the scribe has I think followed his original more closely than those of the two next MSS. have done. In one case at least he has preserved a defective reading which the others have corrected each in his own way. For this reason I place this MS. at the head of the group, though it is probably not earlier than the MS. to be mentioned next.

6. Digby 198. (Cited as D¹.) This is a small thin Digby I. folio. It consists, like the last, entirely of Fortescue's writings, and contains the *De Laudibus*, the *Monarchia*, and the 'Declaration upon Certain Writings,' &c., the last being incomplete. The whole volume is in the same hand. The *Monarchia* occupies ff. 48-75. On palæographical grounds Mr. Macray was inclined to assign the MS. to about the year 1500. For historical reasons I think that the date must be put a little later, because of the evident protestantism of the author. [The scribe a Protestant.] In two out of the four passages in which the Pope is mentioned D¹ alters the expression into 'the Bishop of Rome,' in one passage the phrase has been omitted altogether, in the remaining one it has been allowed to pass. The writing is bold and vigorous, but exceedingly careless. Lacunæ, caused generally by the recurrence of a word or phrase, are frequent; on the other hand, words and phrases are repeated twice, and in one instance even three times, and mistakes are frequent and palpable.

7. Harleian MS. 1757. (Cited at H².) This is a miscellaneous volume in folio, relating mainly to English Harleian II. history. It contains of Fortescue's works (besides the *Monarchia*) the *De Laudibus*, and two copies of the 'Declaration,' &c., one perfect, the other imperfect. The *Monarchia* occupies ff. 196-203. The handwriting, ac-

ording to Mr. Thompson, is of the middle of the sixteenth century. According to Lord Clermont, the copy of the *De Laudibus* in this volume is 'in the handwriting of Glover, who lived in the reign of Elizabeth¹.' If this refers to the first portion of the *De Laudibus* (for the latter part is in a different hand), then the *Monarchia* is also in Glover's hand. It ends abruptly in the middle of a sentence in Chapter xv. This however is not the result of mutilation, as nearly half of the last page is left blank. For some reason the scribe left his work in an unfinished state. It is further to be noticed that Lb. and D¹ conclude with Chapter xviii. This is neither due to mutilation, as in the case of L, nor to incompleteness, as in the case of H²; for at the end of Chapter xviii both MSS. add the word *Finis*. So that we must suppose either that the scribes deliberately abstained from copying the last two chapters, or that this group of MSS. represents an earlier edition of the work, and that the last two chapters were added afterwards.

8, 9, 10. In the last place we have another group of three MSS., also closely related, but in a different way from those of the preceding group. For here the first MS. is almost certainly the original, mediately or immediately, of the other two. The three MSS. are as follows:—

Digby II. 8. Digby 145. (Cited as D².) This MS. has a pathetic interest, for it is in the handwriting of Sir Adrian Fortescue, the grandson of the author's younger brother Sir Richard Fortescue, who was attainted and beheaded in 1539, probably for no other crime than fidelity to the faith of his fathers². The volume is a small folio, and contains, besides the *Monarchia*, a copy of Piers the Plowman³, also in Sir Adrian's hand, and at the end of the volume some proverbs which I differ from Lord Clermont⁴ in thinking to be by a different hand. The *Monarchia* occupies ff. 131–159, and the date of the writing is fixed

¹ Works, p. 366.

² Family History, p. 272.

³ Described by Professor Skeat in the Preface to his Edition of

the 'A Text' of Piers the Plowman, p. xxiv. But he has certainly dated the MS. too early.

⁴ Family History, pp. 263–5.

by the entry at the end: 'Explicit Liber . . . scriptus manu propria mei Adriani Fortescue Militis, 1532.' This MS. was made the basis of his text by the first editor, Lord Fortescue of Credan¹, and his text has been reprinted practically without alteration by Lord Clermont; so that the characteristics of this MS. can be easily studied by any one desirous of doing so.

9. Rawlinson B. 384. (Cited as R.) This is a small ^{Rawlinson.} thin folio containing miscellaneous collections on English history. The *Monarchia* occupies ff. 42–68. It is written in two different hands, both of about the middle of the seventeenth century. It follows closely the text of D²,² though, for reasons which will presently appear, I incline to think that it was copied not immediately from D², but from some MS. which copied D². The writer or his model has modernized the language a good deal, and in one instance in an absurdly mechanical way. Having in the first Chapter altered the word 'tayles' (= tallia, tallagium), not incorrectly, into 'taxes,' he applies the same interpretation to the word in Chapter xi, where it means 'entails.'

10. Cambridge University Library, ll. 3. 11. (Cited ^{Cam-} as Cb.) This is a folio volume containing collections ^{bridge.} relating mainly to English history in the seventeenth century, and in hands of that period. The *Monarchia* occupies ff. 214–241. The text closely follows D². Where it differs from D², it generally agrees with R, and these coincidences are I think too frequent to be accounted for by the theory of two scribes independently modernizing the same original. On the other hand, neither R nor Cb. copied from the other, for each has lacunæ which the other has not. Hence we must suppose that both are copied from a text which was taken from D². But besides a text of the type

¹ In the margin he gives various readings from Laud and Digby 198. He says that he also collated a Cotton MS.; but as he gives no variants it is impossible to control this statement. It is curious that Lord Clermont has altogether overlooked Digby 198, in spite of his predecessor's frequent references to it. For proof of this omission see especially Works, pp. 336, 346.

² And therefore its readings are very seldom cited.

of D², the writer of Cb. must have also had before him a text of the Y type. For he has taken from it not only the 'Example what good Councell helpithe,' &c.¹, which is only found in MSS. of that type; but also the titles of Chapters viii, xii, and xiii, which are wanting in R; probably because they are crossed out in D². Also in Chapter xi he has given the peculiar title which appears in Y, though he has afterwards crossed it out and substituted the ordinary one. Moreover, on his own motion he has not merely altered, like D¹, but wholly omitted all the passages in which the Pope is mentioned.

Epitome. Besides these ten MSS. of the *Monarchia*, there exists an Epitome of it in Latin, under the title 'Epitome singularis cujusdam Politici Discursus Edwardi 4 temporibus scripti,' &c. Hearne seems to have thought of publishing this, for in Rawlinson Miscell. 326 there is a copy in his handwriting headed 'Sir John Fortescue prepared for the press. Thursday, Jan. 19, 1726.' The original from which Hearne copied was formerly in the possession of Beaupré Bell, Esq., Jun., by whom it was left to Trinity College, Cambridge². The Epitome seems to have been made from a MS. of the type of D². It is occasionally cited as 'Epit.' The handwriting is of the reign of James I.

Occasion
of the com-
position of
the *Mo-
narchia*.

After this review of the history of the text we may return to the consideration of the question before us; viz. the occasion of the composition of the *Monarchia*. The passage on which most turns is one at the end of Chapter xix, beginning: 'I blissed be oure Lord God for that he hath sent King Edward the iiiijth to reigne vpon us,' &c. This passage is mutilated in L; Lb., D¹, and H² stop short of this chapter; Y and H¹ read 'Henry VI' for 'Edward IV'; while C, though reading 'Edward IV' here, asserts

¹ This he regards as the first chapter of the *Monarchia*, for he says of it: 'The first chapter of which Treatise ys thus verba[lly] out of an old Manuscript written and copied.' The 'old manuscript' would be the MS. of the Y type. The scribe of this MS.

was very ignorant of Latin. Almost all the Latin quotations are wrong.

² It is numbered R. 5. 18. I have compared Hearne's copy with the original, and found it very correct.

that the treatise was 'wroughten to King Henry the Sixt^h.' Lord Clermont² has summarily rejected the idea that the *Monarchia* can have been composed for Henry VI, pointing out that the references in Chapter ix to the war of the Public Weal in 1465 and to the death of James II of Scotland in 1460 make it impossible that it should have been written under Henry VI. But he has not remarked that neither of these arguments precludes the possibility of its having been composed for the Lancastrian restoration of 1470. And the fact that some of the most important recommendations afterwards embodied in the *Monarchia* certainly were drawn up by Fortescue for the government of the restoration³ entitles that idea to more serious consideration. Much more weighty is Lord Clermont's contention that the expression 'this land' used of England in Chapter x implies that Fortescue wrote the work in England, and therefore after 1471. There would seem then to be two main theories possible.

Was it
written for
the Lancas-
trian re-
storation?

1. We may suppose that the *Monarchia* was written in the first instance for the Lancastrian restoration of 1470, and that it was afterwards recast by Fortescue and adapted to Edward IV. In this case the reading of Y and H¹ and the heading of C would represent the original form of the work.

Two
theories.

2. The *Monarchia* may have been written originally for Edward IV, and the scribe of Y writing under the Tudors may have altered the reading to avoid shocking Tudor susceptibilities. This nineteenth chapter may have been mutilated in L and omitted in the original of D¹, Lb., and H² for the same reason⁴.

¹ This discrepancy struck the maker of the Index to C; for he objects 'verum in fine laudat Edw. 4.'

² Works, p. 446.

³ See Appendix B.

⁴ There is a curious parallel to this in the Prologue to W. Worcester's Collections. It was evidently first addressed to Richard III. But afterwards the letters

Rich were erased and *Edw* written in their place, but the number 'thred' (third) was not altered. This has escaped the editor (Mr. Stevenson), who assumes that Edward IV is the monarch addressed. But Edward IV is expressly spoken of as 'your most noble brodyr and predecessoure.' Moreover, after each mention of Henry VI there is an erasure in the MS.;

Probably written under Edward IV.

On the whole, the second theory seems best to account for all the facts. In any case the *Monarchia* and the 'Declaration upon Certain Writings,' &c. are the two latest of Fortescue's extant works. And with this discussion we may bring to a close our consideration of those works. Of works now lost which were attributed to Fortescue, Lord Clermont¹ mentions three; a genealogy of the house of Lancaster, a genealogy of the Scottish kings, and a book of devotion. Stowe makes a quotation from Fortescue which, as far as I know, is not in any of his existing writings².

Fortescue's literary attainments.

I shall next say a few words on Fortescue's literary attainments, the extent of his reading, &c. In the *De Laudibus*, c. 49, he tells us that on festival days the students in the Inns of Court and Chancery occupied themselves with the reading of Chronicles and Scripture³. Both these lines of study have left their mark on Fortescue's works. His knowledge of the Bible was evidently extensive, and comes out most strongly in the *De Natura Legis Naturæ*, where in two chapters out of every three the arguments are supported by texts of Scripture. Biblical quotations are also fairly numerous in the *De Laudibus*. In the study of history Fortescue was evidently much interested. I have not been able to determine with any certainty whence he derived his knowledge of foreign history. He quotes the Chronicles of France, Spain, and

Biblical and historical knowledge.

probably some such phrase as 'named Kyng' or 'Kyng in deed but not in right' has been cancelled; see English in France, ii. [521] ff. On the other hand, if Fortescue himself altered the work to suit Edward IV, we may compare the similar adaptation of Lydgate's poem on the Kings of England; see Warkworth's Chronicle, pp. xxii, 67-8; Gregory, p. 54; and the still more violent change of tone in Capgrave; see *De Illustr. Henr.* pp. xiii f.

¹ Works, p. 556.

² Stowe, *Annals*, p. 325 b: 'King Richard was imprisoned in Pomfrait Castle, where xv. dayes and

nights they vexed him with continuall hunger, thirst and cold, and finally bereft him of his life, with such a kinde of death as never before that time was knowne in England (saith Sir John Fortescute).'

³ The 'talkyng of cronycles' was one of the occupations of the squires of the household; Ordinances, &c., p. 46. Henry VI was a great reader of Chronicles and Scripture; Blakman, pp. 289, 299; Whethamstede, i. 295. It was on this ground that the Lords applied to him to assist them in the refutation of York's claim; Rot. Parl. v. 376 a.

Denmark¹; of Rome, Athens, and Sparta². To English history his references are constant, especially in the tracts bearing on the Succession; but he does not often give his authorities, except in the 'Declaration upon Certain Writings,' where he cites the Polychronicon, Petrus Pictavensis, Nicolas Trivet³, and Ralph de Diceto⁴. He cites also two chronicles, one of which he calls the Chronicle of St. Alban's, the other he calls 'Flores Cronicarum' (sic) or 'Flores Hystoriarum'⁵;—unless these are two separate works. Owing to the way in which the St. Alban's chroniclers copied not only the substance, but the titles of their predecessors' works⁶, it is impossible to say what are the precise chronicles which Fortescue means. He expressly says that some of these chronicles were seen by him for the first time after his return from exile⁷. For his account of the early history of Britain he may have used the Chronicle of Richard Rede, of which we know that he possessed a copy⁸.

At the end of Lord Clermont's edition of the *De Natura Legis Naturæ* Lord Carlingford has placed a most useful table of all the quotations cited in that work⁹. The list of authors is a stately one; and if all the works of Fortescue were included, some further names would have to be added. But it would be unsafe to take the list with Lord Carlingford as evidence of the extent of Fortescue's reading¹⁰. If we deducted all the quotations which Fortescue took at second-hand from other works, the extent of his reading would probably be found to shrink considerably. The

Authors quoted by Fortescue.

Not all read by him.

¹ *Infra*, Chap. ix; *De Laudibus*, c. 54.

² *Infra*, Chap. xvi; N. L. N. ii. c. 15.

³ Works, p. 526.

⁴ *Ib.* 538-9.

⁵ *Ib.* 525, 539 f.

⁶ See e.g. Mr. Luard's preface to the *Historia Anglorum* of Matth. Paris, vol. i.

⁷ Works, p. 526.

⁸ *Infra*, Chaps. ii, iii, and notes thereto; *De Laudibus*, c. 17. The

passage in this last chapter in which Fortescue maintains that the laws of England have never changed since the days of the Britons, a passage which has been seriously supported by Coke, and no less seriously refuted by Selden (see Selden and Amos ad loc.), rests perhaps on Rede, f. 6, r', or on Higden, ii. 90 ff.

⁹ Works, pp. 347* ff.

¹⁰ *Ib.* 346*.

most important question in this relation is that of Fortescue's Aristotelian quotations, which will therefore be reserved till the last.

Fortescue's acquaintance with the Civil and Canon Law. As to the extent of Fortescue's acquaintance with the Civil Law I must leave others, more qualified, to speak. I have noticed elsewhere the terms of high respect in which he speaks of that system of jurisprudence¹. Even higher are the terms in which he speaks of the Canon Law, which he regards as positively inspired². In regard to this point Lord Carlingford says: 'The Corpus Juris Canonici comprises five Codices: the first being the Decretum Gratiani, which is divided into three parts. Fortescue refers to the Decretum only, and to the two first of its parts. . . . He quotes from the Corpus Glossis Diversorum Illustratum published by order of Pope Gregory XIII³.'

His relation to Aquinas and others. Of the relation of Fortescue to St. Thomas Aquinas, Ægidius Romanus, and the *Compendium Morale* of Roger of Waltham, I have spoken at length elsewhere⁴. Of his obligations to Vincent of Beauvais something has also been said⁵. That he knew the latter's *De Morali Principis Institutione* at first-hand I regard as certain, because there is a copy of it in the Rawlinson MS. which once belonged to Fortescue⁶. For the same reason the citation of William of Auvergne's *Cur Deus Homo*⁷ is probably genuine. I have shown that Fortescue was well acquainted with Poggio's translation of Diodorus Siculus⁸, and from the numerous quotations which he makes from St. Augustine's *De Civitate Dei* I am inclined to think that he was acquainted

¹ Notes to Chap. ii. below. 'Die Geschichte des Römischen Rechts in England . . . bleibt noch zu schreiben,' says Dr. Güterbock; Bracton, p. 2. He gives however some references. See also S. C. H. ii. 190.

² 'Canones Spiritu Sancto afflati;' N. L. N. i. c. 31; Works, p. 94.

³ Works, p. 355*.

⁴ Notes to Chap. i. below.

⁵ Notes to Chap. ii. below.

⁶ Ib. This work is cited De Laudibus, c. 54; N. L. N. i. cc. 8, 18. Fortescue probably also knew the *Eruditio Puerorum Regalium*; the verse in De Laud., c. 6, comes from the Prologue of that work; a quotation in N. L. N., i. 5, comes from its third chapter. In one case (N. L. N. ii. c. 18) Fortescue quotes the *Speculum*, but I think not at first-hand.

⁷ Cited De Laudibus, c. 4.

⁸ Notes to Chap. ii. below.

with it, although in one instance he confesses that he borrows his citation from the *Compendium Morale*¹. But in other cases we can be pretty sure that his quotations are taken at second-hand from other works; thus the reference to Vegetius in the *De Laudibus* comes from the *De Regimine* of Aquinas², that to Helyandus either from the *Compendium* or Vincent of Beauvais³. And this may be the case with regard to other isolated quotations from particular authors or works⁴. But besides the plan of borrowing from preceding writers, there were other means open to the mediæval author of decking out his work with an appearance of extensive learning without any very great expenditure of labour. Numerous commonplace books were in existence consisting of striking passages from classical and ecclesiastical authors. Of these the best known is a collection of philosophical maxims extracted from the works of Aristotle (genuine and spurious), Seneca, Boethius, Porphyrius, &c., and going under the name of *Auctoritates Aristotelis*, &c. This collection appears in various forms, but a certain amount of matter is common to them all⁵. Of Fortescue's quotations from Seneca and Boethius, the latter of which are fairly numerous, I can only trace one or two to this source. Boethius' *Consolatio* he may have known at first-hand. The remaining quotations may come from the *Compendium Morale*, which is a perfect mine of such materials. But when we come to the quotations from Aristotle the case is altered. Of these thirty-one are from the *Auctoritates*, eight come from

¹ Works, p. 69*.

² De Laudibus, c. 54. This quotation occurs three times in the De Regimine, iii. c. 21; iv. cc. 7, 10. Lord Carlingford's list of quotations and his notes will supply some other instances of borrowing.

³ De Laudibus, c. 1; cf. Vincent, De Mor. Princ. Inst., c. 15; Compendium, f. 32 a.

⁴ Another source from which Fortescue borrows quotations is the Canon Law.

⁵ On the origin of the *Auctoritates*, and the various forms which they assume, see the interesting monograph of Prantl, Sitzungsbericht d. Bayer. Akad. d. Wissenschaften, July 6, 1867, for a knowledge of which I am indebted to Mr. Ingram Bywater, Fellow of Exeter College, Oxford. The edition which I have used is a small 4to., printed by Gerard Leeu, Antwerp, 1488. I have also used a MS. copy in the Canonici MSS. Pat. Lat. 62. (Bodleian Library.)

Aquinas, six I have failed to trace; but with the above facts before us we may safely assume that they do not come direct from Aristotle¹; and enough has been said generally to show how rash is the assumption that the number of works cited by a mediæval writer is any test of the real extent of his reading.

Fortescue's
observation
of foreign
countries.

But it was not from books alone or chiefly that Fortescue derived his inspiration. We have seen how on his observation and experience of English political life he based both his constitutional theories and his suggestions of reform. And there are many indications in his works that during his enforced absence from England he attentively studied the institutions and social condition of the countries which he visited, especially France. And all that he saw there only deepened his affection for the institutions of his native land. France is for him the type of a despotism as opposed to the constitutional monarchy of England²; and from this fundamental difference he deduces many others which he observes in the condition of the two countries; the misery of the French peasant, as compared with the comfort of the English yeoman³; the readiness with which taxes are granted in England, as compared with the 'grudging' which they call forth in France⁴. He contrasts the French and English financial systems, and notes the greater value of the domains of the king and the dowry of the queen in his own country⁵. He rejects indignantly the suggestion that the English Commons would be more submissive if they were made poor like the French⁶; and he positively exults in the greater prevalence of robbery in England as compared with France and Scotland as a proof of the high spirit of the people, 'which no Frenchman has like unto an English man⁷.' Coming to social and ad-

Compari-
son of
France and
England.

¹ Lord Carlingford's list is on this point a little misleading, for he sometimes refers to the Auctoritates, sometimes to the original text of Aristotle, which creates the impression that Fortescue was acquainted with the latter.

² 'The French Kynge reynith

upon his People *Domino Regali*;' inf. Chap. iii.

³ *Infra*, Chap. iii; *De Laudibus*, cc. 29, 35, 36.

⁴ *Infra*, Chaps. iv, xii.

⁵ *Ib.* Chap. x.

⁶ *Ib.* Chap. xii.

⁷ *Ib.* Chap. xiii.

ministrative points, he contrasts the English custom of primogeniture with the equal division prescribed by the civil law¹, and the numerous small properties in England with the *latifundia* of the French nobles². He compares the English county with the French bailliage³, and illustrates the scale of payment of the members of his proposed new council by reference to the salaries of the councillors in the Parliament of Paris⁴. So too in matters which concern his own profession, he compares the English and French law of succession to entailed estates⁵; and the English Inns of Court with the Universities of France⁶; the length of training of French and English judges⁷, and the comparative duration of the 'law's delays' in the two countries⁸. He seems too to have found that his legal French did not help him much in his intercourse with natives, for he says that the French spoken now-a-days is not like that used by lawyers, but is deformed by barbarisms⁹.

¹ 'Infra regnum Angliæ . . . filius senior solus succedit in hereditate paterna, . . . quæ jure civili inter masculos dividenda est;' *De Laud.* c. 40. 'In regno Franciæ viri et feminae passim dividunt hereditates paternas, et in regno Angliæ . . . filius senior omne obtinet jus parentum;' *N. L. N.* ii. c. 4; *Works*, p. 118. In a document in Rymer, xi. 81, it is expressly noted, that the prevalence of this custom of subdivision in Aquitaine has caused the decay of many notable estates, and loss of services to the crown.

² 'Raro ibidem aliqui præter nobiles reperiuntur possessores agrorum . . . extra civitates;' *De Laud.* c. 29. ³ *Ib.* c. 24.

⁴ *Inf.* Chap. xv; cf. *App. B.*

⁵ *N. L. N.* ii. cc. 10, 38.

⁶ *De Laud.* c. 49.

⁷ *N. L. N.* i. 43.

⁸ *De Laud.* c. 53. Waterhous (p. 583) says that he had personally known many who had been ruined by the delays of the Parliament of Paris. On the length of lawsuits in England, cf. Gas-

coigne, p. 109; *Cont. Croyl.* pp. 501-2, 513.

⁹ 'Vulgariter quadam ruditate corrupta;' *De Laud.* c. 48; cf. *Amos*, ad loc. The use of French in the public administration was at this time declining, and its place was being taken either by English or Latin. The Proceedings of the Council and the Rolls of Parliament alike furnish evidence on this point. But the most striking proof is the fact that Henry V had to refuse to negotiate with France in French, because his ambassadors were ignorant of that language; *Rymer*, ix. 656-9. Trevisa's remarks on the decline of French in schools and in society are well known; *Higden*, ii. 160-1. The same seems to have been true of the universities. At Oxford in the fifteenth century there were no lectures in French; *Munim. Acad.* p. 302. They seem however to have existed at an earlier date; *ib.* lxx, 438. Fortescue, *De Laudibus*, c. 48, gives this absence of instruction in French as a reason why Law could not be studied at the universities.

From the writings of Fortescue we may gather some interesting illustrations of his character and opinions; and the picture is on the whole a very pleasing one. I have already drawn attention to the piety and resignation which inspire his little tract on 'Understanding and Faith,' and it is the same spirit which lies at the root of his belief in the ultimate triumph of right and justice. It is on religious, as well as, like St. Thomas, on historical grounds that he is convinced that tyranny must always be short-lived¹; and he applies to the case of the evil ruler the words of the Psalmist: 'I myself have seen the ungodly in great power, and flourishing like a green bay tree. I went by, and lo, he was gone; I sought him, but his place could nowhere be found².' He is as earnest for personal as for constitutional liberty, and where there is any possibility of doubt the decision should always be in favour of freedom³. He is full too of the spirit of humanity. His pen refuses to dwell on the horrors of the torture-chamber⁴, he would rather that twenty guilty persons should escape than that one guiltless person should be condemned unjustly⁵, and he pictures to himself the remorse of a brother-judge who had sentenced an innocent woman to be burned⁶. He has an honourable pride in his profession to which he belongs, which he truly remarks has furnished many illustrious names to the roll of England's worthies⁷. He is not above a little harmless vanity in the matter. He hopes that Prince Edward, when he comes into his power, will make the judges' dress a little more ornate, for the honour of the legal profession, and the worship of the realm⁸. And it cannot be denied that his desire to exalt the character and institutions of his native land has led him sometimes into

¹ N. L. N. i. c. 7; Works, p. 70; cf. Aquinas, De Regim. i. c. 10.

² 'Understanding and Faith,' Works, p. 489.

³ De Laud. cc. 42, 47; cf. Peacock, Repressor, p. 401: 'Judgement is ever to be 3ouun for fredomys parti.'

⁴ 'Fastidit calamus ea literis designare;' De Laud. c. 22.

⁵ Ib. c. 27.

⁶ Ib. c. 53.

⁷ Ib. c. 51.

⁸ Ib. On the other hand, Gascoigne seems to have thought that the judges' dress was already too ornate. Formerly he says the judges of England were content with lambskin instead of minever: p. 202.

Illustrations of Fortescue's character to be found in his writings.
Piety.

Zeal for liberty.

Humanity.

Pride in his profession.

exaggerations¹. It is to his credit, however, that he shares to the full that confidence in the capacities of parliamentary government which, as Mr. Rogers has remarked, is characteristic of the best statesmen of the period². The laws of England he says are most excellent, if not actually yet potentially, because any defect in them can be amended in Parliament³. Another point which is worthy of notice in Fortescue is his extreme orthodoxy. He revokes by anticipation anything savouring of heresy which he may have written, and submits in all things to the judgement of the Church⁴. Unlike most secular lawyers⁵, he is a strong votary of the doctrine of the supremacy of the ecclesiastical over the civil power. He repeats the well-worn argument that the law which directs men to the ultimate end, happiness, is higher than that which points only to the nearer end, virtue⁶. Christ is King of all the world, and the Pope is His vicar upon earth to whom all earthly powers are subject, even to the kissing of his feet⁷. He expressly explains that this is not to be understood of mere spiritual supremacy. Kings are subject to the Pope not only in their persons, but in their temporalities. He may compel them to rule their subjects justly, and punish them if they do not, as Popes have done both to Kings and Emperors before now. Christ the Lord of all the world has placed in the hands of the Pope His vicar both swords, and he is *Rex et Sacerdos*⁸. It is evident that Fortescue was strongly influenced by the papal reaction which followed the Council of Constance. That he allowed himself to be drawn further along the path of political partizanship than we can altogether approve in the case of a man holding judicial position, I have already hinted⁹. But if he erred in this way he nobly atoned for his error by the sacrifices which he made for his cause. Had he chosen to side less actively with Henry, he

Confidence in parliamentary government.

Orthodoxy.

Hierarchical views.

Partizanship.

Fidelity and self-sacrifice.

¹ Above, pp. 22, 29, notes.

² Gascoigne, Introduction, p. lix.

³ De Laud. c. 53.

⁴ N. L. N. i. c. 47; Works, p. 114.

⁵ e. g. Bracton; cf. Guterbock, Henricus de Bracton, p. 40.

⁶ N. L. N. i. c. 46; Works, p. 113.

⁷ Ib. ii. c. 11; Works, p. 126.

⁸ 'Declaration upon Writings,' &c., Works, p. 535.

⁹ Above, pp. 50-1.

might no doubt have retained his position under Edward, as did most of his colleagues¹. But he not only gave up position and property to follow his master into exile and poverty, but out of his own means he helped to support his master in his time of need².

Fortescue's contemporaries.

Littleton.

Pecock.

Gascoigne.

Commynes.

It is interesting, in conclusion, to notice briefly one or two writers who were contemporary with Fortescue. The interest of Littleton is too exclusively legal to come under consideration here. But Pecock and Gascoigne were also Fortescue's contemporaries. And just as Fortescue prepared the way for changes in the political world, so did Pecock in the ecclesiastical and intellectual world. With Gascoigne the case is different. He does little more than bewail with querulous iteration the prevalence of errors and abuses, and has no constructive force whatever. He is as pessimistic as Fortescue is optimistic. And he deals mainly with ecclesiastical matters, whereas Fortescue confines himself almost wholly to the political world. But they find a common ground of complaint in the corruption and violence of the aristocracy, to which both of them trace many of the evils of the time. More interesting still is the comparison between Fortescue and his younger contemporary Commynes. Commynes entered the service of Charles of Burgundy in 1464³. Between that date and 1470 Fortescue was on the Continent, and the Lancastrian exiles were in constant communication with the Court of Burgundy. Did the aged lawyer and the youthful squire ever meet? Was it in any degree from Fortescue that Commynes imbibed his admiration for the English Constitution, and for those liberal principles of government on which it is based⁴? These are questions which it is worth while to ask, though it is unlikely that they will ever be answered.

I have said⁵ that the interest of the Lancastrian period is

¹ All Henry's judges were re-appointed by Edward except the two Chief Justices, Fortescue and Prisot. See Foss, Judges, iv. 390-3; above, p. 50, *note*.

² See Henry's letter in Waurin,

ed. Dupont, iii. 169 f., quoted above, Part II. p. 59.

³ *Mém. Liv. i. ch. i.*

⁴ For Commynes' views on the English Constitution, see *Liv. iv. ch. i; v. ch. 19.*

⁵ Above, p. 3.

largely prospective, and in this character of the period Fortescue undoubtedly shares. In all the literature of the period which I have read, I have found no single reference to any of his works. But in the seventeenth century he was constantly appealed to as an authority by the constitutional party; and his writings played a part not altogether inconsiderable in the preservation of English liberties¹.

Importance of Fortescue in the seventeenth century.

¹ See *De Laudibus*, ed. Amos, pp. 23, 28, 60, 74, 94-5, 114.

Sir John Fortescue

on the

Governance of England.

CHAPTER I.

THE DEFERENCE BI TWENE DOMINIUM REGALE AND DOMINIUM POLITICUM ET REGALE.

THESE bith ij kyndes off kyngdomes, of the wich that on is a lordship callid in laten *dominium regale*, and that other is callid *dominium politicum et regale*. And thai diuersen in that the first kyng mey rule his peple bi suche lawes as he makyth hym self. And therefore he mey sett vpon thaim tayles and other impositions, such as he wol hym self, *wit^h* owt thair assent. The secounde kyng may not rule his peple bi other lawes than such as thai assenten unto. And therefore he mey sett vpon thaim non impositions *wit^h* owt thair owne assent. This diuersite is wel taught bi Seynt Thomas, in his boke wich he wrote *ad regem Cipri de regimine principum*. But yet it is more openly tredid in a boke callid *compendium moralis philosophie*, and sumwhat bi Giles in his boke *de regimine principum*. The childeryn of Israell, as saith Seynt Thomas, aftir that God hade chosen thaim in *populum peculiarem et regnum sacerdotale*, were ruled bi hym vnder Juges *regaliter et politice*, in to the tyme that thai desired to haue a kyng, as tho hade al the gentiles, wich we cal peynymes, that hade no kyng but a man that reigned vpon thaim *regaliter tantum*. *Wit^h* wich desire God was gretly offendyd, as wele for thair folie, as for thair vnkyndnes; that

sithyn thai had a kynge, wich was God, that reigned vppon thaim politekily and roialy, and yet wold chaunge hym for a kynge, a verray man, that wolde reigne vpon hem only roialy. And therfore God manassyng hem made them to be ferde bi thondres and *oper* gasteful thynges from the hevene. And whan thai wolde not therby lefe thair folissh desire, he charged þe profet Samuel to declare vnto them the lawe of such a kynge as thai askyd; wich amonge *oper* thynges said that he wolde take from thaim thair lande and gyf it to his servantes, and sett thair childeryn in his cartis, and do to thaim such *oper* many harmeful thinges, as in the viijth chapiter of the first boke of kynges it mey apere. Wher as bi fore that tyme, while thai were ruled bi God roialy and politikely vnder Juges, it was not lefull to any man for to take from thaim any of thaire godis, or to greve thair children þat had not offendid. Wereby it mey appere that in tho dayis regimen politicum et regale was distyngued a regimine tantum regale; and that it was bettir to the peple to be ruled politekely and roialy, than to be ruled only roialy. Seynt Thomas also in his said boke prasith dominium politicum et regale, bi cause the prince that reigneth bi such lordshippe mey not frely falle into tyrannye, as mey the prince that reigneth regaliter tantum. And yet thai both bith egall in estate and in poiar, as it mey lightly be shewed and provid by infallyble reason.

CHAPTER II.

WHI OON KING REGNETH REGALITER, AND ANOTHER POLITICE ET REGALITER.

HIT mey *peraventur* be mervellid be some men, whi on reaume is a lordshippe only roialle, and the prince therof rulith it bi his lawe callid *Jus regale*; and a nother kyngdome is a lordshippe roiall and politike, and the prince therof rulith hit bi a lawe callid *Jus politicum et regale*; sithin thes ij princes bith of egal estate. To this doute it mey be answerde in this maner. The first institucion of thes ij realmes vppon the incorporacion of thaim is cause of this diuersite. Whan Nembroth be myght for his owne glorie made and incorporate the first realme, and subdued it to hymself bi tyrannye, he wolde not have it *gouernyd* bi any *oper* rule or lawe, but bi his owne wille; bi wich and for the accomplisshment *perof* he made it. And therfore though he hade thus made hym a realme, holy scripture disdeyned to call hym a kynge, *quia rex dicitur a regendo*; wich thyng he did not, but oppressyd the peple bi myght, and therfore he was a tirraunt and callid *primus tirannorum*. But holy write callith hym *robustus benator coram Domino*. Ffor as the hunter takyth the wilde beste for to sle and ete hym, so Nembroth subdued to hym the peple with myght, to haue *per* seruice and thair godis, vsing vppon thaim the lordshippe that is callid *dominium regale tantum*. Aftir hym Belus that was first callid a kynge, aftir hym is

ch. 8). That Edward IV was possessed by this taste for splendid dress in its full extent is shown by his wardrobe accounts, as the editor, Sir Harris Nicolas, remarks, pp. ii-vii. And Fortescue here contemplates further expenditure beyond that included in 'the yerely charges off his wardrober.' The Croyland Continuator also remarks on Edward's taste for magnificent apparel; but he thinks that the appearance of the English court was 'non alia quam quæ excellentissimum Regnum deceat' (p. 563). For the item of furs, specially mentioned by Fortescue, see Wardrobe Accounts, pp. 129, 133, 134; Issues of the Exchequer, p. 494.

serpes.] This is one of the many forms taken by the word *cypress* (= fine linen) in middle English. For this identification I am indebted to the kindness of Professor Skeat. The origin of the word is French *crêpe*, whence modern English *crape*. *Cresp* was translated *crisp*, which became *crips*, and was then re-cast as *cipres*. In *Piers Plowman* it is spelt as *cypirs*. *Serpes* or *serpis* is therefore for *cirpes*. (See Skeat, *Etymological Dict.*, Ed. 2, or Suppl. to Ed. 1, s.v. *Cypress*). D² not understanding the word, writes *serples*, (*surplice*), and Cb., going still further a-field, has *pearles*!

rich stones . . . and oþer juels.] Under the Lancastrian kings the royal jewels seem to have been chiefly employed as securities for some of the many loans which those monarchs had to raise, or for wages and other payments due; e.g. under Henry IV, P. P. C. ii. 121; under Henry V, ib. iii. 9; Rymer, ix. 284; under Henry VI, P. P. C. v. 132, where the king orders all his royal jewels to be coined, sold, or pledged as quickly as possible for the preservation of his kingdom of France and Duchy of Normandy. This was in 1441. The crown itself was not unfrequently in pawn. In 1430 other jewels had to be pledged to the Abbot of Westminster in order to release the crown which was to be used at the Coronation of Henry as King of France (Rymer, x. 455). In P. P. C. v. 61, and Rymer, xi. 76, we have lists of the jewels given as New Year's gifts by the king in 1437 and 1445. In both these years John Merston was keeper of the royal jewels. The collecting of precious stones seems to have been a perfect passion with Henry VII. Between the seventh and twenty-second years of his reign he spent above £110,000 on them (*Exc. Hist.*, pp. 86-90). The Emperor Frederick III had the same mania. Perhaps they regarded them as a safe investment. The author of the

Royal
jewels in
pawn.

Henry VII
and Fred-
erick III
collectors
of precious
stones.

Epitome, in a marginal note on this passage, asserts that Henry VIII once gave £50,000 for a single jewel.

riche hangynges . . . vessail.] In June 1468, Edward IV pays £397 for plate, some of which was for his chapel; and £984 for various pieces of arras (*Issues of Exchequer*, p. 491). The Croyland Continuator says that none of Edward's predecessors equalled him 'in comparandis vasis aureis et argenteis, tapisseriis, ornamentis tam Regalibus quam Ecclesiarum pretiosissimis' (p. 559).

his chapell.] I have not noticed any other instances of extra-Chapels ordinary expenditure on the royal chapel. The officers of the royal. chapels royal formed part of the household, and their salaries therefore came under the head of ordinary expenditure. For the dean, chaplains, clerks, yeomen, and children of the chapel, serjeant yeoman and groom of the vestry, see *Liber Niger*, Edw. IV, Ordinances of the Household, pp. 49-52. They are frequently mentioned in the documents of the period. In Cal. Rot. Pat. p. 267 b (7 Henry V), there is a commission 'de pueris pro capella Regis capiendis.' In P. P. C. iii. 104 the names of the 'schyldren of the schapel' are given (1423).

horses, &c.] I have found one or two entries illustrating this item of expense. In 1434 four *summarii* (sumpter-horses) cost 20 marks. In 1440 a palfrey costs 13 marks. In 1443 six horses cost £30 (P. P. C. iv. 216; v. 119, 230). In 1454 during Henry's illness an ordinance was issued for the regulation of the royal stables (P. P. C. vi. 210-14). This was probably in connexion with the reform of the household which was made about the same time (see notes to last chapter, p. 220, above). In the *Liber Niger* of Edward IV the annual expense for the purchase of horses and vehicles and repairs is estimated at £520 (Ordinances of the Household, p. 21). In Rot. Parl. v. 154 a, there is a curious petition from the Commons against the proceedings of 'oon William Gerveis . . . cleping hymself the Kyng's Corser' in purveying horses for the king. It was prayed that no one should 'take no Palfrey for the Kyng but of the valu of x. marcs or above; ne Courser but atte valu of x. li. or above; no charie hois, but at the valu of iiiii marcs or above; ne no somer hors, but at the valu of iiiii marcs or above.' The petition was refused. This was in 1449. On the enormous stud kept by Edward III, cf. S. C. H. ii. 553.

The royal
stables.

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