A SHORT

ENGLISH CONSTITUTIONAL HISTORY

FOR

LAW STUDENTS

MR. EDGAR HAMMOND, B.A. (HONS. OXON.)

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BY

EDGAR HAMMOND B.A. (OXON)

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PREFACE

This little book has been written expressly for students taking the Preliminary Examination in Law at Oxford University at which a paper is set on English Political and Constitutional History, and it is hoped that it contains everything which is necessary for the paper so far as constitutional history is concerned. It should be suitable for Bar Students in their Constitutional Law paper and for Students at Cambridge University and those taking the Intermediate Examination of Law at the London University.

The author desires to point out that it is little more than a "cram book" and is not meant to take the place of such works as Taswell-Langmead's Constitutional History or Anson's Law and Custom of the Constitution; it should be read merely for the purpose of refreshing one's knowledge preparatory to taking an examination and if used for this purpose the author trusts and believes that it will fill a long-felt want which from his experience in coaching students he observes to exist.

E. H.

Oxford,

December, 1919.

CHAPTER I.

THE CHARACTERISTICS OF THE ENGLISH CONSTITUTION.

THE CHARACTERISTICS OF THE ENGLISH CONSTITUTION.

A. Professor Dicey has said that the Constitution of a country "denotes those of its rules or laws which determine the form of its government and the respective rights and duties of the government towards the citizens, and the citizens towards the government."

B. There are four characteristics of the English Constitution:—

I. *It is Unwritten in Character.*

a. In this respect the Constitution of our country differs from the constitutions of those countries, like France, Belgium and United States of America, which have a written constitution.

b. Our statute law, it is true, is written, but the Constitution is not the product of any express legislative act at one particular time but the result of historical growth through many centuries.

c. The constitution of those countries which are said to have a "written constitution" was the embodiment of the constitutional laws of the particular country in a legislative measure; and thus the constitution has its source in that legislative measure.

II. *It is based to a large extent upon Custom and Convention.*

a. What we call our constitutional laws are not laws in the proper sense at all: their breach would not result in legal proceedings. They are conventions pure and simple, but in practice they are very rigidly enforced, because their breach would quickly

involve the Government in a breach of the real laws of the country and so subject the members of the Executive to the jurisdiction of the Courts. Consider what would happen were Parliament not summoned regularly: the greater part of the country's taxes could not be collected; any attempt to collect them would be illegal and the Ministers and their subordinates would be brought before the Courts.

b. In our system there is no difference between
   i. ordinary laws,
   ii. fundamental laws, as there is in those countries which have a written constitution. Remember that the latter cannot be altered in the same way that the ordinary laws can be changed, but require some special procedure, as, *e.g.*, in United States of America, where it is necessary to have the concurrence of the various Legislatures in at least three-fourths of the separate States. It is the constitutional laws that are the fundamental ones in such countries as have a written constitution.

III. *It is Flexible in Character.*

a. This implies that fundamental changes may be brought about by an ordinary act of the Legislature in the ordinary way passed by the ordinary legislative organ.

b. It stands in marked contrast with those countries having a written constitution by which it is provided that the fundamental or constitutional laws shall only be altered by some special and peculiar procedure, as, *e.g.*, in United States of America, as we have already seen.

IV. *It is Unitary in Character.*

a. This is a contrast with what is known as the "federal system."

b. The unitary system involves a central Government which pervades the whole country, as in Great Britain.

c. The federal system involves communities, which have at one time been independent of each other, incorporated in a union. The central Government then deals with such matters as foreign policy, defence, postal communication, etc., while each one of the Federal States deals with matters concerning its own affairs each of them by its own Legislature. Switzerland and United States of America are examples of the federal system.

C. In addition to the four essential characteristics of our Constitution, there are certain other features which require attention: firstly, the "absolute sovereignty of Parliament"; secondly, what is known as the "rule of law."

I. *The Absolute Sovereignty of Parliament* is not difficult to appreciate. It signifies that there is nothing which Parliament cannot legally do. The only limits which exist on its powers are not legal limits but physical and moral ones. It is physically impossible for Parliament to turn a man into a woman, though legally the proposition presents no difficulty. Parliament can enact that everybody over forty years of age shall be beheaded, but the moral conscience of the individuals who compose the Legislature makes the passing of such an Act impossible.

II. *The Rule of Law* signifies that everyone in the country is bound to conform to the laws of the land (except, of course, the King himself). Though we have a body of military law in this country to which members of the military forces must conform, nevertheless they are not thereby excused from obedience to the general law of the land, and must submit to it just as an ordinary civilian is bound to do.

CHAPTER II.

THE CROWN.

The Crown.

I. It must be borne in mind that the Crown is an essential part of the supreme Executive, and that all executive acts are done in the name of the Sovereign.

II. The Crown is also one of the three constituent parts of the Legislature in this country, the other two being the House of Lords and the House of Commons.

We must now consider the prerogatives of the Crown.

a. *The direct prerogatives.* They were formerly much wider than they are at present. They consisted of

1. Dispensing power.
2. Suspending power.
3. Arbitrary taxation.
4. Arbitrary imprisonment.
5. Legislating by proclamation.
6. Maintaining a standing army in time of peace without the consent of Parliament.
7. Summoning, proroguing, and dissolving Parliament.
8. Appointing ambassadors.
9. Making treaties of peace and war.
10. The Crown head of the Army and Navy.
11. Appointing judges.
12. Pardoning criminals.

At the present day, however, only 7, 8, 9, 10, 11 and 12 are existing, the others being obsolete.

Further, the Crown's right to veto a Bill is really obsolete in practice, though it still exists in theory.

b. *Prerogatives by exception.*

1. The King never dies. (Statutes passed in the first year of Charles II. are numbered "12 Charles II.").

2. The King can do no wrong.
3. The King can never be a minor.
4. Crown not affected by ordinary acts of Parliament, etc.

We must now deal with those prerogatives which relate to the summoning, proroguing, and dissolving of Parliament.

Although the act in question is done by the Crown, it is always on the advice of some Cabinet.

a. *Summons to Parliament.*

i. The Provisions of Oxford said that there should be *three* Parliaments a year.
ii. A statute of Edward III. said Parliament should meet "once a year or more if need be."
iii. The Yorkists summoned Parliament irregularly.
iv. Under the later Tudors and James I., Parliament was more or less regularly summoned.
v. Charles I. between 1629–1640 summoned no Parliament at all.
vi. Charles II. summoned no Parliament at the end of his reign for four years.
vii. The Triennial Act, 1694, said the *interval* between one Parliament and the summoning of another was not to exceed *three years*.
viii. In these days it is absolutely necessary for Parliament to meet every year to pass
    a. The Army Act; and
    b. The Annual Appropriation Act. Otherwise discipline could not be maintained in the royal forces and the great bulk of the country's taxes could not be legally collected or expended.

b. *Proroguing of Parliament.*

This may be effected in either of two ways:—

i. The Sovereign may come in person to the House of Lords; or
ii. It may be accomplished by the Lord Chancellor in the exercise of a "special commission" issued to him by the Crown.

c. *Dissolution of Parliament.*

This may take place in two ways :—

i. By effluxion of time.

a. The Triennial Act, 1641, limited the life of a Parliament to *three years;* but this statute was repealed at the time of the Restoration.

b. Charles II. kept the Cavalier Parliament in power for seventeen years.

c. The Triennial Act, 1694, said the interval between one Parliament and another was not to exceed three years, but this, it must be noted, had no effect whatever on the duration of the life of Parliament.

d. The Septennial Act, 1766, limited the life of Parliament to seven years.

e. The Parliament Act, 1911, reduced it to five years, which is now its present duration.

Of course Parliament can pass a measure prolonging its own life, as it did during the Great War, but this is only likely to be done in times of great national crisis.

ii. By the exercise of the royal prerogative.

a. If Parliament is sitting it is the usual practice to prorogue it first and then to dissolve it by the issue of a "Proclamation" by the "King in Council."

b. N.B.—In former times the death of the Sovereign *ipso facto* dissolved Parliament, but

i. By statute of 1696 Parliament was to continue six months after the demise of the Crown unless dissolved sooner by the new King.

ii. By the Representation of the People Act, 1867, the death of the Sovereign is no longer to affect the duration of Parliament.

We must now consider the mode in which the Crown communicates with Parliament.

A. *The Personal Presence of the King in Parliament.*

a. Originally the King presided in person, but later on he only sat in the House of Lords.

Charles I. was the only King to violate this rule and enter the House of Commons.

b. Now, constitutionally, the King may not even listen to a debate in the House of Commons.

i. Charles II. used to attend debates in the House of Lords, but had unfavourable comments made on him for so doing.

ii. Now the Sovereign never attends a debate even in the Lords; though in theory he might listen to a debate from the throne.

c. It is usual for the King to open Parliament in the House of Lords, but at the end of a session the royal speech is generally delivered by the Lord Chancellor under a "royal commission."

B. *Royal Messages to Parliament.*

During a session a communication may be made to Parliament either formally or informally.

a. *Formally:* in writing under the Royal Sign Manual delivered to the Lord Chancellor in the Lords, or the Speaker in the Commons.

b. *Informally:* being delivered verbally by a Minister, or officer of the royal household, or mentioned casually during a debate.

Royal Assent to Bills.

a. In early times a "petition" was presented to the Crown with a request to the King to frame a statute redressing some grievance or other.

If the King agreed he would endorse the petition with the words "Le Roi le veut," but on the other hand, if he did not agree, he would endorse thereon the words "Le Roi s'avisera."

b. After the 14th century, to prevent the Crown from defeating the object of a petition which he professed to accept but did not in fact do, as would afterwards appear by his drafting a statute contrary to the text of the petition, the practice arose of presenting the petition in the

A Statute is the work of the King in Parliament.

i. It is an enunciation of rules of law.
ii. Permanent in duration (unless repealed).
iii. *Only* revocable by the authority which made it.

An Ordinance, is the work of the King in Council.

i. Putting the law into effect.
ii. Temporary in point of duration.
iii. Revocable by the authority which made it.

form in which the statute was intended to take and it was called "a Bill." This the King had either to accept or reject *in toto*.

c. Under the *Tudors* the exercise of the royal "veto" was seldom used, because they were seldom asked to assent to a measure which they disliked.

d. The *Stuarts* used frequently to assent to a Bill which they disfavoured, relying on their prerogative to nullify its effect by means of the suspending and dispensing powers.

e. William III. used his veto frequently, because he was personally unpopular with the House of Lords, and could not use any suspending or dispensing powers as his predecessors had been able to do.

f. Anne was the last Sovereign to use the veto, doing so in the case of the Scotch Militia Bill, 1707.

g. The veto has really become obsolete since the Revolution, owing to the transition from "the government by the Crown through the instrumentality of its Ministers, to that of the government by the Ministers in the name and through the instrumentality of the Crown."

Claims which the Crown formerly made in virtue of its supreme executive power to exercise legislative authority.

a. Edward I. sought to change the law merely by an "ordinance,"* thus usurping the power of the Legislature.

    i. Parliament tried to prevent this, *e.g.* by a declaration in *1322*.

    ii. Nevertheless the King used to continue this practice and Parliament hit on the device of giving statutory effect to ordinances already passed to remove the possibility of a dispute, *e.g.* the Statute of Staple embodied the Ordinance of Staple, 1340; the Statute of Labourers embodied the Ordinance of Labourers.

b. Richard II., who became absolute in power, obtained from Parliament the complete subjection of its legislative powers.

The Case of Proclamations 1610: here new buildings in London were prohibited by the King from being erected, and also the making of starch from wheat was prohibited. The opinion of the judges was sought and they considered that no *new* law or penalty could be imposed in this way by the issue of a royal proclamation.

c. Under the Lancastrians the Ordinance disappeared.
d. Under the Yorkists it appeared again under the name of "proclamation."
e. During Henry VIII.'s reign the judges declared that proclamations could only advertise to the people the law and warn them against its breaches, but *could not create new laws.*

    However, Henry VIII. obtained the Statute of Proclamations from Parliament, the effect of which was to make the proclamations issued by him lawful, both past and future.

f. The Statute of Proclamations was *repealed* under Edward VI.—nevertheless the King continued to issue them.
g. Mary and Elizabeth both issued them.
h. In James I.'s time, Chief Justice Coke declared *against* the validity of proclamations by which new laws were established.

    The Case of Proclamations.*

i. Charles I. was able to issue them so long as he had the Court of Star Chamber to enforce penalties for their infringement.
j. Only on *one* occasion since *1641* has the Executive attempted to alter the law by a proclamation; this instance was in the middle of the 18th century, when the export of corn was prohibited.
    i. This, however, was done in an emergency, and
    ii. An Act of Indemnity was obtained from Parliament therefor.
k. At the present day Proclamations are issued by the King in Council; but *no new law* can be created thereby (except in the case of Crown Colonies, which are ruled by the King in Council). They are used merely for the purpose of
    i. Drawing people's attention to the existing law.
    ii. Issuing regulations, the power to do so having been previously given by statute, *e.g.* under the Defence of the Realm Act

Thomas v. Sorrell (1674). A statute of Edward I. had prohibited the selling of wine without a licence. James I. granted a dispensation to members of the Vintners' Company. The judges decided that the Crown had power to grant the dispensation.

Godden v. Hales (1688): The Test Act of Charles II.'s reign prohibited anyone who was not in communion with the Church of England holding any office in the Army. James II. bestowed commissions upon Roman Catholics. The Courts held that the royal dispensation was a sufficient defence when pleaded.

The Case of the Fellows of Eton College: Queen Elizabeth had granted a dispensation against a statute of the college which forbade the fellows holding any ecclesiastical livings along with their fellowship: it was decided by the Courts that the dispensation still holds good.

many regulations were thus issued during the Great War.

iii. Exercising the royal prerogative (of course where it is legal to do so), *e.g.* summoning and dissolving Parliament.

The claim of the Crown to interfere with the operation of existing law by virtue of its dispensing and suspending powers.

I. *The Dispensing Power.*

This power was claimed by the Crown (and formally without doubt it certainly had a legal right to its use), whereby the effects of an existing law might be dispensed with in the case of an individual or class of individuals.

a. It was a very necessary power in former times when Parliament met rarely, and thus enabled the Crown to grant a speedy remedy against the inconvenience of existing laws.

b. Unfortunately, however, the Kings soon began to abuse the use of the power.

i. In the *14th century* the Commons protested against its exercise. But in spite of opposition the Crown continued to exercise it in reference to matters of Trade and Religion.

Thomas *v.* Sorrell.*
Godden *v.* Hales.*

ii. *The Bill of Rights, 1689*, declared that "the pretended power of dispensing with the law as hath been assumed and exercised of late is illegal."

iii. Note that a dispensation granted by the Crown before 1689 is, however, still in force and valid at the present day.

Case of the Fellows of Eton College.*

While discussing the dispensing power one should note that often the *Tudor and Stuart* Monarchs used to grant "monopolies" for the exclusive manufacture of certain goods, or for the buying and selling of certain commodities. This, however, was *not* legal at common law except in the case of some new article when granted to the inventor thereof.

The Case of Monopolies (Darcey v. Allein) 1602: Here there had been a grant of a patent for the exclusive right of the making of playing-cards: held, that it was a monopoly and contrary to law; the judges only admitting the Crown's right to such a grant in the case of a new invention.

The Great Case of Monopolies (East India Co. v. Sandy) 1683: A grant to the East India Company of the sole right of trading in the East Indies was held valid.

The Seven Bishops' Case: Seven bishops petitioned the King that they might be excused from having the "Declaration of Indulgence" read throughout the churches in their dioceses. James II. said this petition was a seditious libel and the bishops were arrested and prosecuted. The jury acquitted them, finding that the petition did not amount to a seditious libel. The case does not decide that the King had no power to suspend the law.

The Case of Monopolies.*

a. The Statute of Monopolies (James I.) allowed a monopoly to be granted for twenty-one years to the inventor; (and this Act has now been incorporated into the Patents and Designs Act, 1907). However, the rights of corporations and companies were expressly excepted from the statute, and therefore a monopoly granted to them was perfectly valid.

The Great Case of Monopolies.*

b. In 1694 a new charter was granted to the East India Company and in consequence of this the House of Commons passed a resolution that all subjects of the Crown have an equal right of trading in the East Indies unless restrained by Act of Parliament.

II. *The Suspending Power.*

This was the right of the Crown to suspend the operation of a particular statute *altogether* and in favour of *all persons.*

a. In early times it was not often exercised; and when it was it was usually confined to matters of religion, *e.g.* the Statute of Provisoes; and it fell practically into disuse.

b. Charles II. revived its use by issuing his famous "Declaration of Indulgence," alike for Protestant, Nonconformist and Roman Catholic, against the statutes imposing religious disabilities.

There was, however, a popular outcry against it.

c. James II. also issued a Declaration of Indulgence.

The Seven Bishops' Case.*

d. The Bill of Rights, 1689, declared that "the suspending power as it hath been assumed and exercised of late is altogether illegal."

The Succession to the Crown.

It is a popular mistake to believe that the eldest son of a king has always succeeded his father throughout English history.

The English King is really elected by the people, who have a strong regard to the claims of primogeniture.

a. In Saxon times the Kings were elected by the Witan. Often an eldest son was passed over in favour of some other. But the successor to the Crown was always of the royal blood and family.

b. After William I. had established himself by Conquest he was elected by the Witan and duly crowned in Westminster Abbey.

c. Successive Kings always obtained the sanction of the Witan, or in later times Parliament, to their right.

d. Henry VIII. obtained from Parliament the power to make a bequest of the Crown by will.

e. The right to succeed to the Throne at the present day is governed by the Act of Settlement; whereby the Crown was settled upon Sophia, Electress of Hanover, and her heirs, provision being expressly made that only those holding the Protestant faith were to succeed.

Revenues of the Crown.

There were two sources from which the Kings gained their revenue.

a. Hereditary Crown lands.

b. Taxation: legal and illegal.

The Norman Kings consulted their advisers before raising taxes, but this was really more a matter of form than anything else. It was only very gradually that Parliament secured a hold over the finances of the country and prevented the Crown from raising taxes arbitrarily.

i. The Magna Carta prohibited arbitrary taxation. "Aids" were sometimes refused to Henry III., and in the Charter of 1225 there appears for the first time the principle that grievances must be redressed before supplies are granted.

ii. The Confirmatio Cartarum (1297) under Edward I. forbade taxation not authorized by Parliament: tallage was, however, not expressly included, and Edward I. continued to raise it.

Bate's Case (1606): James I. imposed a duty of so much per cwt. on currants. Bates, who was a merchant, declined to pay the duty. The Court of Exchequer gave judgment in favour of the Crown, declaring that

a. The King had entire control over foreign trade.

b. The royal power was absolute.

Case of Ship Money (1637): Under the Plantagenets it was customary for the Crown to call on various seaports for ships for the country's defence. In 1635 Charles I. made a demand on the inland towns to pay money instead of supplying ships, and John Hampden refused to pay. His counsel admitted in his defence that in times of national danger the Crown might demand the provision of ships, but he showed clearly that at this time there was no danger at hand. The judges decided in favour of the Crown. Their decision, however, was not popular in the country, and in 1641 the Long Parliament expressly declared that the levying of ship money was illegal.

iii. Under Edward III. Parliament definitely established that redress of grievances must precede the grant of supplies.

iv. Under Henry VI. the auditing of accounts was first commenced, but was subsequently permitted to lapse.

v. Although direct taxation was being less frequently resorted to by the Crown without Parliamentary sanction, there remained open the possibility of raising taxes indirectly by means of the royal prerogative relating to trade and custom duties which the Kings made the most of.

vi. Henry VII., with the Star Chamber ready at hand to enforce his bidding, raised forced loans and benevolences.

vii. Under Henry VIII. and the remaining Tudor Sovereigns arbitrary taxation became more rare, the Crown being able to secure fairly freely from Parliament all that was required.

viii. Under the Stuarts the question of illegal taxation was brought to a head; these Monarchs, unlike the Tudors, were unable to keep peace with their Parliaments and consequently were forced to raise money in any way possible in order to dispense with the necessity of summoning Parliament at all. Two well-known cases serve to illustrate the history of the period:

  i. Bate's Case, under James I.*

  ii. The Case of Ship Money, under Charles I.*

  Both these cases were decided in favour of the Crown; but it must be remembered that the judges in those times were very much under the influence of the Crown and held their office during the "royal pleasure."

ix. After the Revolution arbitrary taxation by the Crown ceased.

  a. Under William and Mary the audit of accounts was re-established, and the "Civil List" was instituted for the expenses of the King and the Royal Household, Parliament granting a certain amount therefor:

the deficit the King had to pay out of the hereditary dues from the Crown lands.

b. Under Anne and George I. debts which had arisen were paid off by Parliament.

c. George III. surrendered the hereditary dues for a fixed sum of money.

d. When the necessity arose the Civil List was increased.

e. William IV. surrendered the hereditary revenues of Scotland, and at the present day the sole income of the Crown (except from private property) is derived from the Civil List.

Thus it is that no taxes are now raised by the Crown without the sanction of Parliament. And the taxes that are raised are properly appropriated and audited. The King's personal expenses being provided for, the public funds are administered in accordance with the purposes for which they were sanctioned. Owing to the Cabinet system of government, arbitrary taxation cannot again arise, because the Cabinet are responsible to the House of Commons and so to the electorate, and it is upon their request and recommendation that supplies are granted.

CHAPTER III.

PARLIAMENT.

A. Historical Development of the Legislative Organ.

B. The House of Lords.

C. The House of Commons.

D. Conflicts between the two Houses.

E. Short Particulars of Famous Parliaments.

Section A.

Historical Development of the Legislative Organ.

Saxon Times.

a. The government was carried on by free discussion in a general assembly of the whole body of free warriors.

b. Gradually a body developed which was composed of members of the Royal Household. This body was known as the "Witenagemot."

   i. During this period new laws were made by the King with the concurrence of the Witan.

   ii. On the death of the King his successor was elected by the Witan.

Norman Times.

a. The regular gathering composed of members of the Royal Household and the chief men of state, *e.g.*, the Justiciar, the Constable, etc., which succeeded the old Saxon Witan was called the "Curia Regis."

   This body, as will be seen in a later chapter, was the forerunner of the King's Courts and the Privy Council.

b. There was a far larger body known as the "Magnum Concilium." It was composed of all the great nobles and tenants-in-chief, but owing to its size it was seldom called together. William I., however, assembled it at Salisbury, 1086. It was this body which was the forerunner of the present House of Lords.

Early Plantagenets.

a. The Magnum Concilium, or Commune Concilium as it is sometimes called, was summoned more frequently than in Norman times.

The Minor Clergy.—They attended Parliament reluctantly and preferred to meet in their own convocations. Eventually they ceased to attend Parliament at all, but in 1605 they suddenly sought to resuscitate their ancient right to attend. In 1664 an arrangement, however, was come to between Lord Clarendon and Archbishop Sheldon whereby the clergy should be taxed in the same way as the laity (for hitherto they had taxed themselves) and the clergy, instead of attending Parliament, were given what they had not before, namely, the right to vote for knights of the shire as freeholders. Even now the writs summoning the bishops to Parliament contain the "praemunientes clause" which bids them bring representatives of the minor clergy.

i. The Magna Carta provided for the attendance of the tenants-in-chief by an individual summons.

ii. The minor tenants were not summoned individually. In time they ceased to attend and a means had to be devised to bring them back to the assembly. This was done by the privilege of representation.

b. During this period the King merely sought advice from the Council when he so desired.

i. The legislation was generally declaratory in character.

ii. The Magna Carta (1216) provided that "no scutage or aid other than the three recognized feudal dues were to be paid to the King nisi per commune concilium."

The three feudal dues were:—

a. For knighting the King's eldest son.
b. Marriage of his eldest daughter.
c. Ransom of the King's body.

The Evolution of the Modern Representative Parliament.

a. Simon de Montfort's Parliament of 1265 was really the first to which were summoned representatives from the boroughs and shires.

b. Edward I.'s famous Model Parliament was summoned in 1295.

i. The composition of this Parliament may be said to contain the three estates of the realm, the Clergy, the Baronage and the Commons.

ii. To this Parliament were summoned:

a. The archbishop, bishops and abbots by individual writs, the two former being directed to cause the attendance of representatives of the minor clergy.*

b. Barons, who were also summoned by individual writs.

c. The Commons. Writs were addressed to the sheriffs throughout the country bidding them cause the election to be made of *two knights* from each shire, *two citizens* from each city and *two burgesses* from each borough.

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- c. The evolution of modern representation starts from the Commune Concilium and was brought about by:—
  - i. The separation of the greater from the lesser barons.
  - ii. The schemes of baronial reform prompted by the inaptitude of Henry III.'s government.
  - iii. The gradual formation of a national assembly.
    - a. This was the work of Edward I. It was in 1295 that his "Model Parliament" was summoned, but even as far back as 1275 a Parliament very similar in constitution seems to have been called together by the same Monarch.
    - b. Stubbs says the marks of an ideal national assembly are
      - i. The presence of estates; and
      - ii. The concentration of local government machinery (communitas communitatium).
  - iv. The change of the estates of the realm into *two* Houses of Parliament.
    - a. The first occasion when the two Houses sat separately was in 1332.
    - b. Towards the end of the 14th century the practice of sitting in two Houses became definite.

SECTION B.

THE HOUSE OF LORDS.

I. It must be noted that the House of Lords and the Peerage are by no means identical.

- a. There are peers who have not a right to sit in the House of Lords.
- b. There are people who sit in the House of Lords who are not peers, *e.g.*, the Lords Spiritual and the Lords of Appeal in Ordinary.

The House of Lords at the present time is composed of

A. *The Hereditary Peers of the United Kingdom.*

a. After 1295 any person who had been summoned to Parliament *individually* obtained a perpetual right for himself and his heirs to a continuation of the summons as soon as he had once sat in answer to the writ.

b. Thus arose the hereditary Peerage of England, which became that of Great Britain after the Union with Scotland in 1707 and that of the United Kingdom of Great Britain and Ireland after the Union with Ireland in 1801.

B. *The Representative Peers of Scotland.*

These are not hereditary lords of Parliament. By the Act of Union (1707) their number is fixed at sixteen, and they are elected by the peers of Scotland at the beginning of each Parliament; no individual writ of summons is issued to them.

C. *The Representative Peers of Ireland.*

By the Act of Union (1801) their number is fixed at twenty-eight; they are elected for life, and they do receive an individual summons at the commencement of each Parliament.

D. *The Lords Spiritual.*

Their number is fixed at twenty-six.

Always the two Archbishops and the Bishops of London, Durham and Winchester; the remaining twenty-one seats are allotted according to seniority.

i. They transmit no hereditary title.

ii. They are not entitled to be tried by the House of Lords for treason or felony.

E. *The Lords of Appeal in Ordinary.*

These are statutory life peers created by the Appellate Jurisdiction Act, 1876, for their judicial capacity.

They are entitled to be tried by their peers.

Berkeley Peerage Case. Sir Maurice Berkeley became entitled to land which had formally belonged to the baronage of Berkeley. He claimed because he held the land he was *ipso facto* entitled to a writ. Held, he was not.

II. *Restriction of King's Right to Create Peers.*

a. It is doubtful whether the Crown can create a peer of Scotland now; it is not done in practice.

b. The Act of Union with Ireland (1800) provided that until the number of the Irish Peerage fell to 100 the Crown could only create a new peer upon the extinction of three existing peerages: when it falls to 100 it is not to fall any lower, so that a new peer must be created when an existing one becomes extinct.

c. A peerage cannot be surrendered to the Crown.
Grey de Ruthyn's Case (1640).
The Purbeck Case (1678).
Lord Mowbray's Case (recent).

d. The Crown cannot create a peerage with limitations which involve a variation from the ordinary law of the country with regard to descent.

See the Devon Peerage Case.
See the Wilter Peerage Case.
See Buckhurst Peerage Case.

e. Beyond these restrictions the Crown's powers are unlimited, though Lord Sunderland, by his Peerage Bill of 1719, would have prevented an increase to the House of Lords beyond six.

III. *The Limits of the Crown's Right of Summons to the House of Lords.*

a. The Crown cannot summon simply because a man holds a barony.

Berkeley Peerage Case.*

b. It cannot summon a Scotch or Irish peer (other than the representative peers), but it may confer on him a peerage of the United Kingdom and so summon him in this capacity.
See Duke of Brandon, 1787.

c. The Crown cannot summon any bishop it chooses.

d. The Crown cannot summon a man in pursuance of a patent limiting his peerage.

The Wensleydale Peerage Case. Baron Parke was created a Lord of Parliament for life under the title of Lord Wensleydale: held, that though the Crown could create a life peerage, it could not summon him to Parliament.

The Wensleydale Peerage Case.*

But this can now be done under the Appellate Jurisdiction Act, 1876, in the case of Lords of Appeal in Ordinary.

e. The Crown cannot summon an alien.

f. The Crown cannot summon a bankrupt peer.

IV. *Disqualifications for Sitting and Voting.*

Although the Crown might summon them, they cannot sit and vote:

a. Infants.

b. Felons.

c. Those sentenced by the House.

d. Those who would not take the oath or affirmation.

V. *Privileges of the House of Lords.*

i. The right of personal access to the Sovereign (enjoyed individually through their Speaker by the Commons).

ii. Freedom from arrest.

Extends to their servants also.

(Not so in the case of the Commons.)

iii. Freedom of speech.

a. This right was more easily gained than it was in the case of the Commons.

b. Charles I. attempted to withhold a writ of summons to the Earl of Bristol, because he had attacked the Government, but the earl vindicated his claim against the King.

c. During the 18th century, there are cases of the Crown dismissing a member of the House of Lords from minor political offices for opposing the Government.

iv. Right to provide for the due constitution of the House. This may be by:—

a. Demanding that members shall be duly summoned.

b. Declaring a member to be not entitled to vote.

i. The Lords can suspend for ever.

ii. The Commons only for the session.

c. Determining claims to peerages.

As a matter of right:
- i. When the validity of a new creation is in dispute.
- ii. Where a disputed claim to succeed to an existing peerage of Ireland has arisen.

Upon reference from the Crown:
- i. When there is a dispute as to an existing peerage of the United Kingdom.
- ii. Or Scotland.

v. The right of exclusive control over all matters which arise within the walls of the House; and of giving effect to their privileges by committing for contempt.

   i. The Lords may commit for a definite number of years.

   ii. The Commons only for the current session.

vi. The right of each peer accused of treason or felony to be tried by his fellow peers.

   i. The Lords spiritual cannot claim this right.

   ii. Lords of Appeal in Ordinary can.

vii. The rights of a dissentient peer to record a protest against resolutions adopted by the majority of the House.

viii. The right of voting by proxy.
This was, however, abandoned in 1868.

SECTION C.

THE HOUSE OF COMMONS.

I. *Qualification of Members.*

Anybody may be a member of the House of Commons except:—

a. An infant (this rule was, however, broken in the case of Charles Fox and Russell).

b. A lunatic. If after election a member becomes a lunatic, the constituents may petition the House to declare the seat vacant if the member is confined in an asylum.

Under a statute of Victoria, anyone concerned in committing a member to an

asylum must certify the fact to the Speaker; further, after a period of six months, upon a report to the effect that the insanity continues, which is laid on the table of the House, the seat becomes vacated.

c. An alien (of course, a naturalised British subject is quite eligible).

d. A peer. If he is an hereditary peer of the United Kingdom or a peer of Scotland, whether one of the representative peers or not.

   But an Irish peer other than one of the twenty-eight chosen to sit may represent a constituency in England or Scotland.

e. One in Holy orders. By statute this applies to clergy of the Church of England and Roman Catholic priests, but the disqualifications are removed on the Holy orders being divested.

   A nonconformist minister, however, is quite eligible for Parliament.

f. Service under the Crown in certain offices; *e.g*, judges, a member of the Permanent Council for India.

   i. A returning officer may represent a constituency other than the one for which he acts.

   ii. A sheriff also, but not for the place where he acts.

   iii. Certain offices may be accepted by a member of the Commons, but *ipso facto* he will require re-election, *e.g.*

      i. The Solicitor-General.

      ii. Any office created since 1705.

g. One who holds a pension during the royal pleasure; but this does not include

   i. Men in the Army or Navy.

   ii. Men in the Civil Service.

h. One who contracts with the Government; whether he does so directly or indirectly.

i. Traitors and felons; unless the sentence has been duly served or a pardon granted, or the sentence did not exceed twelve months' imprisonment.

j. A bankrupt.
   i. If already adjudged bankrupt one cannot be elected.
   ii. If the bankruptcy is subsequent to election the seat is vacated unless within six months a discharge is obtained accompanied by a declaration stating that the bankruptcy was due to no fault of the bankrupt himself.

k. A candidate found guilty of corrupt practices at an election.
   But after seven years he may sit for another constituency.

When a candidate has been duly elected a member of the Commons, he ceases to be a member

1. By death.
2. By incurring one of the disqualifications.
   When desirous of resigning, an application may be made for the office of the stewardship of the Chiltern Hundreds or the Exhertorship of Munster.
3. By the House declaring the seat vacant upon some serious ground, such as gross misconduct. (This was done in the case of John Wilkes.)

II. *Historical Development of Origin of the Franchise.*

A. *The County Franchise.*

a. Originally knights of the shire were elected by the inhabitants of the shire, who were summoned to meet by the Sheriff of the Shire Court.

b. During the Middle Ages the activity of the Shire Court declined and the local inhabitants became slack in attendance, and consequently the nomination of the candidate might fall into the hands of a few interested persons if the sheriff neglected to give adequate notice of the election.

c. In 1432 (Henry VI.) important modifications were made, and the exercise of the county franchise was limited to the residents in the shire holding *freehold property to the annual value of forty shillings.*

The small freeholders to whom the county franchise was restricted became the backbone of the nation for the next 400 years. They remained the only uncorrupt element in the electorate from 1660 to 1832.

B. *The Borough Franchise.*

a. Originally most of the great boroughs under charters of incorporation received the right to send members to Parliament. In different boroughs the right to vote was conceded on widely different grounds, *inter alia* :—

i. Burage tenure—the holding of land of this peculiar tenure.

ii. Payment of scot and lot—that is, the payment of contributions for local or national purposes.

iii. Corporate office—being a freeman of the borough.

b. As the franchise was so limited, it is easy to see how it became so corrupt, because it was not popular to send representatives to Parliament, as the voters had to contribute towards a salary for their member.

c. But under the Tudor Monarchs there was an extraordinary development of political activity, and the right to send a representative was thought to be a matter of urgent importance.

d. The influences that tended towards the corruption of the electorate were :—

i. The creation of new boroughs by the Crown in which the franchise was restricted to a group of persons who were practically the royal nominees.

ii. Old charters were cancelled and new ones granted in their place.

iii. The right to decide disputed elections was left to a committee of the House of Commons and the matter was decided purely on party grounds.

C. *Great changes introduced in the 19th century.*

a. By the time of the 19th century corruption and bribery at elections were rampant, and the House of Commons was hardly representative of the nation. The county franchise had been restricted to the 40/- freeholders and, owing to the influence of the "Industrial Revolution," these were fast disappearing. The borough seats were far worse than the county: some were in the gift of noblemen; others in the gift of the Crown. From all these causes it was clear that reform was much needed, and the Whig opposition, led by Grey, Melbourne, and Palmerston, took up the matter. Popular excitement ran high throughout the country and riots broke out at Bristol. The Reform Bill was passed by the Commons by a majority of one, but the Lords, under the Duke of Wellington, the "Iron Duke," rejected the measure. After an appeal to the country a greater majority was returned to the Commons in favour of the Bill, which was only passed by the Lords because William IV. had used his influence, backed by the threat to create new peers to swamp the Upper House.

b. In 1832 the great Reform Act was passed.

The County Franchise.	*The Borough Franchise.*
i. The old 40/- freehold was confined to cases where the voter was in actual occupation, or held an estate of inheritance or for life. ii. New qualifications were added. a. Occupation of freeholds to the yearly value of £10.	i. Freedom of the borough was still retained. ii. A new qualification, *viz.*, occupation of buildings to the value of £10 per annum subject to certain conditions as to residence and payment of rates.

b. Copyholds to the yearly value of £10.

c. Leaseholds for sixty years at £10 per annum.

d. Leaseholds for twenty years at £50 per annum.

e. An occupation of land at a rent of £50 per annum.

c. The Representation of the People Act, 1867, made further changes.

County Franchise.

i. Freehold, copyhold, and sixty years' leasehold reduced from £10 to £5 per annum.

ii. A new qualification was the occupation of property to the annual value of £12.

Borough Franchise.

i. Two new occupation franchises were introduced.

ii. The household qualification conferred on all males who paid poor-rate.

iii. The lodger qualification for occupying unfurnished lodgings to the annual value of £10.

d. The Representation of the People Act, 1884.

i. This Act abolished the £50 occupation franchise as bestowed by the Act of 1832.

ii. It extended the household and lodger qualifications to the county franchise.

D. *The Present-day Franchise.*

a. The present right to vote is contained in the Representation of the People Act, 1918.

This Act abolished the old qualifications and now

Males vote on a "residential qualification"; that is to say, they may vote for a candidate in the constituency where they reside. They also have an additional vote for occupying business premises of the yearly value of not less than £10. They also may have a university vote if holding a degree of a university.

N.B.—Never more than two votes may be exercised, one of which *must* be the residential one.

Females vote if of thirty years of age and either

i. Her husband is entitled to a vote; or

ii. She would be entitled to a local government vote, the qualification in this latter case being the occupation of a dwelling house—or land or premises (if not a dwelling house)—of annual value of not less than £5.

A woman may have a university vote if she has passed the final examination at one of the universities which would entitle her to a degree if she were a man.

b. The new Act has introduced, therefore, many important changes: it has abolished the lodger vote and the freeholder's vote and has made practically universal male suffrage.

1. It has given the vote to a great number of women.
2. It has disfranchised Conscientious Objectors for a period of five years.
3. It has removed the disqualification of those who had poor-relief.
4. It has made a redistribution of the constituencies.

5. It has introduced proportional representation as an experiment in a number of constituencies; and

6. It has abolished the county franchise.

III. *Qualification of Voters.*

The following persons are absolutely disqualified from voting:—

1. Females if under thirty years of age.

2. Infants.

3. Peers—except the non-representative Irish peers, who may vote for elections in England and Scotland.

4. Lunatics.

5. Aliens (a British subject naturalized, of course, may vote).

6. Persons employed as canvassers, agents or messengers for a candidate.

7. Persons convicted of illegal practices at elections are prohibited for five years.

8. Returning officers—except where an equal number of votes, then they have the casting vote.

9. Conscientious Objectors—if granted total exemption by the Central Tribunal or if imprisoned or detained for an offence against discipline by a court martial for an offence, having represented that it was the result of conscientious objection to military service.

IV. *Privileges of the Commons.*

i. The Crown shall put the best construction on the proceedings of the House.
   This is a mere matter of courtesy.

ii. The right of access to the presence of the Sovereign.
   This is enjoyed only through the Speaker.

Shirley's Case, 1603. Sir Thomas Shirley, a member of the House, was imprisoned for debt. The Commons demanded his release and imprisoned the warder of the prison for contempt in not releasing him.

Haxey's Case, 1397: The Commons adopted a Bill introduced by Haxey to reduce the charges of the Royal Household in Richard II.'s time. The King demanded him, and the Commons gave him up. In the first year of Henry IV. he petitioned the King and a former sentence passed on him as a traitor was reversed by the King and Lords: this amounted to a recognition of the privilege.

Strode's Case (1512): A prosecution was commenced in the Court of Stannaries against Strode, who had introduced certain Bills to regulate the tin mines. Parliament declared the proceedings against him were illegal.

Eliot, Holles and Valentine: Were imprisoned by Charles I. for seditious speeches. The Long Parliament reversed their condemnation.

iii. Freedom from arrest:—

Shirley's Case.*

a. Formerly this privilege extended to their servants.

b. For forty days before and after the session.

c. It does not apply in the case of

i. Contempt of court.
(Long Wellesley's Case).

ii. Contempt of either House.

iii. For an indictable offence.
(Wilkes' Case).

iv. Freedom of speech: the Commons had a long fight before they secured this privilege.

Haxey's Case.*

Strode's Case.*

Eliot, Holles and Valentine.*

a. On one occasion James I. tore the records from the Journal of the House.

b. The Bill of Rights claimed this privilege.

c. Though after the Revolution there is no case of proceedings being instituted against a man for anything said in the House of Commons, nevertheless in George III.'s time people were removed from office under the Crown in some cases where they had incurred the royal displeasure: the last instance being that of General Conway, who opposed the Ministry of George Grenville on the question of general warrants; he was dismissed from being colonel of his regiment.

N.B.—Strangers are allowed in the House on sufferance only.

In regard to the right of freedom of speech, the right of the House to prohibit its debates being published must also be considered.

i. The Long Parliament first forbade a member to publish any report of a debate without leave of the House.

ii. During the 18th century reports were ordered to be printed under the direc-

Miller's Case (1771): The House sent a messenger to arrest Miller, a printer: he gave the messenger into custody for assault; the Lord Mayor and Alderman (Wilkes and Oliver) committed the messenger to trial. The House then committed the Lord Mayor and Alderman to the Tower.

Stockdale v. Hansard (1839): Hansard had published a debate, by direction of the Speaker, which contained a libel; he was sued for libel by Stockdale, who won his case: the Courts holding that an illegal act could not be made legal by a resolution of the House.

Bradlaugh v. Gosset (1884): The plaintiff complained that, having been duly elected for Northampton, the House had passed a resolution excluding him from the House, thus preventing him taking the oath required by statute. The Courts held that they could not interfere with the House concerning the regulation of matters within its own walls.

tion of the Speaker. Reports, however, used to appear in magazines, the speakers figuring under "feigned names."

iii. In 1771 the House tried to take strong measures to prevent the printing of debates.

Miller's Case.*

Owing to the feeling aroused over the case, the House has not since tried to prohibit the publication of debates: though reporting is allowed on sufferance really.

N.B. a. Where a debate was ordered to be published by the House, if it contained defamatory matter this was no defence for the publisher.

Stockdale v. Hansard.*

b. This was now altered by statute, so now a publication by order of either House is privileged and no proceedings can be taken.

c. Also a faithful and fair report of Parliamentary proceedings is privileged, and an action for libel will not lie although the publication was not ordered by the House. But a particular speech may not be published *mala fide* to damage an individual.

(Watson v. Walter).

v. The right of the House to provide for its proper constitution.

a. By issue of writs when a vacancy occurs during the existence of a Parliament.

b. By enforcing disqualifications for sitting in Parliament.

Bradlaugh v. Gosset.*

c. Until recently of determining disputed elections.

d. Expulsion of members for misconduct.

vi. The right to the exclusive cognizance of matters arising within the House.

But a crime committed in the House is under the cognizance of the law courts.

Ashley v. White: Ashley, a voter, brought an action against White, the returning officer for Aylesbury, for not allowing him to vote: he won his action: but the Commons imprisoned him for contempt, but on appeal to the Lords he was discharged. Five other electors were also imprisoned by the Commons. The matter was finally settled by the prorogation of Parliament.

Sheriff of Middlesex's Case (1840): This arose out of Stockdale v. Hansard: the Sheriff levied execution on the goods of Hansard to recover the amount due to Stockdale under the judgment for his action of libel, and the Commons committed him for contempt. Held the Court could not enquire into the contempt.

vii. The power of committal for contempt for a breach of its privileges.

Punishment may be "admonition"
"reprimand" or
"commitment";

but the Commons cannot commit to prison for longer than the current session.

There are certain minor privileges, such as exemption from attending as a witness, but this is usually waived.

V. *Limitation of the Privileges of the Commons by the Courts.*

The privileges are really rights "conferred by law" and are determinable by the Courts just as other rights.

Ashley v. White.*

Stockdale v. Hansard.*

Where, however, a man is committed for contempt of Parliament the Courts will not enquire into the contempt, and if a writ of habeas corpus is issued, it is a sufficient return to the writ for the jailor to allege that he was committed for contempt.

Sheriff of Middlesex's Case.*

(Bardete v. Abbot).

(Murray's Case).

Though the Courts will not interfere with the privileges of the House, yet the House cannot arrogate to itself new privileges hitherto unknown. It must, however, be mentioned that Sir Erskine May considers the present condition unsatisfactory.

Section D.

Conflicts Between the Two Houses.

a. In 1407 the King requested the Commons to send a deputation to the Lords to hear and report on the reason for granting subsidies. The Commons asserted that this was "to the prejudice of their liberties"; and thus established the rule that *neither* House should make any report to the King until passed by both Lords and Commons.

The Aylesbury Case (White v. Aylesbury). Ashley, a burgess of Aylesbury, had sued the returning officer for not allowing him to record his vote and had won his case. This was the case of Ashley v. White. The decision was reversed by the Queen's Bench, but this was again reversed by the House of Lords. The Commons denied the jurisdiction of the Lords.

b. In 1621 the Lords protested against the illegal punishment of one *Floyd* by the Lower House. A compromise was agreed to.
   i. He was to be tried by the Lords.
   ii. The Commons declaring that this should not be a precedent to enlarging or diminishing the privileges of either House.

c. In 1667 the Lords claimed an original jurisdiction as a Court of Justice in Skinner v. The East India Company.
   i. The Commons denied the right of the Lords to hear the case.
   ii. A violent quarrel arose lasting fifteen months: and was settled by the mediation of the King, the proceedings being expunged from the Journals of both Houses.

d. In 1704 a conflict arose over the Aylesbury Case.*
   i. Here the Commons denied the jurisdiction of the Lords, who appealed to the Queen.
   ii. The quarrel only ended by proroguing Parliament.

e. There are a few instances where the Commons protested against the Lords originating money Bills; this matter is dealt with when discussing money Bills; and on this question the Commons have got their own way.

Section E.

Short Particulars of Famous Parliaments.

The Mad Parliament (1258).

a. This Parliament met at Oxford in Henry III.'s reign.

b. It drew up the Provisions of Oxford, whereby:—
   i. A permanent council numbering fifteen was created to control the King and his administration.
   ii. Three times a year this council was to confer with the barons.
   iii. All aliens were to lose their offices and proper ministers were to be appointed.

Simon de Montfort's Parliament (1265).

It has been already mentioned that to this Parliament for the first time in our history representatives were summoned from the boroughs, cities and shires to attend.

The Model Parliament (1295).

This was the famous Parliament of Edward I., and its constitution has been already dealt with.

The Good Parliament (1376).

a. So called because of its attempt, under the influence of the Black Prince, in Edward III.'s reign to end abuses.

b. Owing to the death of the Prince, it failed.

The Merciless Parliament (1388).

This Parliament, under Richard II., impeached various of the King's friends upon proceedings instituted by the Lords Appellant.

The Reformation Parliament (1529–1536).

This Parliament met in the reign of Henry VIII. in the midst of the quarrel between the King and the Pope.

a. In 1529 various Acts were passed against ecclesiastical abuses, *e.g.* pluralities, non-residence of the clergy and trading by the clergy.

b. In 1532 the first Act in Restraint of Annates was passed.

c. In 1533 the first Act in Restraint of Appeals.

d. In 1534

  i. The second Act in Restraint of Annates.

  ii. Peter's pence was forbidden and the bishops were prohibited from presentation to the Pope for confirmation.

e. In 1534 the Act of Supremacy was passed, whereby Henry was declared "Supreme Head of the Church of England."

f. In 1536 the last act of the Reformation Parliament was the dissolution of the lesser monasteries.

The Addled Parliament (1614).

a. This was the second Parliament of James I., and its summons was due purely to the financial difficulties of the King.

b. Friends of James, called "the undertakers," had attempted to "pack" this Parliament with men favourable to the royal wishes, but without success.

c. The Parliament asked the King to abandon impositions and to restore the clergy who had been ejected from their livings.

d. Nothing was accomplished and James dissolved the Parliament.

The Short Parliament (April 1640).

a. This Parliament under Charles I. John Pym was the leader. It refused to grant any supplies to the King until grievances were redressed.

b. Charles dissolved it within three weeks of its summons.

The Long Parliament (1640–1660).

a. This most famous of Parliaments, when assembled, vigorously attacked the maladministration of Charles I.

   i. Laud was impeached and Strafford convicted under a bill of attainder. Both were executed.

   ii. Monopolies, ship-money and tonnage and poundage were all declared to be illegal.

   iii. Distraint of knighthood was prohibited and the Courts of Star Chamber and High Commission were abolished.

   iv. The Grand Remonstrance was drawn up, which recited all Charles' illegal actions, and was passed by a majority of eleven.

b. In 1642 Charles went to the Commons with an armed force to arrest five members, Holles, Hampden, Pym, Haselrig and Strode, but "the birds had flown."

c. As a consequence of the actions of this Parliament Civil War became inevitable and Charles set up his standard at Nottingham.

d. In 1648, in order to effect the trial of Charles I., Colonel Pride went into the Commons and expelled the Presbyterian members (December 6th, 1648). This is known as "Pride's purge." The remaining members were known as the "Rump."

e. In 1649 the King was sentenced to be beheaded by the Rump.

f. In 1653 the Rump was dissolved by force by Oliver Cromwell; it was again called together in 1659 but was again expelled, by Lambert.

g. In 1659 Monk, the commander of the forces in Scotland, joined by Fairfax, summoned the "Rump" again and the Presbyterian members who had been expelled in 1648 assembled also. On March 16th, 1660, the Long Parliament voted its dissolution.

Barebone's Parliament (1653).

a. This Parliament met under Cromwell upon the expulsion of the Rump, but its life was only of a few months' duration.

b. It possessed great ideals and suggested reforms which have been adopted only of more recent years. It was an attempt of sincere and God-fearing men to legislate for people who were not ready at the time for their improvements.

The Convention Parliament (1660).

This Parliament, summoned on the final dissolution of the Long Parliament, restored Charles II. to the Throne.

a. It accepted all the legislation of the Long Parliament up to 1641.

b. It passed an Act of Indemnity for those who had been connected with the execution of Charles I., but put to death a few regicides.

c. It granted Charles II. a revenue of £1,200,000 and abolished feudal dues.

It was called the "Convention Parliament" because it was not summoned by a King. A similar instance occurred in 1689 after James II. had fled from the country.

The Cavalier Parliament (1661–1679).

This was the first Parliament summoned by Charles II.

i. It attacked the Puritans and passed the Clarendon Code.

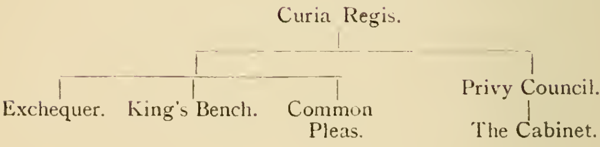
ii. The following measures were passed.

In 1661 The Corporation Act.
1662 The Act of Uniformity.
1664 The Conventicle Act.
1665 The Five Mile Act.

iii. It attempted to impeach Danby, whereupon Charles dissolved the Parliament.

CHAPTER IV.

THE COURTS.


Curia Regis.
Exchequer.
King's Bench.
Common Pleas.
Privy Council.
The Cabinet.

The Courts.

A. At the time of the Norman Conquest, it will be remembered, there were two bodies which figured in the Constitution of the country and which took the place of the old Witenagemot of the Saxons:—

a. The Magnum Concilium.

This was an extensive assembly and consisted of all the chief feudal nobles. Owing to its size it seldom met. William I. assembled it at Salisbury, 1086. This body, as we have seen in the last chapter, was the forerunner of the present House of Lords. It was also known as the "Commune Concilium."

b. The Curia Regis.

i. This was a smaller body than the Magnum Concilium and was composed of members of the King's household; *e.g.*, the Chancellor, the Justiciar, the Constable, etc.

ii. It should be noted that the words "Curia Regis" are often used somewhat loosely. Sometimes they are employed to describe the early Royal Courts of Justice and sometimes they are employed to describe the meetings of the King in Council, the "Council" being a somewhat larger body than the Curia Regis proper but smaller than the Magnum Concilium, which met for various purposes: judicial, financial and administrative.

iii. The Curia Regis is sometimes called the "Aula Regis."

B. It is with this body, the Curia Regis, that we are concerned in this chapter.

a. It may very aptly be described as a fissiparous body; that is, a body which shoots off various

branches. From it the various branches of the Royal Courts have sprung into existence, namely, the King's Bench, Exchequer, and Common Pleas Courts.

b. About the time of Henry I., the *Court of Exchequer* seems to have sat as a separate body, apart from the main body of the Curia Regis, to transact certain financial work. However, it acquired judicial functions as time progressed, and a separate body of judges called "Barons of Exchequer" were appointed thereto.

c. Under Henry II. a permanent staff of judges was duly appointed, and was known as the "capitalis curia regis."

d. By the reign of Henry III. the Curia Regis had split into two further bodies:

    i. *The King's Bench.*

    This Court decided cases in which the King was interested and cases where the King's peace had been infringed. Further, it had jurisdiction to try all cases of crime committed in the land.

    ii. *The Court of Common Pleas.*

    This Court, on the other hand, tried cases between subject and subject.

e. Though there were, throughout the country, the old local courts, a survival of the Saxon times, by a process which belongs more to a study of legal than of constitutional history, these local courts gradually fell into decline; the King's writ pervading the whole realm. The old local courts were:—

    i. The Hundred Court.
    ii. The Sheriff's Court.
    iii. The Manor Court.

f. We may take it that by the time of Edward I. the three Courts of Exchequer, King's Bench, and Common Pleas were fully constituted, and that they remained in much the same state until the Judicature Act, 1873.

C. We must now turn our attention to the question of appeals. Originally they were reserved for the

King in Council to hear, the King often being present in person. Gradually, however, the King ceased to attend personally.

a. In 1358 judges from the King's Bench and Common Pleas were appointed to hear appeals from the Court of Exchequer, thus forming an appeal court which was called the *Exchequer Chamber*; and in 1585 they heard appeals from the King's Bench also.

b. In spite of the existence of the Exchequer Chamber to hear appeals, matters of very great importance could still be brought before the King in Council; and we really come to this fact, namely, that the Court of Exchequer Chamber was the first court of appeal until its place was taken by what is known as the "Court of Appeal," and that the ultimate appeal to the King in Council was gradually superseded by the final appeal to the House of Lords.

D. From the time of the Tudors other courts sprang into existence, not altering the three established Courts of King's Bench, Exchequer and Common Pleas, but taking matters especially assigned to them.

a. Firstly, we have the *Court of Chancery*. For cases where the old common law courts could give no remedy and where hardship arose therefrom, an application might be made to the King himself, as being the fountain from which all justice sprang, to devise a remedy suitable to the particular case. The Lord Chancellor being, as was said, "the keeper of the King's conscience," considered these cases on behalf of the King and thus the Court of Chancery arose, with the Chancellor at its head, which administered, not the ordinary law of the land, but what is known as "equity." Thus it was that where no other remedy was available for the particular case, the applicant could go to the Court of Chancery and obtain a remedy superior to anything which the common-law courts could give him.

1. *The Common Law.* In Saxon times the law varied in different localities; there might be one law in Wessex and a different one in Mercia. When the Royal Courts, as opposed to the local courts, became established after the Norman Conquest the judges used to select, so to speak, the best amongst the local laws and apply them generally throughout the kingdom. It was the law as thus developed in the Royal Courts from the time of the Conquest that is known as the Common Law.
2. *Equity.* This was the system of law as developed by the Chancellors in the Court of Chancery to suit cases where no remedy lay at common law. At first it was flexible and was made to suit each particular case, but by the seventeenth century it had become fixed and stereotyped like the Common Law.

The origin and work of the Privy Council is dealt with in the next chapter.

i. Gradually, therefore, a special body of law grew up, devised by the Chancellors, called "equity," and though at first it was elastic and flexible in its nature, so as to suit each individual case, it eventually became fixed and stereotyped.

ii. Thus it is that we get two systems of law being administered side by side in this country, viz., Common Law and Equity.*

iii. It should be noted that the *Court of Requests* was established also and it may be described as "a poor man's court of equity."

b. Secondly, the *Court of Star Chamber.* This was established by Henry VII., in order to enforce the royal prerogative.

i. It became an instrument of very great oppression, decreeing all sorts of horrible punishments and tortures for those who were unfortunate enough to be brought before it.

ii. It kept no records of its proceedings, unlike the other courts.

iii. It was abolished by the Long Parliament, in the reign of Charles I.

c. Thirdly, Queen Elizabeth set up the *Court of High Commission*, which was a branch, so to speak, of the Star Chamber, to try offences committed against the statutes passed to enforce the supremacy of the Crown as head of the Church; and for neglect to use the Book of Common Prayer and in attending Divine service, etc. This court also was subsequently abolished.

d. Fourthly, we must remember that the *Privy Council** existed, *i.e.*, the King in Council, and, though this body had grown in size from the time when it was the Curia Regis, yet it must be kept quite distinct from the House of Lords—the descendant of the old Magnum Concilium. The King still retained, in theory at any rate, the residuum of royal justice not exercised by the established courts or the

House of Lords: and therefore the Privy Council had jurisdiction to hear appeals—

i. From the Admiralty Courts.

ii. In Lunacy matters.

iii. From the Ecclesiastical Courts; and

iv. From the Colonies when this country subsequently acquired them.

These jurisdictions were transferred to a Court of Delegates under Henry VIII.; but in 1833 a judicial body of the Privy Council was created and these matters were again referred to it, the Court of Delegates being then abolished.

i. By the Judicature Act, 1873, appeals in Admiralty, Lunacy and Divorce matters were transferred to the Court of Appeal.

ii. Now, therefore, the only jurisdiction remaining in the Privy Council is to hear appeals—

a. From the Ecclesiastical Courts, and
b. From the Colonies.

E. Very great changes were made in the Courts by the Judicature Acts, 1873–1875. The Courts of Chancery, Exchequer, King's Bench and Common Pleas (together with the Probate, Admiralty and Divorce Courts more recently established) were all merged into one *Supreme Court*.

a. This Court existing as it does now has two main divisions:—

i. The High Court.

This is again divided into three divisions, Chancery, King's Bench, and Probate, Admiralty and Divorce (Exchequer and Common Pleas being merged into the King's Bench Division in 1880; for hitherto they had each occupied divisions of their own).

ii. The Court of Appeal.

b. There is still an ultimate right of appeal to the House of Lords.

c. The Judicature Acts brought about a fusion of the two systems of law and equity by enacting that they should both be administered in the

1. *The Assizes.*
   a. As early as Henry I.'s reign itinerant justices were sent round the country to see to matters of revenue.
   b. Under Henry II. the system of sending the King's judges round the country or circuit became fully established.
   c. Ever since then the judges have gone on circuit, and do so at the present day, to try criminals.
   d. Most of the county towns are visited three or four times a year by judges from the King's Bench, who derive their powers from the commissions of "oyer and terminer," and "goal delivery."

2. *The Central Criminal Court.*
   a. Of quite recent date, this Court has been established to act as a kind of Assize Court for the County of London.
   b. Most of the offences which would be triable in an ordinary Assize Court are heard in this Court, if committed in London.

same courts, but that where a conflict arose between the two systems the principles of equity were to prevail.

F. Though there are various courts which we have omitted, it is not necessary to deal with them when considering constitutional history. However, before concluding the chapter we may deal with appeals in criminal matters.

   a. The Court of Crown Cases Reserved was the court which heard appeals in criminal matters before the Judicature Acts.

   b. A Court of Criminal Appeal was established in 1918, which hears criminal appeals from the assizes or from the Central Criminal Court.*

G. Lastly, we may sum up the jurisdiction of the House of Lords as a judicial body :—

   a. It has the right to try peers for treason or felony.

   b. It is the ultimate Court of Appeal in the United Kingdom.

   c. It has the right to try Ministers of the Crown impeached by the Commons.

   d. It has no jurisdiction as a Court of first instance, or, if it ever had this right, it was certainly abandoned. (See Skinner v. East India Company.)

CHAPTER V.

THE PRIVY COUNCIL AND THE CABINET.

Section A.

The Privy Council.

It must be remembered that the origin of the Privy Council is to be found in that body, which is sometimes called the Curia Regis, which consisted of the high officers of State, the Chancellor, Justiciar, Constable, etc., generally, those closely connected with the royal household in the Norman and Early Plantagenet times.

a. One branch of this Council became the foundation of the present High Court, as was shown in the preceding chapter.

b. Another branch, which increased somewhat in size, formed what is known as the Privy Council.

   i. That is to say, the Executive Council of the Crown. Its judicial functions have already been discussed, but as an executive assembly it was of great importance.

   ii. The term "Privy Council" came into use under Henry VI.

   iii. Subsequent Sovereigns used this Council as an instrument of their illegal demands.

   iv. Gradually an inner body of councillors grew up within the Privy Council and developed into the modern Cabinet, as will be seen in the next section.

   v. The main body, however, continued its acts as an administrative assembly in certain matters, *e.g.*, the Board of Trade and the Board of Education being, in theory at any rate, committees of the Privy Council.

   vi. Royal proclamations, when issued at the present day, are issued by the King "on the advice of his Privy Council"; and a Privy Councillor is styled "Right Honourable," and may put the letters P.C. after his name.

Section B.

The Cabinet.

A. *Its History.*

I. There is some evidence of attempts to establish secret committees of confidential Ministers as early as the reign of Charles I.

II. Charles II. created an informal and secret Council, called the "Cabal," but it presented none of the essential features of the modern Cabinet. Ministers were not united amongst themselves; they were not consulted by the King as a body, and they were not dependent upon the support of the House of Commons. The Cabal was unpopular, however, and Sir William Temple's scheme of restoring to the Privy Council the functions usurped by it was unsuccessful. James II. continued to consult a small group of Ministers.

III. The unbroken history of the Cabinet in the modern sense of the term dates from the reign of William III.

a. At the outset he chose his Ministers from amongst the Whigs and the Tories alike, but this did not work well and he took Sunderland's advice, namely, that the Cabinet should be formed from one party and limited in number to those who held some responsible office. The Whig Junto therefore formed the germ of the modern Cabinet.

b. The Act of Settlement, 1701, attempted to destroy the constitution of the Cabinet, by providing that no Minister should be a member of either House of Parliament. This clause in the Act never came into force.

c. William III. and Anne both used to preside at Cabinet meetings.

d. Under the first two Hanoverian Sovereigns, the King ceased to preside in person. Walpole took presidency and was to all intents and purposes a modern-day Prime

Minister. During this period there grew up—

i. An efficient Cabinet, consisting of those Ministers holding responsible offices.

ii. An honorary Cabinet, consisting of those who had ceased to hold office.

e. Under George IV., Addington declared that he would not admit anyone to Cabinet meetings unless he held some responsible office; thenceforward the Cabinet consisted of the heads of the great departments of State who were for the time being responsible for the actual administration of the business of government.

IV. Thus it was that the Cabinet, from being an open political committee of the Privy Council —large, undeterminable, and often consisting of an inner group of responsible Ministers and an outer circle of nominal members, occasionally hostile to the responsible Ministers—became a definite body of men, enjoying high political office, who, nominally at any rate, shared the same political opinions and were jointly responsible for each other's actions.

B. *Doctrines relating to the Cabinet.*

They are four in number:—

1. *Ministers are collectively responsible for the government of the country.*
The great obstacle to the development of the Cabinet system in the eighteenth century was the non-existence of the doctrine of collective responsibility. There is no distinction between legal and political responsibility.

2. *The Ministers must be unanimous as to advice which they tender to the Crown.*
It illustrates the transition of government by the Crown to that of government by the Cabinet in the name of the Crown. William IV. discharged the Reform Ministry (1832) because they were not unanimous, but he had to recall them to power again.

3. *Proceedings of the Cabinet should be kept secret.*
This rule is associated with the Privy Councillor's oath taken by each member. The rule

of secrecy was often violated during the eighteenth century.

Lord Camden openly said he had opposed in a Cabinet meeting a measure in connection with the questions of General Warrants.

The protection afforded by secrecy encourages each Minister freely to express his opinions at Cabinet meetings.

The sanction of the Crown must be obtained for a Minister to disclose what took place at a Cabinet meeting: and it is only granted to enable a particular Minister to justify himself in the eyes of the world.

4. *The Cabinet is dependent for support upon the majority in the House of Commons.*

   a. *Before 1832* any Ministry which was favoured by the Crown was practically certain of obtaining a majority in the Commons; due to corruption.

      Before 1832 there were only two occasions when a Ministry retained by the Crown became defeated in the Commons (Walpole and Melbourne).

   b. *Between 1832 and 1867* a defeat in the Commons on a question of vital issue was the ordinary method of terminating a Ministry.

   c. *Since 1867* the Cabinet has grown more *sensitive* to *national* than to *Parliamentary opinion*: so the resignation of a Cabinet often takes place not because of a defeat in the Commons but because a series of by-elections has gone against the Ministry, signifying that the will of the electors is unfavourable to the Ministry.

C. *The Relation between the Cabinet and the Prime Minister and the Crown.*

Between the Cabinet and the Prime Minister.

The Premiership is said to date from the beginning of the Hanoverian period, when the King ceased to preside at Cabinet meetings.

Walpole was the first Minister in the modern sense, but he differed in that—

1. He entered the Cabinet simply with a knowledge of financial matters.

2. His power was his favour at Court and his corrupt methods, by which he kept the House of Commons at his beck and call.
3. The term "Prime Minister" was an *opprobrious* epithet applied to him by his friends.

From 1784, when the Younger Pitt took office, the Prime Minister has been regarded as a party leader, invited to form a Cabinet by the Sovereign, in confidence that his followers are sufficiently numerous to secure Parliamentary support for his policy.
In 1906 the Prime Minister was recognised as such, and in State processions ranks next after the two Archbishops.

N.B.—The Prime Minister is chosen by the Crown. He acts as mediator between his colleagues for the purpose of reconciling internal dissensions in the Cabinet.

It is undesirable for him to be burdened with arduous administrative duties, and he generally holds the office of First Lord of the Treasury. It is merely a nominal office, but carries £5,000 yearly salary with it.
The Prime Minister is intermediary between the Crown and other members of the Cabinet; his duty is to smooth over difficulties.
The Prime Minister can dismiss a member of the Cabinet: Lord Palmerston was dismissed because he entered into direct communication with the French Government, unknown to Queen Victoria. The Prime Minister is usually a member of the Lower House. "The life of the Cabinet is usually that of the Premiership," and when the Prime Minister falls the Cabinet falls with him.

Relations between the Cabinet and the Crown.
Duties of the Cabinet.

1. A leader in either House must keep the Crown daily informed of the progress of affairs in Parliament.
2. The Ministry must not initiate any important business without first informing the Crown. (Lord Palmerston's dismissal.)

Duties of the Crown.

1. The Crown must not, without informing the Cabinet, seek advice on matters of State from outsiders.
2. The Crown should not make public expressions of opinion on matters of State *without* the previous sanction of its Ministers.
3. It must accept advice, not only on general policy, but as to the persons who should fill offices and dignities in the Royal Government.

D. *Recent developments in connection with the Cabinet System.*

1. The Cabinet is not identical with the Ministry, because certain Ministers are not regarded as holding Cabinet rank, *e.g.*—
   a. Great officers of the Royal Household and certain Under-Secretaries of State.
   b. Owing to the increase of Ministers during the last generation, the Cabinet is again becoming rather unwieldy, and there is a tendency for an inner circle to be created in the Cabinet, *e.g.*, in the Great War Mr. Lloyd George formed an inner War Cabinet.
   c. The Cabinet is becoming more sensitive to national than to Parliamentary opinion; and the House of Commons becomes less important in the actual scheme of government.
2. The party system, which depends for efficiency upon two (and not more) parties, appears to be in decay.
   a. Ministers are at the mercy of chance combinations, and it is very difficult for them to pursue a settled policy.
   b. An efficient opposition is necessary to party Government.

CHAPTER VI.

MISCELLANEOUS MATTERS.

A. The Jury System.
B. Nationality.
C. Treason.
D. Habeas Corpus.
E. Control of Expenditure by the House of Commons.
F. Money Bills.
G. Impeachment and Attainder.
H. Parliament Act, 1911.

The Jury System.

Section A.—The Criminal Jury.

In the Saxon and Early Norman times there were various methods of criminal trial.

a. Compurgation, by which the accused might bring men called "compurgators" to swear to his good character. This mode of trial was rarely used, however.

b. Ordeal, which consisted in plunging the arm into boiling water, or taking hold of a red-hot iron: if, after a period of three days, the wound was healed, the man was pronounced innocent; otherwise, guilty. This method of trial was abolished by the Council of Lateran, 1215.

c. Inquest by sworn recognitors; superseded trial by compurgation, and was really the origin of the modern criminal jury.

The best authorities hold that its consecutive history dates from the Assize of Clarendon, 1166, which provided that accusations of the more serious crimes should be made before the justices in eyre, by twelve knights of the shire, or four men from each township.

a. This was known as the *jury of presentment*, their only function being to make accusations. This corresponds to the modern "grand jury."

b. When the ordeal was abolished in 1215 the jury, who accused the man, also tried him. This was obviously unfair, so a statute of 1352 required new jurors to be summoned, who were called the *jury of deliverance*.

   i. This latter corresponds to the modern "petty jury."

   ii. At first it gave its verdict of its own knowledge, no witnesses being called; consequently they must come from the locality where the crime had been committed: where, however, they had no knowledge of

Bushell's Case (1670). A jury had acquitted William Penn and William Mead on a charge of preaching in a London street; the jury were fined by the recorder for contempt in doing so, and were committed to prison in default of paying their fines: they obtained the issue of the writ of habeas corpus, and the return to the writ was that they had been committed for finding a verdict "contra plenam et manifestam evidentiam, et contra directionem curiae in materia legis." The jury were ordered to be released.

the case, they were permitted to go and collect information. Later on, however, men were added to their number who did know the facts.

iii. These latter were called "afforcing jurors"; and about the beginning of the sixteenth century there was a cleavage between the original members of the jury of presentment and the afforcing jurors, the latter becoming the modern-day witnesses.

c. An accused could not, however, be compelled to place himself on the verdict of his countrymen in the cases of more serious crime. Torture was used, and possibly was preferred, because one's property was not forfeited to the Crown on conviction in that case. Torture, however, was abolished in 1727.

The procedure in criminal trials was grossly unfair, because no opportunity was given of preparing a defence.

After the Revolution (1689), however, improvements were made; counsel was allowed to defend, and the witness for the defence gave evidence on oath, etc.

At first, the jury were by no means independent. The Star Chamber inflicted penalties on juries who gave verdicts contrary to the judge's direction.

a When the Star Chamber was abolished, the King's Bench asserted a similar power.

b. But the independence of the jury was established in Bushell's Case, 1670.*

Section B.—The Civil Jury.

Originally there were varying methods of trial.

a. Compurgation: the oath of defendant, supported by twelve witnesses. It was allowed as wager of law in the actions of debt and detinue till 1832.

b. Ordeal: till abolished by the Council of Lateran, 1215.

c. Battle: used chiefly in the case of real actions (*i.e.*, actions concerning land; it was introduced to this country by the Normans and disliked

by the English, but was not employed much after Henry II. Only finally abolished in 1819. (Thornton's Case.)

d. Trial by jury.

The trial by jury dates from the adaption of the system of sworn recognitors in a criminal trial to a trial by the same method in cases of real actions, commenced by writ of right. This first arose in Henry II.'s reign, by provision of the Grand Assize.

a. An "assize" denotes a small body of men, summoned by "writ," to determine a particular question, *e.g.*, who was the owner of the land in dispute.

b. It was gradually extended to all civil actions, except debt and detinue.

c. Jurors were summoned who knew the facts.

d. Later on, others were also summoned to give them information—these became witnesses, but even as late as 1670 it was still recognised that the jury might act on their own knowledge.

Of course, now, they must *never* do so.

In early times the jury might be called to account by a "writ of attaint," a second jury of twenty-four being summoned, and, if they reversed the verdict, the first jury were punished.

The writ fell into disuse when the jury ceased to give a verdict of their own knowledge, though it was not finally abolished till 1826.

Nationality.

a. *At common law* all persons born within the King's Dominions were British subjects, no matter what their parentage might be. (Calvin's Case.)

b. *By statute* a further group of persons were added to the list, namely, "those born of British parents abroad."

c. *The Naturalization Act, 1870,* really codified the law as regards British nationality. It did not repeal the common law on the subject, but covered it in express terms. Under the Act people born since 1870 are British if—

   i. Born in the King's Dominions.

   ii. Born abroad of British parents.

   iii. Women married to British subjects: and on divorce or death of the husband they still retain their British nationality.

   iv. Granted a certificate of naturalization after residing five years in England.

   Infant children to whose parents such certificate is granted, if resident or if they become resident in this country, acquired British nationality.

The Act provides that a British subject may lose his nationality in various ways: so that the old maxim, "Nemo est exuere Patriam," no longer holds good. Thus:—

   i. By becoming naturalized in a foreign State. But if this is done in war time, acts of treason cannot be committed with impunity. (R. *v.* Lynch.)

   ii. By a woman marrying a foreign subject.

   iii. Where a person is born abroad of British parents, on attaining twenty-one years, a declaration of alienance can be made, whereby the person can adopt the nationality of the country where he was born, ceasing to be a British subject.

d. *The British Nationality and Status of Aliens Act, 1914*, has re-enacted most of the provisions of the Act of 1870.

i. The Act only applies to those persons born after 7th August, 1914; so the old Act remains in force and most people alive now come within its scope.

ii. British subjects are still

a. Those born in the King's Dominions.
b. Those born abroad of British parents.
c. Those naturalized here.
d. Foreign women marrying British subjects.

iii. A special provision enables a British woman, upon her husband becoming an alien, to make a declaration, if she so desires, to retain her British nationality.

iv. When a certificate of naturalization is granted, the names of the infant children may or may not be included, as the Home Secretary thinks fit.

v. A naturalization certificate, if obtained by fraud, may be annulled.

And by an amending Act of 1918 the Home Secretary may revoke naturalization certificates where persons have shown themselves disloyal by speech or deed towards the King; or who were not of good character at the date of the grant of the certificate, or who have been non-resident in the kingdom for seven years, etc.

Points to Note.

1. The details of British nationality are complicated and they are only given in outline here; though sufficient for examination purposes, there are other provisions and exceptions, *e.g.*, the Acts provide as to persons born on British ships and on foreign ships in British waters, etc.

2. Though English law recognises one man as belonging to a particular nationality, it in no way follows that a foreign country takes the same views, *e.g.*, *A* may be British according to English law, but French according to French law, and Italian according to, say, Chinese law.

3. The House of Lords has decided that a man may be without any nationality, but such a person is deemed to be an alien.
4. Both the Act of 1870 and that of 1914 provide that aliens shall have the same rights of owning real and personal property in this country as a British subject (except that they cannot own a British ship).
5. Further, apart from statutes, the Crown can by its prerogative confer "letters of denization" on a foreigner which will make him to all intents and purposes a British subject, except that he cannot hold office under the Crown or be a Privy Councillor. (Act of Settlement.)

Dammaree's Case, 1710. Levying war against the King was extended to a case of riot in England, which consisted in burning Dissenting Chapels, as it was considered that thereby the rioters signified the intention to burn everything.

Treason.

A. The Statute of Treasons, 1352 (Edward III.) defined treason as :—

  i. Compassing the death of the King, Queen, or their eldest son, and assisting the King's enemies.

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

  iii. Counterfeiting his seal or money or importing false coin.

  iv. Slaying the Chancellor, Treasurer, or judges in the discharge of their duty.

B. Under the Tudors many additions were made to the law of treason, their main object being to enforce the policy of the Crown to secure the succession and to oppose the papal authority, *e.g.*; and it was at one time treason to deny and afterwards to maintain the validity of the marriage of King Henry VIII. and Anne Boleyn.

C. In later times treason was extended by judicial interpretation, and acts brought thus within the law were known as "constructive treasons."

Dammaree's Case.*

D. By the Treason-Felony Act, 1848, the offences of slaying the Chancellor, judges, etc., was made a treason-felony, the maximum penalty being death, and treason proper remains as it was under the original Act of Edward III.

E. Note that allegiance is due to the King from

  i. All British subjects, whatever they may be.

  ii. All foreigners present in the King's Dominions.

Habeas Corpus.

A. At common law no fewer than four writs were available to secure the liberty of a person wrongfully imprisoned; but the most effective was the writ of habeas corpus.

B. When, however, the King ordered a man to be imprisoned without trial and the writ was issued, the gaoler could make his return thereto that the man was detained "per speciale mandatum regis," and here the matter ended. (Darnell's Case, 1627.)

C. *A Statute of 1641* enacted that this return was not a sufficient excuse for detaining the prisoner, thus abolishing the rule in Darnell's Case.

D. *The Habeas Corpus Act, 1679*, removed various restrictions on its exercise, thus:—

  i. It was made available in the Channel Isles and Cinque Ports.

  ii. And also in term and vacation time alike.

  iii. One service of the writ was sufficient (hitherto it had to be served three times).

  iv. It was made illegal to send anyone but convicted criminals beyond the seas.

  v. Persons accused of felony or treason must be released on bail if not tried at the next assizes, except where the witnesses for the Crown could not be produced. But if not tried at the second assizes, the accused must always be discharged altogether.

  vi. A judge was not to refuse the issue of the writ under a penalty of £500.

E. *The Bill of Rights, 1689*, enacted "that excessive bail should not be demanded."

F. *The Habeas Corpus Act, 1816*—

  i. Enabled the court to enquire into the return of the gaoler to see if it was correct.

ii. And also it made the writ applicable to cases where the imprisonment was of a civil nature, whereas hitherto it only applied where the imprisonment was of a criminal nature.

CONTROL OF EXPENDITURE BY THE HOUSE OF COMMONS.

A. Prior to the Revolution, the actual spending of public money was for the most part under the sole control of the Crown. And consequently it was not infrequently diverted from the purpose for which it had been voted.

B. After the Revolution, Parliament sought to regulate the expenditure, and the system of control which was formerly vested in two different individuals is now vested in the one person, the Controller and Auditor-General.

a. The audit of accounts really dates from the Plantagenet period, Edward III., Richard II., and Henry IV.

i. It fell into abeyance after 1408; but was temporarily revived under Elizabeth and Charles II.

ii. After the Revolution of 1688 it was firmly established.

b. The Controller and Auditor-General is a high official absolutely independent of the Cabinet; he can take no part in politics, for he cannot be a member of either House.

i. He holds office during good behaviour and is removable only on an address from both Houses of Parliament.

ii. He is the controller of the issue of public money, his warrant being essential for the issue of money from the Consolidated Fund at the Bank of England.

iii. He is the auditor of the public accounts. At the end of each financial year he draws up an account and a report, which he presents to the Public Accounts Committee of the House of Commons.

iv. Note that Lord Grenville in *1611* was

auditor of the Exchequer when the King (George III.) was insane and England was in the midst of a war with France, and he refused to draw the necessary order on the Bank for funds.

a. He said he had no authority to do so under the Great or Privy Seal because the King was insane.

b. Possibly he refused his consent in order to force on the Regency Bill.

c. The only way to make him do his duty in a crisis would be :—

i. By impeachment.

ii. Or possibly a mandamus issued to him by the High Court.

MONEY BILLS.

Money Bills are exclusively in the control of the House of Commons, and *originate* in the Lower House only.

a. As far back as the reign of Richard II. it became the practice that all grants of money should be made by the Commons.

b. In 1407 this was formally recognised, when the House of Lords named certain subsidies as being necessary for the defence of the kingdom, and their action was declared by the Commons to be a breach of privilege.

c. In 1661 the Commons refused to assent to a Bill for "paving the roads in Westminster," which had originated in the House of Lords.

d. Not only did the Commons demand to originate Money Bills, but they contended that the Lords should not even amend a Money Bill : the latter should either accept it or reject it as it stood.

The question of Money Bills has been finally settled by the Parliament Act, 1911, which establishes the right of the Commons over such Bills entirely.

a. The Lords are thereby prevented from rejecting such a measure or amending it.

b. The Speaker is given power to decide whether any particular Bill is a Money Bill or not.

This prevents a financial clause being "tacked on" to any ordinary measure by the Commons with a view to assist its passage through the Lords, a practice which used sometimes to be adopted.

Impeachment and Attainder.

A. *Impeachment* is a recognised mode of trial whereby Ministers of the Crown are "impeached," *i.e.*, accused of crime, and sent before the House of Lords for trial.

i. Throughout our history there are many instances of this mode of prosecution.

ii. In 1678 Danby was impeached; the question was raised whether the prorogation or dissolution of Parliament put an end to the proceedings. It was decided in Warren Hasting's Case that it did not.

iii. The royal pardon cannot be pleaded as a defence (Danby's Case), and this was confirmed by the Act of Settlement.

The Crown can, of course, grant a pardon after conviction.

iv. The last instance of an impeachment was that of Lord Melville, in 1806.

B. *A Bill of Attainder* is a special Act passed by Parliament which renders *ex post facto* an act done by an individual, and lawful at the time, an illegal act.

i. Such Bills were frequently used in the Wars of the Roses and under the Tudors; but under the Stuarts they were less frequent.

ii. The last case of their use was in 1696, when Sir John Fenwick was so prosecuted.

The Parliament Act, 1911.

This Act has effected enormous changes as to the mode of legislation in this country.

a. Before the Act, for a "Bill" to become law it had to be passed by the House of Commons, then the House of Lords, and then finally receive the Royal Assent.

b. The Act, apart from its provisions dealing with Money Bills, which we have already considered, has enabled the Commons to pass legislation over the heads of the Lords entirely, by enacting that after a measure is duly passed by the Commons it shall become operative after a period of two years, in spite of being rejected by the Lords.
   i. Of course, the Act has not effected the question of the Royal Assent.
   ii. But subject to this, the Commons have now the power to pass any measure independently of the Lords, which will become law after a period of two years.

CHAPTER VII.

A General Review of the various Periods in English Constitutional History with Special Reference to the Great Constitutional Statutes.

Section A.

The Norman Period (William I., 1066, to the end of Stephen, 1154).

A. During this period the Constitution of the country underwent a great change owing to the Conquest by William I., in 1066.

  i. William I. was officially elected by the old Saxon Witan as a matter of form, but this body was superseded by the Magnum Concilium and the smaller body which was composed of members of the royal household, the "Curia Regis."

  ii. New offices were created, *e.g.*, the Justiciar, the Chancellor, the Treasurer, etc.

B. One of the most fundamental changes in the land was the introduction of Feudalism, and it had a marked effect from the constitutional point of view, because the criterion of power was the possession of landed estates.

C. The relations between the Church and the State were more or less formally defined.

  i. William I. refused to do homage to the Pope.

  ii. He laid down that—

    a. No Pope should be acknowledged in England without the King's consent.

    b. Nor any papal letter should be received.

    c. He forbade Church legislation without the sanction of the Crown; and

    d. No ministers were to be excommunicated by the Pope.

  iii. It will therefore be observed that the Church was placed subservient to the State in matters which dealt with administration or in matters which had any direct bearing upon the State.

  iv. Church courts were established for the trial of

Benefit of Clergy.

1. In later times, considerable difficulty arose over the question of "criminous clerks." Practically everybody who could read or write might claim the privilege to be tried by the Church courts, and these inflicted milder penalties than the civil courts.

2. During Henry II.'s reign the matter came to a head, because the Constitutions of Clarendon, 1164, provided for the punishment of clergy by the civil courts, after having been found guilty and deprived of their clerical office by the ecclesiastical courts. à Becket raised the cry that the clergy were punished twice over for the same offence; and in consequence of the popular outcry at à Becket's murder, Henry was unable to enforce the provisions of the Constitution.

clerics, who might thereafter claim "the benefit of clergy."*

v. During these times the Church became a powerful political element in the Constitution.

D. During the Norman period direct taxation was considerably increased: the King's proposals were merely submitted to the barons for formal sanction, but it is evident that in these times a strong king was practically absolute; there was no Parliament to check him; his only fear lay from a revolt raised by the baronage and carried out by force of arms.

E. The Charter of Liberties of Henry I. is really the most important statute (if we may use the term) of this period.

i. By this charter Henry promised good government to his people in general, and more particularly—

a. To the Church: not to keep benefices vacant.

b. To the barons: not to extort unjust taxes or to abuse feudal rights.

c. To the people: he promised peace and the good laws of Edward the Confessor as modified by amendments introduced by William the Conqueror.

ii. The importance of this charter lies in the fact that it paved the way for the great Magna Carta of King John.

iii. The necessity of a king to please those whom he has to rule is also evidenced by the charter.

F. Under Henry I. a number of administrative reforms were carried out which had far-reaching effects in later constitutional history.

i. The old local Saxon courts were revived and placed in direct contact with the Curia Regis.

ii. Barons of Exchequer were for the first time sent round the country on circuit to do judicial and financial business.

Section B.

The Plantagenet Period (Henry II., 1154, to the end of Richard II., 1399).

A. It will be remembered that during this period, for the first time in our history, representatives of the people were summoned to confer with the Crown (Parliament of Simon de Montford, 1265, and Model Parliament, 1295), and therefore the growth of the present-day system of representation has its origin in these times.

B. Under Henry II. certain reforms were instituted.

i. *The Constitutions of Clarendon, 1164*, aimed at bringing the criminous clerks under civil jurisdiction; but its provisions were unenforceable owing to the murder of Thomas à Becket.

ii. The system of sending judges round the country, as instituted under Henry I., was developed and improved.

iii. *The Assize of Clarendon, 1166*, enacted that—

a. Every landowner must attend the "royal justices" when on circuit.

b. A jury of twelve men were to present criminals to the justices for trial. This was the "jury of presentment."

iv. *The Grand Assize* directed that disputes as to land might be tried by a jury.

C. During King John's reign we have the signing of the famous Magna Carta, 1215.

i. The immediate causes leading up to this great constitutional enactment were:—

a. The quarrel between John and the Pope, whereby England was put under an "Interdict," and the King excommunicated.

b. The attempt made by John to attack France.

c. Fitz-Peter, the able Justiciar, and the only man capable of exercising any restraint over John, died in 1213.

ii. But the real causes were far deeper and more significant.

  a. The King's misgovernment and lawlessness were terrible.

  b. The time was arriving when a monarch could no longer behave as an autocrat and at the same time displease everybody by his incompetence and by his mismanagement.

  c. The determination of the baronage, led by the able Archbishop Stephen Langton, to force an improvement in the situation.

iii. It is impossible here to set out the provisions in detail of this famous charter, but we may mention that it aimed at attaining the good government as promised by Henry I.'s charter.

  a. It declared that taxes should not be raised without the consent of the Great Council, excepting the three ancient feudal aids.

  b. It provided for justice for every man and declared that no one was to be imprisoned except upon the condemnation of a jury.

iv. The results of the King's submission to the baronage were great, and it may aptly be said that the Magna Carta was the forerunner of all the enactments which declared for the liberty and good government of the subject.

D. The points to note from the constitutional standpoint upon the reign of Henry III. may be shortly summarised as follows :—

  i. The King was a child at the commencement of his reign and the government was carried on for him.

  ii. Owing to his bad government and extravagance, when he was old enough to take over affairs for himself, the Great Council, by withholding supplies, forced the King to agree to their setting up a Commission of twenty-four, who drew up reforms.

  iii. In 1258 the Mad Parliament drew up the Provisions of Oxford, which :—

a. Created a permanent council of fifteen to control the King and his administration.

b. Deprived aliens of their offices and appointed proper Ministers.

iv. Owing to Henry's repudiation of the Provisions of Oxford the crisis came, and Simon de Montford's Parliament was summoned in 1265.

E. Edward I. has been described as the "English Justinian," but in reality he was the far greater lawyer of the two, because Edward was responsible for and himself effected his various legal reforms and enactments; Justinian's legal work of codifying Roman Law was not his own effort, but was effected by a committee of lawyers to whom Justinian delegated the task.

i. Many statutes were passed which relate rather more to political than constitutional history, viz., the Statutes of Gloucester, Westminster, Mortmain, etc.

ii. It was Edward who summoned the famous "Model Parliament" in 1295, in order to gain the support of his people. He was the first king who realised the necessity of a united nation approving of the policy of its head.

iii. Instances of illegal taxation occur and legislation by "ordinance" was frequently resorted to.

F. During Edward II.'s and Edward III.'s reigns Parliament grew somewhat in strength, and during the latter's reign made considerable use of the weapon of impeachment.

G. Richard II.'s reign is comparatively unimportant except for the fact that he acquired absolute power.

Section C.

The Lancastrians (Henry IV., 1399, to the end of Henry VI., 1461).

A. During the reigns of Henry IV. and Henry V., Parliament enhanced its powers considerably.

i. Illegal taxation was rare.

ii. The Audit of Accounts was first introduced, in 1406.

iii. Money grants originated in the Lower House.

iv. Haxey, who had been imprisoned by Richard II., was released by Henry IV., thus establishing the right to freedom of speech in the Commons.

v. Henry V. granted the request of the Commons that their petitions should be turned into statutes without alteration.

B. During the Wars of the Roses, under Henry VI., Parliament became impotent.

Section D.

The Yorkists (Edward IV., 1461, to the end of Richard III., 1485).

Parliament having become weak in the previous reign, owing to the Wars of the Roses, Edward IV. rendered himself quite independent by securing an income by heavy and illegal taxation: he raised "benevolences" and confiscated the estates of those who had been opposed to him.

Section E.

The Tudor Period (Henry VII., 1485, to the end of Elizabeth, 1603).

A. It is useful to consider how far the royal authority was limited at the time of Henry VII.'s accession:—

i. Every law required the sanction of Parliament.

ii. New taxes could not be raised without Parliament's consent.

iii. Nobody could be imprisoned except by a legal warrant, which must state his name.

iv. Servants of the sovereign could not plead the royal authority as a defence for their illegal acts. They could be sued in damages for any civil injury they committed.

v. Impeachment existed, whereby the Ministers of the Crown could be brought to account for their actions.

B. This period often appears to be marked by the Crown exercising absolute authority and Parliament exercising a very limited control in affairs. The raising of forced loans and benevolences by both Henry VII. and Henry VIII., and the Statute of Proclamations, 1539, which gave to the proclamations of Henry VIII. the force of law, give this impression. It is, however, not the case; though the Tudors were most powerful monarchs, nevertheless the Parliament was growing in strength, and though the effect was not at once seen, it became evident as soon as a weaker set of sovereigns succeeded, namely, the Stuarts.

i. The Tudors were popular, on the whole, and this no doubt prevented greater parliamentary opposition to their wishes.

ii. Henry VII. had amassed very considerable wealth, which saved himself and Henry VIII. from the necessity of resorting to Parliament for funds. Elizabeth also was extremely careful in the spending of money.

iii. People's thoughts were much engaged on the question of reforming the Church.

iv. And under Elizabeth there was the threat of a Spanish invasion. So it was that a strong ruler was welcomed by the country, and constitutional controversies did not often arise.

C. Under the Tudors the authority of the Crown was strengthened by the establishment of such Courts as the Star Chamber and the Court of High Commission.

Section F.

The Stuarts (James I., 1603, to the end of James II., 1689).

A. It was in this period of our history that the crisis came in the conflict between the Crown and Parliament. As was pointed out in the previous section, Parliament had grown in strength under the Tudor monarchs, and when the House of Stuart ascended the Throne its members found to their cost that they could not carry out their wishes just as

they pleased. We may usefully trace the history of the relations between James I. and his Parliaments.

i. The First Parliament (1604–1611).

   a. It asserted its right to control disputed elections (Goodwin's Case).

   b. Freedom from arrest was asserted in Shirley's Case.

   c. A disagreement arose between James and this Parliament over what is known as the "Great Contract," whereby he was to surrender his rights to feudal dues in return for a Parliamentary grant.

   d. A further dispute arose regarding the jurisdiction of the Court of High Commission: so Parliament was dissolved.

ii. The Second Parliament (1614).

   a. Summoned through financial necessity, this Parliament besought the King to abandon "impositions."

   b. James had therefore to order its dissolution.

   c. It was known as the "Addled Parliament."

iii. The Third Parliament (1621–1622).

   a. James not being willing to make any clear statement as to his foreign policy, Parliament commenced to attack domestic abuses.

      i. Monopolies.

      ii. Bacon, the Lord Chancellor, was impeached for receiving bribes.

   b. The King was petitioned to make war with Spain, to marry his son Charles to a Protestant princess, and to enforce the penal laws against the Roman Catholics. James replied that the Commons had no right to discuss matters upon which they had not been consulted, and the Commons protested thereto that "the liberties of Parliament are the undoubted birthright and inheritance of the subjects of England"; this protest was torn from the Journal of the House by the King's own hand, and Parliament was dissolved.

iv. The Fourth Parliament (1624).

a. With this Parliament James was more friendly, because Charles and Buckingham, having returned from Spain, advocated a war against the Spaniards.

b. James was induced to agree to the Statute of Monopolies, which abolished the right to grant a monopoly in anything unless it was a new invention.

B. Charles I. was no more successful in the management of his Parliaments than was his father.

i. His first Parliament (1625) only granted him supplies for a single year instead of for his life.

ii. With his second Parliament (1626), finance was again the trouble. Added to this was—

a. The impeachment of Buckingham.

b. The imprisonment of members by the King.

iii. With the third Parliament (1628), a succession of quarrels took place.

a. The King's illegal taxation.

b. The billeting of soldiers on the civil population.

c. The Petition of Right, which besought the King to remedy his various abuses, was agreed to by Charles, who was in sore need of financial aid.

d. The raising of tonnage and poundage.

e. Holles and Valentine held the Speaker in the Chair, while Eliot passed a resolution that "anyone who made innovations in religion, levied illegal taxes, or paid them, was an enemy of the kingdom." This resulted in the imprisonment of various members, including Eliot, by the King.

iv. With the fourth (the Short) Parliament (1640) a definite refusal was given to the grant of supplies until grievances were redressed.

v. It was the Long Parliament, which met in 1640, which attacked the King vigorously.

a. It impeached Laud and Wentworth.

b. Monopolies, ship-money and tonnage, and poundage, were all declared illegal.

c. The Courts of Star Chamber and High Commission were abolished.

d. The Triennial Act was passed, whereby Parliament was to meet at least once in every three years.

e. The Grand Remonstrance recited all Charles's illegal acts.

f. The King went to arrest "the five members, who had flown," and civil war became inevitable.

C. We may summarise the downfall of the Stuarts upon the execution of Charles I., in 1649, as being due to:—

i. The lack of foresight upon the part of James I. and Charles I., in not realising that Parliament was a growing force to which they must give way.

ii. The doctrine of the "divine right of kings," as held so strongly by these two monarchs.

iii. The raising of tonnage and poundage, ship-money, and other illegal exactions, in order to be able to dispense with the necessity of summoning Parliament.

iv. The exercise of the suspending and dispensing powers.

D. The ability of the Stuarts to rule for long periods without summoning Parliament at all was due to two facts:—

i. Having the Court of Star Chamber ready at hand to sentence and punish those who refused to pay the illegal exactions.

ii. A subservient body of judges dependent for their office on the King's pleasure.

E. Although after the execution of Charles I., there were two further members of the House of Stuart upon the Throne, namely, Charles II. and James II., the victory had been completely gained by the Commons under Charles I. and thenceforward it

became impossible for a king to threaten the country with the abuses and exactions which had hitherto prevailed.

i. Charles II., it is true, fell back upon many of the expedients of Charles I. to raise money in order to rule without Parliament, but it must be remembered that the people were so sick of the government under the Commonwealth that a certain amount of licence was granted to the first monarch who succeeded the Cromwellian administration.

ii. A good deal of the money Charles II. obtained was raised, not by taxing the country, but from Louis XIV., who paid him an annuity in order to make him independent of Parliament.

iii. James II., who attempted to play the part of the earlier autocrats, soon found himself in difficulties and fled the kingdom.

F. Though we have considered the constitutional history of this period with reference to the weakening of the Sovereign, and the growing strength of Parliament, we cannot leave it without giving a short account of the Constitution of the country under the Commonwealth.

i. Upon the execution of Charles I., though the government was nominally a republic, it was rendered effective by the army under Cromwell, who was in reality a military dictator.

a. All that remained of the House of Commons was the "Rump"; Colonel Pride having expelled a large body of members to secure the conviction of Charles I. The "Rump" abolished the House of Lords.

b. There was at first a Council of State, with executive powers; but in 1653 the Instrument of Government conferred on Cromwell the title of "Lord Protector."

c. The Instrument of Government may be described as a "written constitution" for the country.

i. It defined the Protector's powers.

James II.—A note on the causes of his downfall.

1. James endeavoured to obtain the repeal of the penal statutes against Roman Catholics, but not meeting with success, he made use of the "dispensing power" to prevent their operation. Thus the Declaration of Indulgence and the Trial of the Seven Bishops.
2. The birth of a son to James, who would succeed to the Throne, a Roman Catholic, was not tolerated by the country.
3. James had lost the support of his army.

ii. And appointed an executive council to control the Protector.

iii. It contained provisions as to the franchise; all males who were worth £200 were given a vote, with certain exceptions, which included papists.

iv. Laws were to become valid at the expiration of twenty days after their passing Parliament. The Protector had no veto thereon.

v. Provision was made for the maintenance of a standing army.

ii. After Cromwell's death, and upon the failure of his son, Richard Cromwell, to control affairs, the country was only too ready to welcome the restoration of the Monarchy in the person of Charles II.

Section G.

After the Revolution of 1689.

A. After the abdication of James II.*, William of Orange and Mary were offered the Throne and the *Bill of Rights* became law.

i. This Bill of Rights is one of the most important of our statutes from the constitutional point of view.

ii. It provided—

a. That the suspending and dispensing powers were illegal.

b. That the Court of Ecclesiastical Commission should be abolished.

c. That the King was not to maintain a standing army in times of peace without parliamentary sanction.

d. That subjects should have the right to petition the King.

e. That excessive bail and fines should not be imposed.

f. That the Crown be settled on William and Mary, and the heirs of the body of

Mary, and in default of such issue, on the Princess Anne and the heirs of her body.

B. A new order of things arose. Hitherto the country had been governed by the King, subject to the criticism of Parliament; henceforward the power of the Crown passed gradually into the hands of the House of Commons and so into the electorate.

C. Since the Revolution the Cabinet system has become the great feature of the Constitution; and, with the exception of George III., no monarch has since made any attempt to exercise autocratic powers. We may usefully give a short summary of the means employed by George III. "to govern as well as reign."

i. Public officials who opposed the King's wishes were deprived of their offices, and officers in the navy and army lost their commissions if they voted in the Commons against the will of the King.

ii. He bribed members of Parliament and voters at the elections.

iii. He opposed the repeal of the Stamp Acts. This resulted in the loss of the American colonies.

iv. A secret body of councillors, called "the King's friends," was formed, by whose aid George hoped to govern independently of Parliament and his ministers.

D. We may suitably conclude by remarking that this last period has witnessed an enormous extension of the franchise, commencing with the *great Reform Act of 1832*, and by a consideration of the more important statutes passed since the Revolution which bear on constitutional questions:—

i. *The Act of Settlement, 1701.*

a. This Act settled the Crown upon the Electress Sophia of Hanover, and the heirs of her body.

b. Express provision was made to confer the Crown only upon Protestants.

c. Judges were to hold office "quamdiu se bene gesserint."

ii. *The Act of Union with Scotland, 1707.*

a. Upon James I. ascending the English Throne, the Crown of Scotland belonged also to the English King, because James was also James VI. of Scotland; nevertheless, though united under one King, the English and Scotch Parliaments did not coalesce, but each continued to sit in its respective country.

b. Upon the fall of James II., a Scotch Convention Parliament, just as the English Convention Parliament had done, offered the Crown to William of Orange.

c. In 1704 the Scotch Parliament enacted that, on the death of Queen Anne without issue, a new ruler should be chosen who did not occupy the English Throne also, unless England first of all brought about freedom in religion and trade in Scotland. To this measure the English Parliament replied by prohibiting certain imports into Scotland. These were the facts which led up to negotiations for the union of the two countries.

d. By the Act of Union it was provided that—

i. From the 1st May, 1707, the two countries should be united into that of Great Britain.

ii. The Crown should descend to the issue of Sophia of Hanover.

iii. Trade rights should be the same in both countries.

iv. Provision was made for the sixteen Scottish Representative Peers to sit in the House of Lords.

v. The Episcopal Church in England and the Presbyterian in Scotland were preserved.

iii. *The Act of Union with Ireland, 1800.*

a. Henry II. made a conquest of Ireland, and was titled "Lord" of that country. Thence-

forth English settlers went there and the English barons held counties palatine.

b. In 1495 Poyning's Law decreed that all English statutes passed prior to 1495 should be valid in Ireland, and that henceforth no Irish Parliament should pass any law without the licence of the English Crown.

c. Henry VIII. was styled "King" of Ireland instead of "Lord."

d. English statutes, however, passed after 1495 did not bind Ireland unless they expressly extended to that country. The Irish Parliament, however, protested vigorously against the claim of the English Parliament to legislate for Ireland even expressly.

e. By an Act of 1783, however, the English Parliament declared that the Irish Parliament and Courts should have exclusive jurisdiction in Ireland. Nevertheless, religious quarrels and disputes as to free trade led to a rebellion in Ireland in 1792, and self-government for Ireland at that time did not work. After expending a large sum of money in bribery, the Irish Parliament passed the Act of Union.

f. Immediately prior to the Union the Constitution in Ireland was similar to that in England: but the Act provided that—

   i. On 1st January, 1801, Great Britain and Ireland should become the United Kingdom of Great Britain and Ireland, with a united Parliament.

   ii. Twenty eight Irish Peers, to sit in the House of Lords, were to be elected for life.

   iii. Other provisions dealt with trade, navigation, etc.

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