
This is a reproduction of a library book that was digitized by Google as part of an ongoing effort to preserve the information in books and make it universally accessible.

Google™ books

<https://books.google.com>





The life of Sir Edward Coke

Cuthbert William Johnson

THE LIFE
OF
SIR EDWARD COKE

VOL I.

LONDON :
SCHULZE AND CO., 13, POLAND STREET.

TO NEW YORK
PUBLIC LIBRARY

ASTOR, LENOX AND
TILDEN FOUNDATIONS



Engraved by J. Smith

Printed by R. Bayly, London

Lord Chief Justice of England, on the reign of James I.

From the original picture by Claessen, in the possession of T. D. Bayly Esq.

Henry Colburn 12, Gt. Marlborough St.

Digitized by Google

*Sturges & Stearns's
Out Office*

THE LIFE
OF
SIR EDWARD COKE,

LORD CHIEF JUSTICE OF ENGLAND IN THE
REIGN OF JAMES I.

WITH
MEMOIRS OF HIS CONTEMPORARIES

BY
CUTHBERT WILLIAM JOHNSON, Esq.

OF GRAY'S INN, BARRISTER-AT-LAW.

SECOND EDITION.

VOL. I.

LONDON:
HENRY COLBURN, PUBLISHER,
GREAT MARLBOROUGH STREET.

M.DCCCXLV.

TO NEW YORK
PUBLIC LIBRARY

ASTOR, LENOX AND
TILDEN FOUNDATIONS

WITH GREAT PLEASURE

THE AUTHOR DEDICATES THIS WORK

(BY PERMISSION)

TO THE RIGHT HONOURABLE

THE EARL AND COUNTESS OF LEICESTER,

AS IT AFFORDS HIM AN OPPORTUNITY

TO RECORD HIS SENSE

OF THEIR KINDNESS AND

HOSPITALITY.

CONTENTS
OF
THE FIRST VOLUME.

CHAPTER I.

| | Page |
|--|------|
| The period in which Coke lived — His general character — His birth in 1550—His parents — His family — Childhood — Enters Trinity College Cambridge — Archbishop Whitgift—Coke's studies—His power of intense application—Nature of his readings—Biography of Whitgift—Coke becomes a Templar—Is called to the Bar —The course of legal study followed in his days—Mootings—Anecdotes of the law students—Coke pleads his first cause—Gets into practice—Accumulates considerable property—Rapidly acquires estates —Notices of his landed property in Norfolk, Essex, Bucks and Dorsetshire. | 1 |

CHAPTER II.

1578—1582.

| | Page |
|---|------|
| Coke's early career at the bar—Account of his first cause —Style of pleading—His emoluments—His legal con- temporaries—Plowden—Bacon—Lord Ellesmere—Sir George Croke—Sir Harbottle Grimstone—Sir Henry Yelverton—Sir Lawrence Tanfield—Dodderidge—Da- vid Jenkins. | 27 |

CHAPTER III.

1582—1593.

Coke's first marriage—The Paston family—Coke's father-in-law—This the happiest period of his life—Trial of Mary Queen of Scots—Coke made Recorder of Norwich, Coventry and London—A bencher and reader of Inner Temple—Elected into parliament for Norwich—Made solicitor-general—Sketch of his parliamentary demeanour—His description of the properties which a member of parliament ought to possess—The members of that age—Their character—Their pay—Coke elected speaker—Sir John Puckering's speech on the occasion—Coke's first speech in parliament in addressing Queen Elizabeth—The lord keeper's reply—The Commons displease the Queen—Certain members committed to the Tower—Speech of Coke on the bill for reforming the ecclesiastical courts—His address

| | |
|--|------|
| as speaker to the Queen at the close of the session | Page |
| —The Queen's speech in reply—Appointed attorney general—Sketch of the parliamentary proceedings during the last years of Elizabeth and the first of James I. | 65 |

CHAPTER IV.

1593—1603.

Coke's residence at Huntingfield Hall—The mansion and its remains—Coke's children—His wife—Her death—Her epitaph—Coke again thinks of marriage—The treaty with Lady Hatton successful—His illegal marriage—Whitgift puts him into the Spiritual Court—Death of Burleigh—Notice of Sir William Hatton—Rivalry of Bacon—Letters of Lord Essex—Character of Lady Hatton—Trial of Essex and Southampton—Speech of Coke—Notice of Essex and of his son—Criminal trials of that age—The public quarrel of Coke and Bacon—Queen Elizabeth—Her conduct to Coke—Her gift to him—Her death—Coke continued attorney-general by her successor. 119

CHAPTER V.

1602—1606.

Coke knighted—Trial of Raleigh—His speech—Raleigh's defence—His condemnation—Sir Henry Montague's speech to him on judgment being passed—Notice of Raleigh—The gunpowder plot—Trial of the cons-

| | Page |
|--|------|
| pirators—Coke's speech to the judges—Notice of this plot and of the conspirators—Many of its particulars doubted—Coke made Chief Justice of the Common Pleas—Coke's emoluments when at the bar—His fees of office. | 155 |

CHAPTER VI.

1606—1614.

| | |
|--|-----|
| Coke's upright character as a judge—Ceremony of his investiture—Is previously made a king's sergeant—His introduction into the Court of Common Pleas—Bacon's letter to him—The case of Marmaduke Langdale—Opposes the court—Refuses to give his opinions—Opposes the Court of High Commission—History of this court—Coke nominated a commissioner—Refuses to sit—Conference in consequence—Archbishop Bancroft's speech to him—The Court of Common Pleas, and the High Commission Court come into contact in the case of chancery—Coke summoned before the Privy Council—Coke succeeds in his opposition—Is made Chief Justice of the Court of King's Bench—The real cause of his promotion—The case of Edward Peacham—the King desirous of ascertaining Coke's opinion—Bacon demands it—Coke finally baffles him—King James writes his opinion—Coke made High Steward of Cambridge. | 213 |
|--|-----|

CHAPTER VII.

1614—1616.

| | Page |
|---|------|
| Benevolences—Coke contributes to them — Presides at the trial of the murderers of Overbury—Weston — Ann Turner — Sir John Elvis — Sir Robert Monson — The Earl and Countess of Somerset—Roger Coke's account of the detection of the plot—King James' fears—The plots which attended him—Coke's address — The declining health of the Lord Chancellor — Bacon intrigues to be his successor—Contest between the Courts of King's Bench and Chancery — Coke consulted by the King. | 256 |

CHAPTER VIII.

1616—1617.

The Case of Commendams—Bacon's letter to Sir Edward Coke—The letter of the Judges to the King—The Judges summoned before the King in council—The King's speech to them—Coke's reply—The King's rejoinder — Bacon's opinion — Coke's reply — The Chancellor puts a question to the Judges, which Coke alone refuses to answer — Again summoned before the council—The reports of the council to the King — Coke again summoned before them — The sentence of the Privy Council upon him—Desired to revise his reports—Suspended from his office—Again

| | Page |
|--|-------|
| appeared before the Privy Council—Letter of Buckingham to Bacon—The King himself enters into the examination of Coke's reports—Coke again summoned before the Privy Council—The Chancellor's reports to the King, of the examination — The examination suspended—Letter of Coke to Buckingham. | . 293 |

CHAPTER IX.

1616.

| | |
|--|-------|
| The real causes of Coke's suspension from the Court of King's Bench—The case of the chief clerkship of the Pleas—Resolution to discharge him—Bacon's letter to the King enclosing a form for the purpose—Warrant for his successor—Bacon advises the King as to Montague—Further notices of the review of Coke's reports—Copy of Coke's supersedeas—Coke's behaviour on the occasion—The opinion of his legal contemporaries—The letters of Mr. Chamberlain—The Queen befriends him—Sir Henry Montague appointed his successor—Bacon's letter to Buckingham—Speech of the Chancellor to Sir Henry Montague when he was sworn to his place—Incomes of the judges in the time of Coke—Notice of Robert Cecil first Earl of Salisbury—Of Villiers Duke of Buckingham. | . 328 |
|--|-------|

INTRODUCTION.

THE works of Sir Edward Coke have been long familiar to the legal profession ; to no English lawyer, indeed, are his gigantic labours unknown. But with regard to the life of their great author, with the exception of the able notice by Oldys, in the *Biographia Britannica*, little has yet been accomplished. To the readers of English history, Coke is principally known as the pleader who so rancorously conducted the prosecution of Sir Walter Raleigh ; and he is hardly remembered for anything except the part which he played in that melancholy trial. To this, many circumstances have contributed ; he was much too independent in his political conduct to be a favourite with the historians of either party ; too patriotic for the royalists ; his high prerogative legal opinions were, on the other hand, equally distasteful to the republicans.

In this work, I have endeavoured to supply the deficiency above referred to ; and for this purpose have availed myself of the stores contained in the Plumian Library, in my own immediate neighbourhood ; that of Lambeth, which has been opened to me by the kindness of his Grace the Archbishop of Canterbury, and that of Holkham, through the liberal hospitality of the Earl and Countess of Leicester.

In none of these collections, however, nor even among the splendid stores of the British Museum, have I found so many original letters of Coke as I once anticipated. In truth, the now remaining correspondence of this great lawyer is extremely limited, and not much distinguished either for its ease or its elegance ; and, upon the whole, our knowledge of his private life is but little extended by his own writings.

In the present work I have endeavoured to do justice to Coke's character, by showing him not only as the lawyer and the author, but as the unflinching patriot, for in all these public relations he puts forth the highest claims to our gratitude and admiration—claims which he well

maintained to the end ; for at the age of four-score we shall find him still the same ardent lover of his country as in the prime of life ; still exerting his great powers and acquirements, as when he was Attorney General to Queen Elizabeth.

At the same time, I have on no occasion endeavoured to conceal Coke's great and manifold defects, so often displayed during his long and eventful career. But, in reviewing these errors, we must not forget the character of the age in which he lived. We must remember, that moderation of language, and liberality of feeling, were not then the fashionable attributes of public characters, or mildness of punishment the desired attribute of the criminal code of England. Moreover, we must not forget that if Coke, in common with the political party with whom he associated, sometimes outstepped the bounds of moderation and humanity, he was surrounded by difficulties and perplexities at once novel and unprecedented ; that he was claiming for the Commons privileges never before exercised, and combating mighty prerogatives of the crown, which had been long enjoyed without resistance ;

that he was very often obliged to argue without authorities, and to maintain positions in which he was of necessity the aggressor. In short, while reviewing at this distant and improved period of human cultivation, the life of this, in many respects, truly great man, let us not withhold from our estimate that liberal interpretation of his failings, the absence of which, in *his* estimate of others, was Coke's chief error.

C. W. J.

THE LIFE

OF

SIR EDWARD COKE.

CHAPTER I.

1550—1578.

The period in which Coke lived — His general character — His birth in 1550—His parents—His family — Childhood — Enters Trinity College Cambridge — Archbishop Whitgift—Coke's studies—His power of intense application —Nature of his readings—Biography of Whitgift—Coke becomes a Templar—Is called to the Bar—The course of legal study followed in his days—Mootings—Anecdotes of the law students—Coke pleads his first cause—Gets into practice—Accumulates considerable property—Rapidly acquires estates—Notices of his landed property in Norfolk, Essex, Bucks and Dorsetshire.

THE long series of eighty-four years which intervened between the birth and death of Edward Coke, comprehends one of the most eventful periods of English History. Its commencement

in the mild reign of Edward VI, was distinguished by the arduous and energetic struggles of an enlightened band of patriots, to throw off the last chains of the Church of Rome; a reformation which they endeavoured to effect by conciliatory measures, and to perpetuate by wise statutes, remarkable even at the present day for their moderation of tone, as well as for the force and elegance of their very preambles.

Coke's days of childhood likewise included the short yet sanguinary reign of Queen Mary, marked by the temporary restoration of popery, the fierceness of its professors, and the misguided zeal of its clergy; a zeal which Pope Paul the fourth himself foresaw would for ever ruin the papal religion in England. The sagacity of this hierarch enabled him correctly to conclude, that persecution is, of all others, the best mode of promoting sectarianism; and that no doctrine was ever yet promulgated, so absurd, as not to be elevated into importance by oppression and cruelty. Of a still more certain consequence, therefore, the rational doctrines of the reformers would be more widely diffused when the sufferings of its professors had given them the fervour of martyrs, and had gained to them the compassionate interest of their countrymen.

Coke was only eight years of age when

Elizabeth commenced her prosperous reign. He witnessed, in its lengthened duration, numerous great and important events, and in many of them he appeared as no inconsiderable actor. The final establishment of the Protestant Church of England, the astonishing increase of this island in commerce, in riches, in knowledge, and in power, were a few of the works of this great and glorious reign, in which Coke assisted.

He was fifty three years of age, at the accession of her cowardly successor James I, and shone forth among those leaders of the land, who endeavoured to rescue it from the degradation into which it was sinking in his reign of plots, favourites and pedantry. This was a period remarkable in the Constitutional History of England for the first successful efforts of the Commons to acquire that due weight in the national legislature, which they did not dare to attempt in the reign of his arbitrary and talented predecessor; and justly may it be considered as fortunate for the cause of liberty, that the Commons of England had, in their earliest struggles, to contend with so cowardly and so contemptible a monarch as James I.

In all the plots, debates and contentions of this reign, Coke never forgot his duty to his country, even when fulfilling the duties of the

highest judicial offices in the gift of the crown-offices, which were then held at the mere arbitrary will of the King, to meet whose wishes too many of Coke's predecessors had not refused to falsify the decisions of justice.

In the early part of the reign of Charles I, Coke died, still acting with the liberal party of that day; for, they then spoke with dignity, and acted with a manly moderation worthy of English Commoners. Unfortunately for Charles I, as his difficulties increased, and his dangers thickened, his most talented friends fell from him. Death, disgust for his insincerity, exile, and the sword, had reduced his supporters to a brief array. At the period of the king's trial, Coke had been fifteen years in his grave, otherwise he would not have been a silent spectator of his sovereign's murder. Although a member of the moderate party, his moderation would not have degenerated into cowardice, and indolence. He would not only have disapproved, but have opposed, the violence of the popular torrent, when he saw it overpowering all bounds, and sweeping away the landmarks of constitutional liberty. The great Selden might plead his love of ease, his natural inactivity; others their want of weight in the state, a third party might content themselves with a cold negative to the proposed murder,

or silently withdraw from the tragic judgment—but such pusillanimity would not have enervated Coke: he would rather, in all the towering strength of the profound old lawyer, have stood undismayed between his king, and those who went through the mockery of his trial; he would have dared them to proceed to judgment; he would have scouted their pretended authority as too transparently ridiculous for vindication; as completely contrary to all law, as it was unjustifiable in equity.

In following Coke through this long and eventful period, it will be necessary to trace at some length many of the scenes in which he was an actor, and, in so doing, we shall find that he managed to preserve at the same time his loyalty and his patriotism, his ardent love of liberty with an uncompromising allegiance to his sovereign. We shall have the conclusion naturally forced upon our attention, that he fulfilled high and important duties with a success which, in many succeeding periods, lawyers and statesmen have found infinite difficulty in attaining. Coke, we shall find, was able to accomplish these things, not because they solely occupied his attention, but amidst all the irksome employments of a laborious profession. Besides the imperative duties that devolved on him he voluntarily

found time to write comments upon the laws of his country, even to this day, unexcelled in their profound legal knowledge ; and to arrange huge volumes of decisions distinguished for their learning and accuracy—voluminous works, still regarded as first authorities by the lawyer, at the same time that they are among the best text books of the legal student.

To the law student, the life of Sir Edward Coke is full of materials for the most careful, the most serious reflection. Riches did not render him idle, affluence did not enervate him. Born to a competent estate, he yet laboured in his profession as if for his very existence. Rising from his bed before day-break, he studied unceasingly until weariness compelled him to seek repose. He was one of the few eminent lawyers on whom, as Lord Woodhouselee justly remarks, “ Fortune has bestowed hereditary affluence ; for, to a man of talents and of moderate activity, the possession of a competence in early life is very far from being an advantage.”*

Coke did not start in life with both the great advantages which Lord Talbot considered the best endowments of a law student, “ parts and poverty,” for he had a family estate, and

* Life of Lord Kames, vol. 1, p. 3.

excellent connexions—connexions which through life he studiously, perhaps too carefully, preserved and extended, certainly in his latter days more so than accorded with his happiness. He commenced, however, with still greater endowments than these: namely, with a moral courage which no difficulties appalled, and with habits of industry, for which no investigation was too tedious or intricate.

It would be unjust to the student to hold up Coke as a perfect model for his imitation, for he had many great and important defects of character. He was proud in the extreme, imperious and overbearing. This pride was one great actuating principle which followed him through life, was distinguished in his two marriages, in his pleadings, in his decisions as a judge, in his contests with Bacon, in his intrigues at court, in the marriages of his children, and even in his speeches in Parliament.

His pride, however, was not confined to himself, storehouse as he was of common law, or to his own gigantic acquirements. He felt proud of the equity of the laws of England, proud of his country and of his country's rights, and, when tottering towards his grave, in one of his last addresses to the Commoners of England, he again spoke of his country's glories, of the feats of her children in by-gone days of triumphant victories, with

all the buoyant enthusiasm of youth. This proud feeling of patriotism is discernible in all his works; it is found in every page of his "Commentaries," and it peeps out even in the dry prefaces, to still more uninviting reports.

His ever anxious solicitude for the progress of the student was worthy of so great a man. It was not with him an occasional feeling, for it will be found beaming through all his gigantic labours—he let no opportunity escape to further this benevolent intention.

Of Coke's morality, of his religious feelings, we have abundant evidence. The student will not fail to be struck with the testimony he gives to the unvaried non-success of every lawyer of his day, who was distinguished for his disregard of the rules of virtue or the laws of God.

The foregoing is a slight sketch of the life and mind of Edward Coke, an outline that I will now proceed to fill up in detail. He was born on the first of February in the year 1551, at his father's seat in the parish of Mileham, near East Dereham, in Norfolk.

The house in which he was born no longer exists; it was pulled down some years since by the present Mr. Coke, and another erected on its site. It stood on the ground formerly occupied by some of the outworks of the old Castle of Arundel; built in the age of William of

Normandy, by Alan son of Flaad; to whom the Conqueror granted the Manor of Mileham.

Sir Henry Spelman was shown by Sir Edward Coke the very spot of his birth, his mother being suddenly delivered of him, by the parlour fire-side, before she could be carried up stairs to her bed.*

Although the house no longer remains, Mrs. Leeds, the present tenant of the new mansion, still shews the spot of Sir Edward's birth.

According to the register of Mileham, he was baptized on the 8th of February, 1551, so that he was probably born on the day I have assigned, or late in the previous year.†

His father, Robert Coke, was a bencher of Lincoln's Inn, and a barrister of very extensive practice.‡

His mother, Winifred Knightley, was daughter

* Spelman's *Iceniæ sive Norfolkiciæ* p. 150 Mileham—Prædicabat miri quidpiam ejus Genitura; Matrem ita subito juxta Focum intercipiens et in Thalamum cui suberat non moveretur. Locum ipsum ipse mihimet demonstravit. The learned Spelman resided at Narborough, in Norfolk, about twenty miles from Mileham.

† I owe to the politeness of the Reverend C. B. Barnewall, the following copy of the Mileham Register. "Edvardus Coke generosus baptizatus fuit VIII die Februarii, An. 1551"

‡ Stowe's London, p. 429.

and co-heiress of William Knightley, of Morgrave Knightley, in Norfolk, and a very estimable woman. Coke, in after life, always spoke of her with much gratitude and reverence.

The surname of Coke is evidently of British origin, being derived from the British word coc, or coke, a chief.

The town of Cuckfield, in Sussex, was originally spelt Cokefield, Cokkfield, or Cookefield, then Cuxfield and lastly Cuckfield.*

In the reign of Henry III, in a grant to the great Earl de Warren, it is spelt Cokefield†; in the ninth of Edward II, I find it changed into Cokefeld;‡ and in the eighteenth of Henry VII into Cockfield.§

I find the same variations in spelling the name of Sir Edward Coke; he is often designated by contemporary authors as Cook; even Lady Hatton, his second wife, always spelt his name Cook, or Cooke; and, in Norfolk, his native country, the provincial pronunciation of the name is still more extraordinary, being more like Kuke than Coke.

In the writs of military aid, printed by order of,

* Horsfield's Sussex. vol. 1, page 252.

† Tower Records. No. 2.

‡ Burrell MSS.

§ Tower Records.

the commissioners of the public records, there are several directed, to the Cokefords, of the eastern English counties : thus, there is one dated at Westminster, August 30, 1293, enjoining John de Cokeford to repair in person, with his horses arms, and servants, to the sea shore, either in Norfolk, or Suffolk, for the defence thereof against the French.

The Cokes of Norfolk, according to a pedigree, by the great Camden, Sir Edward Coke's friend, are a very ancient family, one of them, William Coke of Doddington, being seated there in the year 1206.* From him lineally descended the two Sir Thomas Cokes, father and son of the reign of Edward III, the father a man of considerable abilities, the son Seneschal of Gascoigne.

Robert Coke, the grandson of the first Sir Thomas Coke, married a lady of fortune, and his grandson, Thomas Coke, marrying Alice, daughter of William Falcard, Lord of Sparham and Stiveskey, these estates came to their son Robert Coke, who married Ann Woodhouse, by whom he had Robert Coke, his heir, who was the father of Sir Edward Coke.

✓ Sir Edward Coke's father died on the 15th

* Fuller's Worthies, p. 250.

of November 1561, at his chambers in Lincoln's Inn, leaving his only son, then in his eleventh year, and seven daughters. Many years subsequently, Sir Edward Coke caused a monument to be erected to his memory in the parish church of St. Andrew's Holborn, on which is the following inscription :—

Monumentum Roberti Coke de Mileham, in Comitatu Norfolciæ Armig. illustrissima Hospitii Lincolniensis quondam socii Primarii.

Qui ex Winefrida Uxore sua, Gulielma Knightley filia, hos suscepit liberos.

Edwardum Coke, filium, Majestatis Regiæ Attornatum Generalum.

Winefridam, Miloni, Mingay, Generos.

Dorotheam, Gulielmo Franklyn, Generos.

Elizabetham, Richardo Osborne, Generos.

Ursulam, Georgio Ledys, Generos.

Annam, Francisco Stubbe, Generos.

Magaretam, Roberto Barker, Armig.

Ethelredam, Nicolas Bohun, Armig.

| | | |
|-------------------|---|-----------------|
| Obiit in Hospitio | } | Domini 1561. |
| Prædicto 15 Die | | Elizab. 4. |
| November Anno | | Aetat. suæ 48.* |

* Stowe's London, 229. Collins's Peerage, Ed. 1756. v. 3. p. 679.

Coke had been scarcely two years at Cambridge when he lost his mother. He erected a monument to her memory in the church at Titledhall.

She had, it appears, married again, but of her second husband I have no particulars except those furnished by her epitaph.*

I am entirely unacquainted with the history of Sir Edward Coke's seven sisters, and their husbands; the latter were most probably country gentlemen, who had no distinguishing qualities; were perhaps lords of the villages in which they dwelt; perchance shone to most advantage in a Norfolk fox chase.

No particulars of the early youth of the subject of the present biography have rewarded my researches. He may be supposed to have spent his childhood at Mileham, under the direction of his mother, for whose care of his early years he always expressed the highest gratitude and veneration.

In 1660, being then ten years of age, he was sent to the grammar school at Norwich, at that time under the mastership of Mr. Walter Hawe,†

* By her second husband, Robert Bosanne, Esq., she had issue a son named John, and was buried January 16, 1569. Bloomfield's Norfolk, vol. 5. page 1079.

† Antiq. Scholæ Reg. Norwic. p 57.

where it is said by the editors of the *Biographia Britannica*, he displayed great diligence and application. It is more than probable that this was the case, for his works are far too great, and betray a mind far too industrious for him to have been the slave of indolence, or pleasure, at any period of his career.

Coke remained at Norwich school seven years, and was from thence removed to Trinity College, Cambridge. This occurred in 1567, when he was seventeen years of age, and, on the 25th of October in that year, he was matriculated a pensioner of Trinity College. It does not appear from the University books that he ever took a degree.*

The admission books of Trinity College do not reach back nearly so far as 1667; neither is the name of Edward Coke to be found in the list of the scholars of the college. "His circumstances in life," says Dr. Wordsworth, "being such as not to allow of his seeking admission to the pecuniary benefits of the institution."†

* The Rev. J. Romilly's (the registrar's) certificate, transmitted to me in the obliging communication of Dr. Wordsworth, Master of Trinity.

† Dr. Wordsworth's letter to the Author, Nov. 7 1835.

He remained at the University four years. There is no account of his studies to be found at Cambridge; there exist no traditions concerning his sayings and doings. Being intended for the profession of the law, he probably paid more attention to the study of Norman French, and to the year books, than to mathematics or classic lore.

He had now arrived at an age when young persons begin to acquire the chief portion of the useful information which they are to benefit by in life. Coke certainly was not an idler; he early began to read such books as would serve him in his future professional pursuits. Among the books at Holkham Hall, there are many law authorities, containing his autographs and notes, dated at a very early period of his life. He must have possessed from his boyish days the power of intense application, in a very remarkable degree. The books which he studied so steadily, and so perseveringly, were of a nature which almost defy the mental digestion of a modern student.

There were then no law books written with the elegance of Blackstone's Commentaries, or Fearne's Contingent Remainders. Every law authority was composed in the barbarous law French of the age, and Coke had to struggle to obtain

knowledge from such authors as Fleta, Britton, Hengham and Littleton; from the year books, and the reports of Plowden and Dyer.*

It has been often said that Dr. Whitgift was Coke's university tutor, but of this fact I have not been able to obtain the slightest proof.

Coke came to Cambridge in 1567, in which year Whitgift was master of Pembroke Hall, and not long after Master of Trinity, Coke's own college. It could not have been usual for Masters of Halls, at Cambridge, to officiate as tutors which must have been the case had Whitgift performed that office for Coke.

If, however, he was not Coke's tutor, he was certainly his friend, for otherwise this great divine, would not have thought of sending him when made Attorney General to Queen Eliza-

* To a non-professional reader, the asserted barbarism of an old Law Report will hardly appear credible, the following is a case from Dyer's Reports, 240—45 which I give verbatim selecting it for its brevity,

“ Fuit resolve per le pluispart de les justices & le counsell del Roigne cest terme a sergeants inne, in præsentia comitis Sussex Justic Forestar citra Trentram que le building dun novel Mease in le severall soyle on waste dascun home deins un Forest, est un purpresture & noyance al Forest & Game & finable ou arrentable, pur le tolleracion ou permission de ceo destroye al arbitement & discretion del justice, ou raceable & destrue al pleasure, &c.”

beth, the Greek Testament with the fatherly message, "that he had studied the Laws of Man long enough, and that henceforth he would have him study the Laws of God." The fact that Whitgift put Coke into the Bishop's Court upon his second irregular marriage, was a noble instance of the prelate's firmness and impartiality.

Whitgift was admirably adapted by these, his characteristic qualities, for the unsettled age in which he was Primate of all England; for its church was then, as it has been often since, violently attacked on all sides, catholics and non-conformists of all sects uniting in their attempts to humble and subvert it. Whitgift resisted these parties with equal courage and good success. His measures of severity were hardly regarded as such, at the period when he presided over the church. He was one among many of the great men whom Queen Elizabeth found out, and promoted to the highest steps of their profession. She was certainly, in this respect, even more than usually admirable; no one hated superficial men more than good Queen Bess*.

* John Whitgift was a native of Grimsby, in Lincolnshire: he rose entirely by his own merit to the University honours which were conferred upon him. He was made successively

In his twenty-first year, Coke was removed from Cambridge to Clifford's Inn, in London, and, in the following year, April 24, 1572, entered himself a student of the Inner Temple. As a student, it appears, he speedily was noticed for a very close application to his studies; and more publicly by a very clear statement to the Benchers of the Cook's case, which had considerably embarrassed these grave lawyers and who

Bishop of Worcester and Archbishop of Canterbury, which last promotion he obtained in 1583, on the death of Archbishop Grindal.

He was employed and trusted, by Burleigh, in many state affairs of importance; thus he was one of the commissioners in 1586, who were appointed to try Mary of Scotland; he did not, however, proceed to Fotheringay, but he was present in the Star Chamber, to which place the court was adjourned, after hearing Mary's reply to the charges brought against her.

He died in 1608, lamented, says Camden, by all good men (*a*).

The college at Croydon, of which he was the founder, testifies to his munificence and charitable disposition. Of his forgiving temper, there are many instances. Thus, when Sir Richard Knightley, who had established a secret printing press, from which issued many bitter libels on the church and its primate, was heavily fined by the Court of Star Chamber, Whitgift had the greatness of mind to sue for and obtain his pardon (*b*).

(*a*) *Britannia*, p. 200.

(*b*) *Beetham's, Baronetage*, vol. 4, p. 386.

very much admired the way in which Coke unravelled the story. It was probably a case relating to the management of the House, with which I confess myself unacquainted*.

He was admitted to the bar in his twenty-seventh year when he had been a member of the Middle Temple only six years, which at his age was thought to be a very extraordinary circumstance, for the students were then accustomed to remain eight or nine years on the books of the society, before they were called.†

From the period when Coke left Cambridge, until his twenty-eighth year, when he pleaded his first cause, I have few materials from which I can learn the course of his studies, the books he read, or the students with whom he associated. That he was not an idle reader is proved by his published works; for he never touched upon any theme, commented upon a section of his author, or reported any case, but he apparently exhausted all the learning which could be applied to the subject. His habit of early rising, which attended him through life, gave him ample time for his studies. His grandson, Roger Coke, tells us that he usually rose at three o'clock in the morning, and, in

* Lloyd's Worthies, p. 823.

† Fuller's Worthies, p. 250.

his time, the courts seldom sat later than noon. The business of a barrister having the most extensive practice would then leave him ample space for a very careful and extended course of study. The cases, too, in Coke's day, principally involved questions of real property: these were rare, and others not more important were trivial ones of defamation of character. Trials on bills of exchange were then nearly unknown. There are not more than two or three reported cases of this description previously to the time when Coke quitted the bench. Few cases then occurred of the kind, which now so incessantly occupy the attention of the courts. The labours of the judges were light.

The course of legal study was, in his time, rather different from the system at present adopted. A student was then usually obliged to be eight years on the books of an inn of court before he could be called to the bar; five years longer than is at present necessary.

Clifford's Inn, as well as several other subordinate inns, were then, as now, appendages to the larger inns of court, and in these it was usual for the law students to dwell, and associate together, for the purpose of study and the disputation of doubtful or difficult points of law. The practice has long been disused. I learn

from an old manuscript of the time of Henry VIII, that in these inns a curious system of study was then adopted.*

“ After dinner and supper,” says this writer, “ the students and learners, in the house, sit together, by three and three, in a company ; and one of the three putteth forth some doubtful question in the law to the other two of his company ; and they reason and argue unto it in English ; and at last, he that putteth forth the question declareth his mind, also shewing unto them the judgment, or better opinion of his book, where he had the same question ; and this do the students observe every day throughout the year, except festival days.”

The benchers of the Temple had even then to contend with some unruly spirits. In the 38th. year of Henry VIII, May 30, they ordered the students not to have long beards. The treasurers of all the inns of court conferred together on this mighty affair in their full parliament, and in consequence it was ordered, by the decree of the 5th of May, the 1st. and 2nd. year of Philip and Mary, “ that no fellow of this house should wear his beard above three weeks’ growth.” In the 38th year of Elizabeth, the students were desired, by the benchers, not to

* Cotton MS. Vitellus, chapter 9, page 320.

go into the city with either cloaks, or hats, boots, or spurs, "except when they ride out of the town."

The benchers equally set their faces against gambling. "None of the society shall, within this house exercise the play of shoffe-grotte, or slyp-grotte upon pain of six shillings and eight-pence.* The students, it seems, very early acquired the accomplishment of tobacco-smoking; for, on the 7th of November, 7th year of Charles I, an order was issued, "That there be no drinking of healths, nor any wine or tobacco uttered or sold within the house."

It was usual in those days for many gentlemen's sons to belong to an inn of court, who had no intention of practising the law as a profession; and this must account for the multitude of students who then belonged to them. Chief Justice Fortescue, who wrote his *De Laudibus legum Angliæ*, a century before the time of Coke, tells us that in his days. "Neither at Orleans, where as well the canon, as the civil laws are taught, and whither out of many countries students do resort; neither at Angers or at Caen; or any university of France, Paris only excepted, are found so many students, past child-

* 17th of July 13th year of Henry VIII.

hood, as in this place of studies, notwithstanding that all the students there are English born."

Such was the legal school in which Coke was educated. That he was industrious and persevering, time, by its fruits, demonstrated; pleasure did not tempt him from the dry legal inquiries of his profession; he was never even suspected of any licentious conduct. If the youth is the epitome of the man, he was proud and reserved, economical in his expenses, neat in his dress, ambitious of distinction, and leaving no means unemployed, to realize his aspiring hopes, the fondest wishes of his heart.

His public principles, there is little doubt, partook of the spirit of the age. Born in the short reign of Edward VI, he first became a public character in the reign of Elizabeth, when an intense dread of popery and an earnest, grateful admiration, of Elizabeth's services in the cause of protestantism threw a veil over even her most arbitrary proceedings; public feelings, which were completely lost in the reigns of her not more arbitrary, but more selfish successors.

In Trinity term, 1578, Coke pleaded his first cause; his practice speedily became considerable, and, soon after this great event in a barrister's life, he received the appointment of reader of

Lyon's Inn, a situation which he held for three years with the highest credit.

“The benchers,” says the manuscript I have before referred to, “appoint the utter barristers to read among them, openly in the hall, of which he has notice half a year before. The first day he makes choice of some act or statute, whereupon he grounds his whole reading for that vacation; he reciteth certain doubts, and questions, which he hath devised upon the said statute, and declares his judgment thereupon, after which one of the utter barristers repeateth one question, propounded by the reader who did put the case, and endeavours to confute the objections laid against him. The senior barristers, and readers, one after the other, do declare their opinions and judgments in the same, and then the reader, who did put the case, endeavours to confute the objections, laid against him, and to confirm his own opinion. After which, the judges and sergeants, if any be there, declare their opinion.”

Coke had begun, some time before this, to accumulate considerable property. His practice at the bar was lucrative, and the estates left him by his father, had evidently increased in his hands. There is at Holkham Hall, the original book of title deeds belonging to Sir Edward,

with various notes in his own hand writing. Thus, at the end of the first indenture, which relates to Titleshall Austens, dated 2nd October 1576, he has written : “ This was the first purchase made by the aforesaid Sir Edward Coke.” These purchases succeeded each other with great rapidity, and at last attracted the notice of government. There is a tradition in the Coke family, that when he was in treaty for the family estate of Castle Acre Priory, in Norfolk, James I told him, that he had already as much land as it was proper a subject should possess. To this, Sir Edward replied, “ Then, please your Majesty, I will only add one *acre* more to the estate.* This fine estate, once the property of the splendid abbey of Lewes, in Sussex, and afterwards of the first Earl of Exeter† is still possessed by the descendants of Sir Edward Coke. The observations of King James, with regard to the Castle Acre estate, must have been made about the year 1615, for I find by the book of Title Deeds at Holkham Hall that Castle Acre was bought by Sir Edward Coke, in the thirteenth year of that sovereign’s reign.

* For this and other information with regard to Sir Edward Coke, I am indebted to the present Mr. Coke, when hospitably received by him and Lady Anne Coke, at Holkham in July, 1835.

† Dugdale’s Monasticon, vol 5, p. 46.

Besides his Norfolk purchases, Coke bought some large estates in Essex : among these were the Manor of Pitsey in 1582, and that of Crustwic in the parish of Wiley in 1580.* By degrees, he also possessed himself of various lands in Dorsetshire, for instance, the manor and village of Durwarston and Shillingston ; lands and houses in the borough of Wareham, and certain fisheries adjoining.† In the Manor of Corfe Castle, by his marriage with Lady Hatton, he acquired only a life interest, for immediately after his decease in 1635, this high spirited lady sold the property to Chief Justice Banks, in the possession of whose descendants it still remains.‡ With the same lady, Coke also received a life interest in the mansion and estate of Stoke in Buckinghamshire, where he resided in his old age, and Hatton House in Holborn, built by, and formerly the town residence of, the Lord Chancellor Hatton.§

* Morant's History of Essex, vol 1, p. 256—474.

† Hutchin's Dorsetshire, vol 2, p. 161. Vol 1, p. 24—89.

‡ Ibid, vol 1, p. 174.

§ This house was built on the orchard ground of the Bishop of Ely, who long refused to alienate it, until he was frightened into compliance by the well known short and energetic letter of Queen Elizabeth, threatening to "unfrock" him if he did not immediately comply with her favourite chancellor's request. Hatton Garden now occupies the site of this mansion.

CHAPTER II.

1578—1582.

Coke's early career at the bar—Account of his first cause—
Style of pleading—His emoluments—His legal contemporaries—
Plowden—Bacon—Lord Ellesmere—Sir George Croke—
Sir Harbottle Grimstone—Sir Henry Yelverton—
Sir Lawrence Tanfield—Dodderidge—David Jenkins.

THE thirty years which Coke spent at the bar, as a barrister, solicitor-general to Queen Elizabeth, and lastly as attorney-general were the happiest of his life. He was then rising rapidly in his profession, had wealth and honours daily thrown in his way, and in his first wife, Bridget Paston, had an excellent and affectionate companion. The court had not then entangled him ; parliamentary affairs and family broils had not yet rendered him notoriously uncomfortable and ridiculous.

This portion of his life, however, is not the richest in furnishing materials for his biographer,

since, even in his own admirable reports of cases in which he appeared, there is little mention of himself. The pleadings are but rarely given, and, when they are added, they turn upon mere points of law, and the cases are detailed in the driest style, uninteresting to any but the student. Blackstone had not yet written; Mansfield, Ellenborough and Lyndhurst had not then convinced the legal profession, that it was possible to render even law an attractive and agreeable study. The conduct of Coke, at the bar, partook of the spirit of the age; he was deeply read, both in the statute, and the common law. Of the last, perhaps, no man possessed so much, neither was he deficient in classical lore; but these advantages lost much of their effect for want of a polished manner and some humility of deportment.

Of his style of pleading, we have no very correct account. His recorded speeches are distinguished for their legal knowledge, their learning and their close adherence to the facts of the case; there is little trace of imagination; he was seldom figurative and still more rarely eloquent. His speeches, to a modern reader, will often appear tedious from the mass of facts with which they are inelegantly crowded; and their effect is by no means assisted by the writers whom it was his fate to have as reporters.

I have already stated that the first cause in which Coke was engaged was in Trinity term 1578, when he appeared as counsel for the defendant, in the case of the Lord Cromwell against Denny.* From this case, which was an action for slander, his client the Rev. E. Denny, vicar of Norlingham in Norfolk, appears to have had the misfortune of such a neighbour as the Lord Cromwell, who introduced as preachers into Norlingham Church two unlicensed persons. These, in their sermons, denounced the book of Common Prayer as impious and superstitious. For this reason, when they again came to preach, the vicar endeavoured to prevent them, but, being supported by Lord Cromwell, they succeeded in gaining possession of the pulpit. At this time, some high words passed between Mr. Denny and Lord Cromwell who exclaimed in his anger, "Thou art a false varlet, and I like not of thee." To this the former replied, "It is no marvel that you like not of me, for you like of these (meaning the preachers) who maintain sedition against the Queen's proceedings." In the action for these words, the Lord Cromwell failed, another was then commenced, but finally the matter was compromised.

* Coke's Reports, 4, fol. 13.

Coke's practice as a lawyer was certainly very great ; we have it from good authority that he was employed in most of the great causes in Westminster Hall,* and the tradition among the members of the bar is, that his emoluments were equal to those of a modern attorney-general.

This is, probably, a correct report, when the difference in the value of money is taken into the account ; for otherwise, such were the comparative smallness of the fees then usually paid to a barrister, that the gross amount of the sums received by him could not have amounted to the receipts of a modern lawyer in first rate practice.

Coke had for his contemporaries at the bar, some of the ablest lawyers which this country has produced ; men alike distinguished for their learning and their probity. Among the foremost of these, I may mention Plowden, Bacon, Egerton, Croke and Yelverton; and there were, besides these, Hobart and Tanfield, afterwards chief justices, Heath and Dodderidge. Of these great lawyers it will be well to give a short notice, since they were mixed up with many of the chief events of Coke's life, were his rivals at the bar, his contemporaries on the bench,

* Preface to his own Reports.

assisted in his disgraces, and were witnesses of his restoration to the smiles of the court.

Edmund Plowden, the author of the "Commentaries," was born in Shropshire in 1519. He was one of the most eminent lawyers of his age, but, being of the Roman Catholic persuasion, Queen Elizabeth, in whose reign he died, did not promote him to the bench. If this had not obstructed his promotion, he was too learned in the law, was regarded too much as a legal oracle to have been passed over by that sagacious and provident Queen.

In early life, he appears to have been undetermined in the choice of a profession; for, although he tells us in the preface to his Commentaries, that "his first commyng to the studye of the lawe, was in ye twentyeth yere of myne age," which he adds was in 1539; yet in 1552 he was admitted by the university of Oxford to practise chirurgery and physic; but says Wood: "As Dr. Thomas Phaer did change his studies from common law to physic, so did our author Plowden from physic to common law." He had probably been induced to turn his attention to the study of medicine from some professional prospects of advantages which proved deceptive, for he speedily resumed his legal studies, became reader to the Middle Temple, and a sergeant at law.

He has been well described by Daines Barrington as "the most accurate of all reporters," and Sir Edward Coke, in the preface to his own tenth book of Reports, thus speaks of the labours of his learned and laborious contemporary : —

"Plowden's Commentaries, consisting of two parts, both of them learnedly and curiously polished, and published by himself, the one in the 18th year of Queen Elizabeth and the other in the 21st year of the same Queen; works with all the professors of the law, of high account. The author was an ancient apprentice of the law, of the Middle Temple, and of great gravity, knowledge and integrity." The biographical materials afforded by the life of a learned barrister, are necessarily few, since his adventures are usually merely the every day contests and technical controversies which attend motions for new trials; their extreme of popular interest not rising above the development of evidence. His wanderings are confined to his circuit, or amid the briefs and authorities dispersed around his chamber. It is only when he becomes a law officer of the crown, and thus his history is identified, in some degree, with that of the court to which he owes his promotion, that it becomes interspersed with more stirring incidents and attraction. Plowden came of an

honourable and ancient family long seated on their estate at Plowden in Shropshire. Dying in his sixty fifth year, he was buried in the Temple Church, where he is represented on his tomb reclining in his gown.

He was treasurer to his society when their great hall was rebuilding ; and his coat of arms, with the date 1576, may still be seen in one of the windows.*

Of the illustrious Francis Bacon, the life of Coke will necessarily contain much information, since he was by far the most distinguished and the most formidable of all Coke's rivals. His intrigues, his cringings to court favourites, his miserable mistakes, the final termination of his disgraced judicial career, his long continued contests with Coke ; these will often be found connected very intimately with the life of the latter.

Bacon was indeed an extraordinary man: " the wisest, brightest" but certainly not the " meanest of mankind." He was born at York House, in London, on the 22nd of January 1561. Trinity College, Cambridge, had the honour of being his Alma Mater, as it was of his rival Coke. For this nursery of his genius he ever retained the kindest remembrance. When he published his " *Instauratio Magna*" in 1620, he presented

* Herbert's Antiquities, 269.

a copy to his college, with a latin letter, still preserved in its library, of which the following is a translation :—

“ All things are indebted for their advance to their commencement ; therefore, as I drew my first knowledge of the sciences from your fountains, I have thought it right to return my improvement of them to you ; with which hope I expect, that with just modesty of mind and reverence towards the ancients, you do not neglect the improvement of the sciences ; but that after the sacred volume of the word of God, you should enroll, in the second place, that his great volume of the Works and Creatures of God, which the first ought to have for their Commentaries only. Farewell.”

According to Aubrey, Bacon was one of the martyrs of science ; an experiment was the cause of his death. “ As he was taking the air in a coach with Dr. Winterbourne (a Scotch physician to the king) towards Highgate, snow lay on the ground, and it came into my lord’s thoughts why flesh might not be preserved in snow as well as in salt. They were resolved they would try the experiment presently.

“ They alighted out of the coach, and went into a poor woman’s house at the bottom of Highgate Hill, and bought a hen and made her

exenterate it, and then stuffed the body with snow, and my lord did help to do it himself.

“The snow so chilled him, that he immediately fell so extremely ill that he could not return to his lodgings, I suppose then at Gray’s Inn, but went to the Earl of Arundel’s house, at Highgate, where they put him into a good bed, warmed with a pan; but it was a damp bed, which had not been laid in for a year before, which gave him such a cold, that in two or three days, as I remember Mr. Hobbes told me, he died of suffocation.”

This event happened on the 9th of April, 1626.

That Bacon was liberal even to extravagance, is very certain, for he died with debts amounting to twenty-two thousand pounds; but that, to support it, he was guilty of receiving bribes, to influence his judicial decisions, is sustained by no unquestionable evidence. Though justly condemned and fined in one reign, (for under no pretence should a judge receive presents of suitors) he was restored to his honours, and the fine remitted by the succeeding monarch. His merits, as a philosopher, are without dispute; he is universally hailed as the reformer of science. Before his time, men were the slaves of names, and Aristotle, the fathers, and the

schoolmen, were appealed to as authorities to which it was heretical not to submit. Bacon was the first who dared openly to teach, that man should appeal, for information, to observation and experiment. "Man," says the first axiom of his immortal *Novum Organum*, "is but the servant and interpreter of nature; he knows nothing, he can know nothing, but what he learns from experiment, or the observation of nature." An army of philosophers arose after him, and have gone on, making conquests in every department of science; but he was, and is (for his spirit still survives,) the pioneer who led and cleared the only way which conducts to truth.

Such he is esteemed by the world; and that, with the prophetic eye of conscious genius, he foresaw the fame which would arise to him, seems apparent in the lofty opening of his work:—

"Francis of Verulam thus thought and reasoned, and deemed that for his thoughts to be known to the living, and to future generations, was of concern *to them*."

Of all Coke's contemporaries, next after Bacon must be placed the chancellor, Thomas Egerton, first Lord Ellesmere.

This great lawyer presided over the Court of

Chancery from 1596, until 1616, with equal credit to himself and benefit to his king and country. He had the rare good fortune to be, at the same time, the favourite of the court, and the popular friend of the people. Through life he preserved his integrity, his private friendships, and his office; never betraying his sovereign by his flatteries, nor leaving his friends in the hour of their adversity. This he strikingly evinced, when the great and gallant favourite, the Earl of Essex, was in disgrace; for while Coke pleaded against him, with bitter energy and the most caustic invectives; while Bacon forgot his friend, in his duty to the queen; Egerton could find a more admirable and a more pleasing path;—he, at the same time, stood by his queen, and by that friend who, in his more prosperous days, had often successfully and faithfully supported him. He preserved both his loyalty and his gratitude. He still farther evinced these highly honorable feelings, in bringing about a reconciliation between Elizabeth and Essex, after she had given the warm-hearted Earl a box on the ear, in a debate about the appointment of a Viceroy for Ireland,—which Essex regarded as an unpardonable insult, and in consequence had withdrawn from court.

Egerton then addressed him a letter,* in which he feelingly and sensibly implored the indignant Earl to submit himself to the mercy of the Queen, and to remember the observation of Seneca, “ If the law punish one that is guilty, he must submit to justice; if one that is innocent, he must submit to fortune.”

The reply of the gallant but outrageous favourite was full of proud and passionate indignation. “ The queen’s heart is hardened,” he exclaims. “ What I owe as a subject, I know; and what as an earl and marshal of England, I know; but how to serve as a drudge and slave, I know not. If I should acknowledge myself guilty, I should do wrong to the truth, and to God, the author of truth. My whole body is wounded by that one blow.”†

To this, Egerton, nothing daunted by the warmth of Essex, replied in a long and able letter, still urging him to submission. “ The difficulty, my good lord,” he observed, “ is to conquer yourself, which is the height of all true valour and fortitude, whereunto all your honourable actions have tended. If I might have conferred with you myself in person, I would

* Cabaia, p. 234.

† Cabala, p. 235.

not then have troubled you with so many idle blots*.”

Essex gradually cooled during this correspondence ; but he had not yet the courage to avow himself in the wrong. “ Natural seasons,” he remarked in reply to Egerton, “ are expected here below ; but violent and unseasonable storms are from above. There is no tempest equal to the passionate indignation of a prince, nor yet, at any time, is it so unreasonable as where it lighteth upon those who might expect an harvest of their careful and painful labours.

“ In this course do I anything for my enemies ? When I was in the court I found them absolute, and therefore I had rather that they should triumph alone, than they should have me attendant on their chariots.” This letter was written in 1598.

Essex, at length, relented ; himself humbled at court ; but was appointed to his Irish expedition, but failed in its execution ; was again in disgrace ; and was committed to Egerton’s custody, who again befriended him.

On the 21st of October, 1599, from the court at Richmond, Egerton again addressed his friend.† “ Her Majesty is gracious towards you,

* Birch’s Memoirs, vol. 2, p. 385.

† Cabala, p. 235.

and you want not friends to remember and commend your former services ; of these particulars you shall know more when we meet. In the mean time, take this from me by way of caution :— there are sharp eyes upon you ; your actions, public and private, are observed ; it behoveth you, therefore, to carry yourself with all integrity and sincerity both of hands, and heart, lest you overthrow your own fortunes, and discredit your friends, that are tender and careful of your reputation and well doing.”

Essex again humbled himself, and the Queen again admitted him to favour. The Earl was however, regarded, by the public, as an injured patriot ; the government, therefore, advised a commission for his open trial, which took place in the lord keeper Egerton’s house, before a body of commissioners over whom Egerton presided.

The same good spirit, which is so apparent in all the Chancellor’s letters, did not desert him when he sat in judgment on his friend. He preserved the stern dignity of the court, even while he was counselling and advising the accused ; and, on his recommendation, the Earl pleaded guilty and was speedily again pardoned by his partial Queen.

When, on a future occasion, Essex openly revolted against his sovereign, and had actually

fortified himself in Essex house, Egerton was sent, with some other privy councillors, to demand the cause of the disturbance. Essex immediately imprisoned him and his companions in a room by themselves, while he went into the city, to sound the feelings of the citizens. They were all, however, liberated before his return ; at which Essex expressed himself to his followers with great indignation. Egerton was not concerned in the unfortunate Earl's trial ; but he visited him with others of the privy council, before his execution.

The favour which Egerton received from Elizabeth was continued to him by King James, who made him his chancellor, and created him Baron Ellesmere. For a period of twelve years he held this high office with unblemished integrity and reputation. He maintained with firmness all the prerogatives of his court ; and in his declining moments, when the hand of death was almost upon him, he withstood, with unshaken energy, in the celebrated case of the clashing jurisdiction of their respective courts, the decision of Coke and the judges of the Court of King's Bench.

King James seems to have been fully aware of the talents and integrity of his high-minded chancellor. He made him Viscount Brackley ;

he visited him, and endeavoured to cheer him in his illness. Several of his letters to Egerton are preserved, in which he breathes the most paternal feelings to his old and faithful servant. In one of these the King says :*

“ The letter I wrote, the last year, unto you, proved so good a cordial for your health, as I am thereby encouraged to do the like at this time, and as both I hope and pray for with the like success.

“ The greatness of your place, and the ability which God hath given you to discharge it, to the honour of your God and the great benefit of the commonwealth, are causes sufficient to stir you up to be careful of your own health, even to fight against disease as far as you can ; but when you shall remember how ill I may want you, and what miss your master shall have of you, I hope the reason will be predominant to make you not only strive with, but conquer your disease, not for your own sake, but for his of whom you may promise yourself as much love and hearty affection as might be expected from so thankful and kind a master, to so honest and worthily deserving a servant.”

This affectionate letter could not fail of being gratefully received by Egerton. He made yet

* From Newmarket, February 9th, 1612.

a last rally ; his health visibly improved ; and nine days after the King's letter, the Prince, afterwards Charles the First, congratulated him by letter, from the same place.

“ As I was very sorry,” begins the Prince, “ having understood of your danger, so do I rejoice at the good appearance of your recovery.” These flattering appearances were entirely deceptive. Egerton became worse, and the King, paying him an affectionate visit, reluctantly received from the hands of his venerable chancellor the great seal of England. During his lordship's life, the King would not bestow it upon another. He told Egerton, that he would be his under-keeper of the great seal ; advised with him, as to his successor, and adopted his advice. The dying chancellor recommended to the King, the great Francis Bacon, who immediately succeeded him on the woolsack.

Egerton's last hours were soothed by the attentions of the King ; for on his death-bed on the 15th of March, Lord Buckingham and Sir Francis Bacon announced to him, that the King had granted to him a pension of three thousand pounds per annum, and that he was to be made Earl of Bridgewater.

He felt however that he was dying ; and though he gratefully thanked his sovereign for the

favour, he added very pathetically “ these things are now to me but vanities.”*

He died the same day at York House, in the seventy-seventh year of his age, and was buried on the sixth of the following April, at Doddleston in Cheshire, without any pageantry or glory, says Dugdale in his baronage “ than what resulted from the fame of his glorious actions.”

The grave closed over Egerton, but King James did not forget his memory ; he created his son Earl of Bridgewater, from whom the present noble family of that name are lineally descended ; and he especially patronized Egerton’s chaplain and friend Dr. Williams, afterwards Archbishop of York, and keeper of the great seal.†

In private life, Egerton was equally amiable as in public. He did not omit to study the word of God, even when overwhelmed with business of the most important description. His heart, says Dr. Kippis, was full of faith, and hope of immortality. In his letter to King James, requesting to be relieved from the heavy duties of his office, he observed “ Cupio dissolvi et esse cum Christo.” He left behind him an estate which produced eight thousand pounds per annum ; yet he was entirely the architect of his

* Carlton Letters, Birch M.S. 4175.

† Hackett’s Life of Williams, pt. 1, p. 30.

own fortune. He could inherit nothing from his ancestors, the Cheshire Egertons ; since he was the natural son of Sir Richard Egerton of Ridley.

James the First appears to considerable advantage in his transactions with this truly estimable nobleman. He was always sensible of his services, was kind, affectionate and grateful. It is true that, in his reign, Egerton was always prosperous : he never saw the hour of adversity ; so that James had no opportunity of having his friendship tested, in the way, the most trying to a Stuart.

Egerton, there is no doubt, possessed great suavity of manner, united with great dignity of deportment. It was usual for many persons, in his time, to visit the Court of Chancery, for the purpose of seeing the manner of its venerable judge ; “ and happy were they,” says the facetious Fuller, “ who had no other business there.”*

In treating of Coke’s learned contemporaries, I must not omit to notice Sir George Croke. This great judge, so advantageously known to the lawyer by his reports, and to the lover of liberty and his country for the fearless decision which

* Cheshire Worthies, p. 176

he gave in favour of Hampden in the great cause of ship money, was born in 1559 at Chilton in Buckinghamshire.

He was educated at Thame school, was of University College Oxford, and a member of the Inner Temple. In 1619 he was made king's serjeant ; in the succeeding year a judge of the Court of Common Pleas ; and on the death of Sir John Fortescue in 1629, he succeeded him as a judge of the Court of King's Bench.

Sir Harbottle Grimstone, master of the rolls to Charles II, married Croke's daughter, and edited his valuable reports. He describes him as " of a strict life to himself, yet in conversation full of sweet deportment, affable, tender and compassionate, seeing none in distress whom he was not ready to relieve ; a man of great modesty, and of a most plain and single heart, of an ancient freedom and integrity of mind, esteeming it more honest to offend, than flatter or hate. He was remarkable for his hospitality, a great lover, and much beloved of his country, wherein he was a blessed peacemaker ; and in those times of conflagration was more for the bucket than the bellows, often pouring out the waters of his tears to quench those flames which others did ventilate. He was an example,"

adds Grimston, "of faith, hope, and good works; refounded a chapel of ease and an almshouse at Studeley in Buckinghamshire, and amply endowed them."

In the case of ship money, in which Croke so much distinguished himself, every precaution was taken by the court to ensure a verdict for the crown. Previously to the trial, the following artfully drawn case was put to the twelve judges by the lord keeper.

"When the good and safety of the kingdom in general is concerned, and the whole kingdom in danger, may not the King, by writ under the great seal of England, command all the subjects of this kingdom at their charge to provide and furnish such number of ships, with men, victuals, and munition, and for such time as he shall think fit, for the defence and safety of the kingdom from such danger and peril; and by the law compel the doing thereof in case of refusal or refractoriness?"

To this case a favourable answer was, with some difficulty, unanimously obtained from the twelve judges. Croke and his brother judge, Hatton, seemed reluctant to acquiesce, but were persuaded to subscribe to the answer by the assurance, that it would not at all stand in the way of any contradictory decision to which

they might arrive, when the cause should come to a trial. When that occasion did arrive, and Hampden's case, after being solemnly argued for many days in the Court of Exchequer, was finally determined, Croke then spoke fearlessly and learnedly against the legality of the impost.* The judges of that day would gladly have avoided coming to a decision on such a case; for their reluctant determination was sure to displease either the King or the people.

“ Judgment,” said Croke, “ is of the Lord ; the hearts of men, and also their judgments are in the hands of God ; and when judgment is once past, we have done. For my own part, I know we cannot do so well in this case as we should ; but we satisfy ourselves in our consciences and our understandings, and in this case we are to give counsel to the King according to our oaths, whether the charge be legal or not. If legal, the subject ought not to complain ; if not legal, then it is not in the King's power thus to charge the subject.”

Even the intrepid Croke, if we may credit Whitelocke, faltered in the discharge of his duty, and at one time was resolved to give

* State Trials, vol. I, p. 16.

judgment in favour of the crown against his own conscience and conviction. From this disgrace he was happily rescued, by the exhortations of his wife, Lady Mary Croke, who implored him to do justice, and deliver his opinion in the case openly and fearlessly, without any regard to what might in consequence be the fate of either himself, his wife, or his children.

The moral courage of this admirable woman deserves a more widely diffused record than it has yet attained. She felt that the frowns of a court were trivial when compared with the sacrifice of integrity and conscience. When learned courts trembled, and judges were afraid to be honest, she alone dared to be just, and to exhort others to feel and to act as she did.

Thus, although the majority of the judges gave their opinions in favour of ship money, yet the doubts and divisions amongst them, and the length of the pleading, both for and against the impost, gave a blow to all taxes and supplies of money from the subject to the King, obtained without the sanction of parliament, from which they never afterwards recovered.

Of Lady Mary Croke, I regret that my biographical notices are so limited. Her son-in-law, Sir Harbottle Grimstone, tells us that "this virtuous lady" was the daughter of Sir Thomas

Bennett, and that she survived her husband, to the memory of whom, at Waterstoke in Oxfordshire, she erected a monument. Its latin inscription tells us that he was one of the justices of the Court of King's Bench, and remarkable for his acuteness and superior mind ;—adding that “ he was the heir of truth, whom neither threats nor rewards could allure ; he weighed the authority of the King and the people with a just balance. Wise in religion, virtuous in life, he provided for the poor with a liberal hand, and a humble heart. He both conquered and forsook the world, in the 82nd year of his age, A.D. 1641.*

Two years after the memorable trial of Hampden, Croke, now in his 81st year, resolved to retire from his public labours ; he therefore petitioned Charles I to relieve him from his office, reminding the King that “ he was now become very old, being above the age of eighty years, sixteen of which he had served as a judge.”

The King, to his honour, acceded readily to the request of his venerable judge ; excused him from further attendance at Westminster, yet continued to him the fees and salary which he

* Preface to the third volume of Croke's Reports.

received while he sat on the Bench—" as a token," says the writ of discharge, " of our approbation of the former good and acceptable service done by Sir George Croke to our deceased father and ourself."

Croke did not long survive his retirement. Retreating to his house at Waterstoke, a few months afterwards " he cheerfully resigned his soul into the hands of Him that gave it."

Grimstone describes him to have possessed a rare memory, prompt invention, and quick apprehension. It appears that he was indefatigably industrious. This is shewn by his " Reports," which were not published until after his death. They rank high as legal authorities. The first edition of these appeared in 1657.

The case, in the third volume, of the King against Sir John Elliott, Denzil Hollis, and Valentine, speedily attracted the notice of the House of Commons, and ten years afterwards, in 1667, they made a formal complaint of it during a conference with the House of Lords: " as it did much concern this great privilege of parliament, and which passing from hand to hand amongst the men of the long robe, might come in time to be a received opinion as good law." The case arose from the commotion and riot which took place on the 4th of March, 1626,

when Sir John Finch, having announced to the House the King's pleasure that they should adjourn for six days, refused to put any questions afterwards moved by the members of the House. But upon his attempting to depart he was forcibly pushed back into the chair, and held in it by Hollis, Valentine and others, Sir John Elliott at the same time affirming that: "The King's privy council, his judges and his council learned, have conspired together to trample under their feet the liberties of the subjects of this realm, and the privileges of the House." For this they were indicted in the Court of King's Bench, found guilty, fined and imprisoned, although they objected very justly to the jurisdiction of the court in any questions concerning the privileges of parliament. The crown lawyers had provided against this objection, by mixing up their principal charge with other matters, implicating them in crimes committed out of parliament, and before its meeting; so that their plea did not avail them.

"The court," said the complaining Commons "overruled the whole plea mingled together, and took it in general; so that, perhaps, whatever was criminal in their actions, might serve as a justification of their rule, and might make it seem, in time to come, a precedent and

a ruled case against the liberty of speech in parliament, which they durst not singly and bare-faced have done.”

In consequence of this remonstrance of the commons, and by the direction of the House of Lords, Denzil Hollis, then become Lord Ifield, brought a writ of error in the upper house, and after hearing counsel on both sides, it was finally resolved on the 15th of April, 1668, “ That the judgment given, in the Court of King’s Bench, should be reversed.”*

Such was the estimation in which Croke’s writings were held by the parliament of Charles II, that the mere reading of one of his reports, induced both houses to open a case, and reverse a decision made by the Court of King’s Bench nearly forty years previously.†

Sir Henry Yelverton was another of Coke’s legal contemporaries whose name is yet familiar to the modern lawyer.

* Croke Car. p 182, 604.

† Sir Harbottle Grimstone, the biographer and son-in-law of Croke, was a younger brother and bred to the study of the law. Little captivated, however, by its dryness, upon coming, at the death of his elder brother, into the family estate, he very readily abandoned his legal researches. Becoming attached to Sir George Croke’s daughter, his future father-in-law, who probably perceived his talents, would not bestow her hand upon him in marriage, unless he returned zealously to

Yelverton was born at Islington, in 1566, and was the eldest son of Sir Christopher Yelverton, speaker of the House of Commons in 1602, and a judge of the Court of Common Pleas in 1606.

Henry Yelverton was educated at Oxford, and was called to the bar by the society of Gray's Inn. He was appointed solicitor general in 1613; and in 1616, through the interest of the Earl of Somerset, he became the king's attorney general.

When Somerset fell into disgrace, Yelverton nobly refused to plead against his benefactor, and, in consequence, was committed to the Tower, but was speedily released. Four years afterwards, having lost the favour of the new favourite, Buckingham, he fell under the displeasure of the court, and was prosecuted in the star chamber, for having put into a charter for the city of London, some clauses which were not authorized by his warrant. Coke, his old rival, and against whom, in the dispute his studies;—which he immediately did, with great alacrity and success; becoming a very distinguished pleader.

He was a member of parliament during the Commonwealth, and on the Restoration, was elected speaker of the House of Commons, and made, by Charles II, master of the rolls. MS. note in Heber's copy of Croke's Reports. Wood's *Athenæ Oxon.*

with Lady Hatton, he had filed an information in the same court, was now sitting on the bench as a judge, and in no very measured terms proceeded to describe the nature of Yelverton's offence; in conclusion, proposing a fine of six thousand pounds, with an imprisonment during the King's pleasure. The court somewhat mitigated this excessive punishment, imposing a fine of four thousand pounds.

It was Yelverton who, in 1626, after he had recovered the favour of Buckingham, and was called to be a sergeant, preparatory to his being made a judge of the Court of Common Pleas, ineffectually endeavoured to do away, upon that occasion, with the usual procession from Sergeant's Inn to Westminster, in the party-coloured robes. At this time, according to Croke, all the judges and barons met at Sergeant's Inn, by appointment of the chief justice; when Sir Henry Yelverton shewed the reasonableness of his request, because by reason of the suddenness of the calling, he was unprovided for the solemnities; citing, at the same time, a precedent, viz., that Sir Edward Coke, "being the king's attorney-general, was made sergeant, and chief justice of the Common Pleas, and sworn in chancery on the same day; then his robes and coif being put on, in the treasury of the common bench,

by Sir John Popham, chief justice, and Sir Thomas Fleming, chief baron, he was led in his party robes to the common bench bar, to make his count, and there took the oath of chief justice, all in one day : And he likewise desired that so it might be done to him. But all the justices conceived it was not a precedent to be followed ; being part of the ceremony for the creation of sergeants which ought to be performed in a solemn manner ; nor could it be convenient to suffer any more such examples." So Yelverton, attended by the benchers of his inn of court, with Sir John Walter and Sir Thomas Trevor, the two other sergeants, made at the same time, walked in procession, from Sergeant's Inn to Westminster Hall, making their counts, taking the oaths, and presenting their rings. On Yelverton's rings was inscribed: "*Stat Lege Corona.*" "They then," adds Croke, "all returned to Sergeant's Inn, where was a great feast at which Sir James Lee, lord treasurer, and the Earl of Manchester, were present."*

Yelverton did not long remain in the Court of King's Bench, for on the 12th of May following he was appointed a judge in the Court of Common Pleas ; and had not Buckingham been murdered by Felton, it is supposed that he

* Reports, vol. 3, p. 3—4.

would have promoted Yelverton to the wool-sack.

Yelverton died, whilst a judge of the Common Pleas, on the 24th of January, 1630, in the sixty-fourth year of his age, with the character of a most learned, upright and religious judge.

For his friendship and gratitude to Somerset and Weston, Buckingham patronized and promoted Yelverton, who, he clearly saw, did not desert his benefactors in the hour of their misfortunes. It is supposed that Weston, when on his trial for the murder of Overbury, stood mute, principally through the advice of Yelverton.

His excellent report of cases argued and determined, in the Courts of King's Bench and Common Pleas, were published in 1661, by judge Wylde. His descendants now hold the Barony of Grey of Ruthin*.

Of another great contemporary of Coke, chief Baron Tanfield, my notices are very limited.

Lawrence Tanfield was of the Inner Temple, and, along with thirteen other barristers, was made king's sergeant in 1602.

In 1603 he became a judge in the Court of King's Bench, and in 1608 chief Baron of the Exchequer†.

* Wood's Athenæ Oxoniensis.

† Croke's Reports, vol 2, p 1, 107, 181.

He was one of Coke's steady associates and supporters, in the many struggles which the judges had, in their opposition to the illegal requisitions of James I and Charles; maintaining his post and the dignity of the court over which he so ably presided, amid all the degradations and disgraces of his judicial brethren.

He died on the 30th of April, 1625, and lies buried in the beautiful church of Burford, in Oxfordshire, under a large, highly painted and partially gilt monument, for the keeping of which in repair his lady left an estate.*

Sir Lawrence Tanfield died possessed of the Manor of Great Tew, in the priory and demesnes of Burford, and other estates, all of which he left to his daughter, Elizabeth, who was married to Henry, Lord Falkland, by whom she became mother of the celebrated Lucius Cary, Lord Falkland, the flower of chivalry on the side of Charles I, and who was slain in the fight of Newbury Field.†

* From the 8th report of the commissioners of Public Charities, p. 458 it seems that dame Elizabeth Tanfield, by her will, dated May 23, 1629, left a message and tenement to her trustees, "that they should with the profits thereof, repair, maintain and cleanse the tomb of her late husband, and the aisle of Burford Church in which it stands."

It appears that upon this tawdry tomb forty pounds were expended in 1819, and as much more in painting and gilding in 1832.

† Wood, vol 1, p. 586.

While Tanfield presided over the Court of Exchequer, Henry Hobart was chief justice of the Court of Common Pleas.

He was of a family long resident in the county of Norfolk. In the 39th year of Elizabeth's reign he was member of parliament for Yarmouth,* and two years afterwards was made a sergeant at law.† He was a bencher of Lincoln's Inn. He obtained his baronetcy in 1611, being the ninth created by James the First, in the institution of the order. In 1613 he was constituted chief justice of the Court of Common Pleas. He died at his seat at Blickling in Norfolk, December 26, 1625, and was buried in Christchurch, Norwich. He is described by Spelman as "a great loss to the weal public;"‡ and by judge Croke as "a most learned, prudent, grave and religious judge."§ He was the author of a valuable volume of reports.

As a contrast to these firm and courageous judges, I may mention the name of the timid and nervous Dodderidge, who became one of the judges of the Court of King's Bench in 1618. Croke describes him as being "a

* Ex collect. B. Willis Arm.

† Dugdale, orig. jurid 262.

‡ Glossar. Lit. Collin's peerage, 3 vols. 17 and 42.

§ Reports, vol 5. p. 28.

man of great knowledge, as well in the common law, as in other human sciences and divinity.”* He was born at Barnstaple in 1555 and speedily became distinguished, both at Oxford and at the Middle Temple, for his industry and learning. His cowardice was very great; he was much too fearful of offending the court to preserve his independence; and in one or two instances left his brother judges to bear the brunt of the battle, while he slunk over into the ranks of the courtiers. His speech in the House of Lords on the question of the imprisonment of Hampden and others, April the 14th, 1628, shews him to have been then getting into his dotage.† He told the lords, “ I have always endeavoured to keep a good conscience; for a troubled one, who can bear?—I have sat in this court fifteen years, and I should know something. Surely if I had gone in a mill so long, dust would cleave to my clothes.”‡

The judges who presided in the Courts of Law and Equity during the reigns of James and Charles the First, with hardly a single exception, did honour to the legal profession. They evinced a stubborn integrity, a fearless independence,

* Reports, vol. 3, p. 127.

† He died five months afterwards.

‡ Parl. Hist. p. 6, Wood.

which their successors in those high offices have well imitated, but never excelled. Throughout the reign of the ill advised Charles, they earnestly endeavoured to dissuade him from every arbitrary attempt upon the liberty of the subject ; and in the cases which were brought before them by the officers of the crown, they gave their judgment, sometimes in favour of the King, but as often in favour of the subject ;—alike disregarding the smiles or frowns of the court. Often compelled, by a regard to the laws, to oppose the encroachments of the crown, they yet demonstrated by their after conduct, that they did not seek by such means to court the smiles of the republicans. Thus, when the death of Charles had terminated their commissions, six of the judges who resumed their seats, stipulated with the Commons, that, if they did so, they should still administer the laws of England as they were used to do in the time of their murdered master. The other six judges absolutely refused to serve, on any conditions whatever.* The mock trial and death of Charles the First was a piece of atrocity, which violated, in the minds of these honest judges, every principle of law and equity.

* Parl. Hist. vol 19. p. 7. These intrepid judges were Barons Trevor and Atkins and judges Brown, Bedingfield, Bacon and Creskeld.

The bungling managers of that proceeding, had not the discretion to put on even the appearance of a legal trial. That shadow of a parliament did not even depose him, before they called their victim to the bar. In his indictment he was charged as " Charles Stuart, King of England ;" and even in his death warrant he is so described.* His persecutors heeded not forms ; they had only one object in view—the death of their King ; and to accomplish that object, they perpetrated many brutal absurdities.

During all the tragic events of the civil war, these reverend judges of the courts at Westminster continued peaceably to administer the law, unmindful of passing events.

David Jenkins " the honest Welsh judge," could not imitate such safe and praiseworthy examples. He fired up, with all the natural impetuosity of a Glamorganshire lawyer, whenever he heard of any of the arbitrary proceedings of the Commons ; denouncing them as contrary to all law. His courage seems to have equalled his zeal ; for when the Commons had committed him to the Tower, transferred him to Newgate, and thence brought him to the bar of the house on a charge of treason, nothing daunted, he stood

* Parl. Hist. vol 23. p 210.

boldly on his defence—absolutely refused to kneel in their presence—and when urged by the house, denounced them in a rage, as “a den of thieves.” Even when the house, by way of reducing him to submission, threatened to hang him, his imagination carried him instantly to the gallows, but infused no terror into his intrepid spirit. “I will suffer then,” he exclaimed, “with the bible under one arm, and Magna Charta under the other!”

The courageous zeal of this honest Welchman could not but inspire his judges with feelings of respect. They did not put their threats into execution, but contented themselves with recommitting him to prison, where he remained until 1656.

There exists but scanty materials for any detail of his life. He was born in 1586, at Hensol in Glamorganshire; was educated at Edmund Hall in Oxford, and was a member of Gray’s Inn; he eventually became a Welch judge, and died on the 6th of December 1663, in the 81st year of his age. He was a person of great ability in his profession; Noy and Banks, when attorney generals, often seeking his advice. Wood describes him as “a heart of oak.”

He died, it appears, as he lived,—“preaching with his last breath, to his relations and those who were about him, loyalty to his majesty, and obedience to the laws of the land.”*

* Athenæ Oxon, vol. 1. p 239.

CHAPTER III.

1582—1593.

Coke's first marriage—The Paston family—Coke's father-in-law—This the happiest period of his life—Trial of Mary Queen of Scots—Coke made Recorder of Norwich, Coventry and London—A bencher and reader of Inner Temple—Elected into parliament for Norwich—Made solicitor-general—Sketch of his parliamentary demeanour—His description of the properties which a member of parliament ought to possess—The members of that age—Their character—Their pay—Coke elected speaker—Sir John Puckering's speech on the occasion—Coke's first speech in parliament, in addressing Queen Elizabeth—The lord keeper's reply—The Commons displease the Queen—Certain members committed to the Tower—Speech of Coke on the bill for reforming the ecclesiastical courts—His address as speaker to the Queen at the close of the session—The Queen's speech in reply—Appointed attorney general—Sketch of the parliamentary proceedings during the last years of Elizabeth and the first of James I.

It was in the year 1582 that Sir Edward Coke married his first wife, Bridget Paston,

daughter and co-heiress of John Paston, Esq. of Huntingfield Hall in Suffolk, with whom he received then, and at her father's death, a fortune, very large for those days, amounting to thirty thousand pounds.*

This lady, then in her eighteenth year, whose beautiful portrait by Casati adorns the yellow dressing-room at Holkham Hall, was of an ancient and honourable family, which had been long seated in the county of Norfolk. She was descended from Sergeant Paston, who was a judge in the reign of Henry VII, and accumulated a very considerable estate. Of the same family was Sir Clement Paston, who, according to Lloyd, Henry VIII called "his champion;" the Protector Somerset, "his soldier;" Queen Mary, "her seaman;" and Queen Elizabeth, "her father."†

By this marriage, Coke became connected with several of the first families in the kingdom; for Eleanor Paston, his wife's aunt, having married Thomas, Earl of Rutland, she had by him Henry, Earl of Rutland; Gertrude, Countess of

* To the Rev. Henry Uthhoff, Rector of Huntingfield, I am indebted for the following copy of the register of Cookley:—
"1582, Edward Cooke, Esq. and Bridget Paston, the daughter of John Paston, Esq. were married the 13th day of August, the year aforesaid."

† State Worthies, 203.

Shrewsbury; Ann, Countess of Westmoreland; and Francis, Lady Abergavenny.

The honourable and distinguished family of the Pastons has long since become extinct. They had their surname from the village of Paston, near North Walsham, in Norfolk, in which county they had considerable estates.*

Nicholas Stone, the sculptor, erected several of their monuments in the reign of Charles I, and in his memorandum book, he speaks of the hospitality of the Pastons, and how "extraordinarily" he was entertained at their seat while proceeding with his work.†

When Philemon Holland published his edition of Camden, about 1625, they were then flourishing among the chief Norfolk families; for he speaks of them as "a family grown great both in estate and in alliance, since they matched with the heiress of Barry and Maulbye." This lady was Agnes, daughter and coheir of Sir Edward Barry, who married Judge Paston.‡

* The last of the Pastons, William, Earl of Yarmouth, died in 1733, when the title became extinct.

† Walpole's *Anecdotes of Painting*, vol. 2, p. 47.

‡ Coke could not have been married more than a month when his father-in-law, Sir John Paston, died. According to the register of Huntingfield, he was buried there on the

Of such a noble family was Coke's first wife, with whom he probably passed one of the happiest periods of his life, and by whom he had ten children.

23rd of September, 1582. On his tomb in the church of that parish is the following odd inscription :

This earthlye coloured marble stone behold with weeping eyes,
 Under whose cold and massive weight, John Paston buried lies.
 A gentleman by birth and deedes, the second son to one
 Sir William Paston, worthie knight deceased long agone.
 This gentle Squire in Huntingfield a wydowe took to wyfe,
 That hight Anne Arrowsmith, with whom he led a loving lyfe,
 Eleven years space and somewhat more, by whom he also had
 One only child, a virgin mayd, his aged heart to glad.
 In youthful yeares this gentleman a gallant courtier was,
 With rarest virtues well adorned, to courtiers all a glass,
 A pensioner to princes four, Henry the Eight that boye,
 To Edward King, to Mary Queen, to Elizabeth our joye,
 Which four he served faithfullie, the court laments his end,
 His countrie neighbours all bewail the loss of such a friend.
 To poore a present remedie, to honest men an ayde,
 A father to the fatherless, the widows playnt he wayde,
 Against the hungrie travailer his doors were never shett,
 Against the reely needie soul his purse was never knitte.
 When he had lived three score yeeres and four, death closed up
 his eyes,
 He lyved well, he dyed well, and buried here he lyes.(a)

(a) I am almost tempted to believe that Coke himself was the author of these heavy lines. Poetry was a branch of polite literature in which he did not excel.

At this period he was rapidly rising in his profession, incessantly and happily employed, and returned from his chambers in the Temple to an elegant and well regulated house. Thus engaged, his name is not connected with the state prosecutions of those days; for he had not yet become a political character.

Mary Queen of Scots was condemned at Fotheringay in 1586. Had she been allowed the assistance of counsel, it is probable that Coke would have been employed on her behalf; for he was then one of the leaders of the bar, and had established a high character for courage and independence. Mary, however, had no one to defend her; she had, in fact, only a few hours' notice of her approaching examination; which I cannot by any latitude of interpretation entitle a trial: for by no competent authority were Burleigh and the other commissioners empowered to try the prisoner for her life, nor were even the most common forms of a trial observed. Neither was Sir Edward Coke employed against the Scottish Queen. Popham, afterwards chief justice of the Court of King's Bench, and Egerton, afterwards Lord Chancellor Ellesmere, were then attorney solicitor and generals; and they conducted the accusation.

It is not my intention to travel over the details

of this wretched proceeding, which the historian has long since recognised as one of the few blots in the fair page of Elizabeth's reign. The mockery of a trial—the sending down a large and talented body of the first public officers of the land to the distant and obscure castle of Fotheringay, to try an imprisoned Queen—clearly betrayed the intention of the court. Had the Queen of England been regardful of her own honour in this case, she would at least have taken especial care to send an impartial, unprejudiced body of commissioners. We should not then have found in the list the names of almost all her ministers: Burleigh, Lord Treasurer; Bromley, Lord Chancellor; Oxford, Great Chamberlain; Warwick, Master of the Ordnance; Leicester Master of the Horse; Howard, Lord Admiral; Hunsdon, Lord Chamberlain; Crofts; Knolles; Saddler; and others. Some care would also have been taken that the accused might have a public trial; that she should be defended with energy, and not condemned unless on the clearest evidence. The tears and pretended reluctance of Elizabeth to sign her death warrant, might then have been spared; Walsingham need not then have intrigued, nor poor Secretary Davison have been sacrificed.

Mary's case affords another instance of the folly of extending harsh measures even to those

of whose guilt there is every probability. Had Mary been sent back to her own country, all the historical romance of her character would have been spared. Her name, instead of being associated with the image of a friendless, beautiful woman, suffering patiently and with dignity, would then have reminded every reader of British history of far less agreeable scenes ; she would have been known in after ages as the busy, thoughtless, unhappy, intriguing Queen, whose claims to our sympathy were only her misfortunes ; and whose few private virtues made no atonement for her public errors.

It was about the year 1585 that the citizens of Coventry elected Sir Edward Coke to be their recorder ; and in 1587 those of Norwich followed their example. In 1590, he was chosen a bencher of the Inner Temple, and two years afterwards succeeded Sergeant Fleetwood as recorder of London,—an office which he held only six months—resigning it in the following June, on being made solicitor-general. From 1590 until 1610, he held the office of steward of the manor of Framlingham.* In 1592 he was elected reader, or law lecturer, to the Inner Temple. This office he evidently executed to the satisfaction of his Inn ; for

* Green's History of Framlingham.

he tells us in his own Note Book, that having composed seven lectures on the statute of uses, he had delivered five of them to a large and learned audience, when the plague broke out in the Temple. He then left London for his house at Huntingfield, in Suffolk; on which occasion, to do him honour, nine benchers of the Temple, and forty other templars, accompanied him on his journey as far as Romford.

I now approach the period of Sir Edward Coke's life when, by his election as the representative of Norfolk in the House of Commons, he first appeared in the political arena. This took place in 1592, when he was in his forty-second year.*

The political conduct of Coke we shall find partook of the changing character of the age, and was adapted to the necessities of his country. It was quiet, passive, and loyal in the reign of Elizabeth, owing to the obligation which all good patriots felt, of uniting every energy, and of sinking all minor differences, in favour of those great and paramount objects, the preservation of their country's independence, and the maintenance of the protestant religion.

* He was elected with Nathaniel Bacon, Esq.—Brown Willis's *Notitia Parl.* vol. 2, p. 131.

No reader of English history need be informed, with what extreme difficulty these great objects, so important to England, so essential to the dearest interests of knowledge, of liberty, and of religion, were attained by Queen Elizabeth,—surrounded as she was by a host of enemies; exposed to the religious hatred of the large and treacherous catholic portion of the people of England; and with a crown already bestowed by the Pope upon another.

At such a stormy period, no friend of England thought of embarrassing, by his opposition, any of the Queen's measures, however arbitrary. If she browbeat any liberal, noisy member of the Commons; if she committed any of the "impertinents," as she called them, to prison, or adopted any other measures equally despotic; still the best patriots of those days were content to sit silent, rather than even by a conscientious opposition, give an indirect support to the nation's enemies.

It is in vain to search among the parliamentary debates of this great Queen's reign, for any of Coke's patriotic effusions. Whether acting as one of the members for his native county, or as speaker of the House of Commons, we shall find him following one uniform course: he

was all loyalty to his Queen—a high prerogative lawyer.

Elizabeth's long and glorious reign produced strange changes in the political feelings and relations of England. Her wise measures had vanquished every enemy, and had immeasurably added to the foreign trade, the manufactures, the knowledge, and the riches of England. But her successor had neither her talents, her frugality, nor her courage. He was, moreover, a foreigner; he preferred foreigners; loved long speeches and talkative sessions of parliament, in which much was said and very little done; was extravagant, the slave of favourites, and a coward. The crown had, indeed, lost strangely by the transition from Queen Elizabeth to King James. The Commons of England had, on the contrary, made astonishing advances, and in consequence, they felt inclined to exert powers, and to assert rights, which in the reign of Elizabeth had never been thought of, or at least, never mentioned. Having vanquished all the foreign enemies of England, they now felt inclined to combat, with equal ardour, internal abuses and corrupt mismanagements.

It was then that Sir Edward Coke first appeared on the public stage, as a patriot and a

reformer. This hitherto subdued trait in his character was apparent, before he was made chief justice of the Common Pleas, long previous to his promotion to the King's Bench ; and it adhered to him as long as he remained chief justice of England. This ardent patriotism was, in truth, the real cause of his removal from his chief justiceship ; for when the great Egerton, Lord Ellesmere, was addressing Montague, his successor, in the King's Bench, he earnestly warned him not to be too ambitiously desirous of popular applause.

It was not probable that he, who was a patriot when sitting at the mere pleasure of the crown, as chief justice in the Court of King's Bench, would be less warm in his love of liberty and of even handed justice, when, after his unjust dismissal, his neighbours again elected him as their representative in parliament. He warmed in his love of liberty, as his years crept on. His ardour kept pace with the advancing spirit of liberty which marked the age ; and he was never cooled in these, his patriotic feelings, by either the smiles or the frowns of the court—a court which, however base and profligate in the reign of the first Stuart, was much altered for the better in that of his son and unfortunate successor.

I think, when these facts are taken into con-

sideration, the political conduct of Coke will appear, to the dispassionate reader of English history, as neither wavering nor inconsistent. His political life filled nearly half a century of a period, crowded with great and mighty events, in which his country passed from the extreme of slavery, both in church and state, to nearly the very opposite extreme of liberty—a licentious extremity which it certainly attained before he had long been in his grave. Those, therefore, of Coke's adversaries, who accuse him of changing his politics with those of the age, merely confess what they are unwilling to allow,—that he regulated his patriotism by the dictates of prudence, and a wise caution; that he examined with patience, and legislated with care, in the hour of danger; and that when, in days of public tranquillity, his boldness of language and his love of reformation became more apparent, he merely demonstrated, that when other men had made a great and mighty march in the road to improvement and knowledge, the first lawyer of his age had not stood still.

Coke, in his fourth Institute, gives an account of the properties which every member of Parliament ought to possess; and he seems to have been guided pretty closely, in his own career, by the principles which he there quaintly inculcates. He

tells us that “ every member of the House, being a counsellor, should have three properties of the elephant: 1. That he hath no gall. 2. That he is inflexible and cannot bow. 3. That he is of a most ripe and perfect memory.* That he should be without malice, rancour, heat, and envy ; not turned from the right either by fear, reward, or favour ; and that of a perfect memory, remembering perils past, he might prevent dangers to come.” Coke also advised the members of parliament to adopt another property of the elephant: “ They are sociable and go in companies. Sociable creatures,” he adds, “ that go in flocks or herds, are not hurtful, as deer, sheep, &c. but beasts that walk solely or singularly, as bears, foxes, &c. are hurtful. These properties ought every parliament man to have.”

Coke was elected, in 1592, to represent the county of Norfolk, as I have already stated, without any opposition;—the election being, as he tells us in his own Note Book, “ unanimous, free and spontaneous, without any solicitation or canvassing on my part.”

The office of a member of parliament had not then become of that honourable nature, that men

* Coke gives these properties on the authority of the Rot. Parl. anno 3, Henry VI.

of fortune and influence struggled for the acquisition of the distinction. At that period the knights and burgesses had only in a few instances begun to pay their own expenses, while attending the parliament: these were long afterwards a regular charge, paid by the electors to their members, at the close of every session.

In those days, as the power of the parliament was limited, so the duration of its sittings was short. A session seldom lasted longer than a month. The houses met early in the morning, and their debates rarely lasted until noon. Short however, as these sessions proved, the crown seldom troubled them with even these formal meetings. Thus, the first parliament in which Coke appeared, was speedily prorogued, and it did not meet again for four years. When it did assemble, on the 24th of October 1597, its duration was equally short; and another long period of five years elapsed, before it met at Westminster, on the 27th of October 1601. This was the last parliament of Queen Elizabeth.

The pay of a knight of the shire, as then allowed by the statute of the sixteenth of Edward the Second, was four shillings per day; a burgess was to be content with half that sum. This, however, did not preclude the members from

entering into private bargains with their electors. As an instance, John Strange, the member for Dunwich in 1463, agreed with the burgesses of that town, to take his wages in red herrings.*

In the same reign, the citizens of York, being anxious that the dignity of that ancient corporation should be properly represented in parliament, unanimously agreed that their members should be allowed four shillings a day if they

* This is a copy of the original agreement between these careful burgesses and their economical representative in parliament.

“ This Bylle indented mead the XVI day of Aprille in the threddezer of King Edward the fourte, betwyn Thomas Peers and John Scherlyng, Ballyfs of the town of Donewych, and John Strawnge of Brampon Esquyer witnessyth that the sayd John Strawnge granteth be these presents, to be oon of the burgeys for Donewych at the parliament to been holdyn at Westm’ the XXIX day of this sayd month of Aprille, for qwhech qwhedyr it hold longer tyme or shortt or qwhedyr it fortune to be porogyt the sayd John Strawnge granted no more to be takyn for hys wagys than a cade full of heryng and half a barell full heryng tho to be deliveryd be Chryst-masse next coming.

In witesse thereof eyther parte to other indenture interchawn jablyly her selys hav setl. day and zer abovesayd.”

From the original in the possession of Thomas Astle Esq. Preface to Glanville’s Reports by Topham XXIII.

The celebrated Andrew Marvel was the last person who received these wages; he represented the town of Hull in parliament in 1661.

kept a house in London during the session, but only two shillings if they went "to borde."*

They were not, however, underpaid, if we may judge of their integrity and independence by their actions. They probably much resembled the petty juries of modern quarter sessions: they were drawn from home with equal reluctance, and were, in the majority of instances, far less independent, and not nearly so well informed as to the best interests of their country. They were willing to redress grievances, and to assert their own privileges; but they proceeded with much cautious timidity and shrank back into inactivity, upon the first rebuke of the chief magistrate.

The persons who were sent to parliament from the Cinque Ports received for many years a daily stipend of two shillings; but after the year

* *Ult. die Sept. an, 2 Ed. quarti.* It was ordained and agreed by the assent of the counsel of the city, yet for als mykel as nowe late some aldermen being at the parliaments in time passed have gone to borde, wheras yai have at all times to fore holden house for the worship of the cite, yet fro hencefurth what alderman soever shall go to parliament and will hold house, shall have for his costs daily iiiis. and if he go to borde, he shall have but iis upon the day and no more fro nowe forth E registro in cam. styli. pont. Usæ. Drake's Antiquities of York, p. 357.

1576, it was raised to four shillings, and the inhabitants were then wont to evade the burthen, by neglecting to make a return to the writ. As early, however, as the reign of Henry the Sixth, the burgesses of Dover made a bargain with the mayor and jurats of Faversham, that, for the sum of forty shillings per annum, they should, once in three or four years, name a member to represent Dover in parliament.

In 1468, the now opulent shires of Essex and Hertford were so bare of substantial inhabitants, that the sheriff could only find Colchester and Maldon, in Essex, and not one town in Hertfordshire, which could send burgesses. Hence, and from other instances, it appears that it lay in the choice of the sheriff, whether a town should send any representative or not; and there is no instance of complaint, either of the House of Commons, or of the towns, against the sheriff, for any partiality on this score.

Several little boroughs pleaded their poverty, as an excuse for not making a return to the writ at all. Much rejoicing took place when they were excused from the burthen; and many boroughs managed, by some address, to be excused for ever. Of this class were Kingston in Surrey, and Thaxted in Essex. The attendance of the members was always very unwilling, and the minis-

ters of the crown never thought of *threatening them with a dissolution*, when they were idle and inattentive ; for that, in those primitive days, was not considered a punishment.

A member at that period had to report to his constituents, upon his return home, what he had said, and how he had voted, in parliament ; for there were then no paid reporters of speeches.

The mayor and corporation usually provided each of the representatives with a horse to ride to the parliament ; and, as it was a usual thing for them to be summoned to meet at some town far away from London,—as Oxford, Winchester, or even Carlisle,—such was the unwillingness of the elder burgesses to fill the office of member of parliament, that the choice fell of necessity upon the best horsemen, and those most able to bear fatigue ;—just as, in modern days, the choice of parish constables is decided.

About the year 1640, in a private manuscript, J. Harrington, Esq., of Kelston, Somersetshire, thus described his *canvass*, in the December of that year.*

* In the long parliament, which met in November 1640, I find that J. Harrington and T. Horner sat for Somersetshire. Parl. History, vol. 9, p. 39.

“ A NOTE OF MY BATHE BUSINESS ABOUTE THE PARLIAMENT.

“ Saturday, December 26,—went to Bathe and dined withe the Maior and citizens ; conferred aboute my election to serve in Parliament, as my father was helpless, and ill able to go any more. Went to the George Inn at night ; met the Bailiffs, and desired to be dismissed from serving ; drank strong beer and metheglin (mead) ; expended about three shillings, went home late ; but could not get excused, as they entertained a good opinion of my father.

“ Monday, December 28.—Went to Bathe ; met Sir John Horner ; we were chosen by the citizens to serve for the city ; the Maior and citizens conferred about Parliamentary business. The Maior promised Sir John Horner and myself a horse a piece, when we went to London to the Parliament, which we accepted off ; and we talked about the synod and ecclesiastical dismissions. I am to go again on Thursday and meet the citizens about all such matters and take advice thereon.

“ Thursday, 31.—Went to Bathe ; Mr. Ashe preached ; dined at the George Inn with the Maior and four citizens : spent at dinner six shillings in wine. Laid out in victuals, at the George Inn, *xis. 4d.* ; laid out in drinking, *viis.* ; laid out in tobacco and drinking vessels, *iiis. 4d.*

“ January 1.—My father gave me 4*l.* to bear my expenses to Bathe. Mr. Chapman, the Maior, came to Kelston and returned thanks for my being chosen to serve in Parliament, to my father, in the name of all the citizens. My father gave me good advice touching my speaking in Parliament as the city should direct. Came home late at night from Bathe: much troubled hereat concerning my proceeding, truly for men’s good report and mine own safety.

“ *Note.*—I gave the city messenger iis. for bearing the Maior’s note to me: laid out in all viiis. for victuals, drink, and horsehire, together with divers gifts.”

In the parliament which met at Westminster, on the 19th of February 1593, Sir Edward Coke was unanimously elected speaker.

On that day the Queen opened the session in person, and the lord keeper, Sir John Puckering, by command of his sovereign, gave the parliament some very undisguised and salutary advice, which modern senates would do well to remember and follow.

“ Her Majesty hath farther willed me to signify to you,” said this plain speaking minister, “ that the calling of this parliament now, is not for the making of any more new laws and statutes, for there are already a sufficient number,

both of ecclesiastical and temporal, and so many there be, that rather than to burthen the subjects with more, to their grievance, it were fitting an abridgement were made of those there are already.

“ Wherefore it is her Majesty’s pleasure that the time be not spent therein.

“ And whereas, heretofore, it hath been used that many have delighted themselves in long orations, full of verbosity and of vain ostentations, more than in speaking things of substance, the time that is precious should not be therein spent.”

Three days afterwards, the Queen having again come to the House of Lords, the Commons presented for their speaker, Sir Edward Coke, then solicitor general, who from the bar of the house addressed her Majesty in a long speech, full of the dry conceits of the time ; expressions of modesty, and high flown compliments to the Queen,—who certainly made both the lords and the commons of those days feel very distinctly that she was, and intended to be, ruler of England. Towards the conclusion of his address he told her :

“ Amidst my many imperfections, this is my comfort, I never knew any in this place, but if your Majesty gave them favour, God, who

called them to the place, gave them also the power to discharge it.”*

The lord keeper then commended him, by command of the Queen, for his modest and well composed speech ; and desired him to proceed in the execution of his office.

Sir Edward Coke then, as speaker, again addressed the Queen, in the name and on the behalf of the Commons. In this address, after taking a rapid survey of the critical situation of the kingdom, then threatened with invasion ; glancing at the Pope ; speaking at greater length on the laws, and giving several latin sentences ;— he concluded by claiming for the Commons, in the usual way, freedom of speech, freedom from arrest, and ready access to the person of the sovereign.

To these requests, after receiving the commands of the Queen, the lord keeper replied at some length ; and with regard to the three claims of the Commons, he very candidly informed them,—

“ To your three demands the Queen answereth, liberty of speech is granted to you ; but how far, this is to be thought on. There be two things of most necessity, and those two do most harm : which are wit and speech ; the one

* Parl. History, vol 4, p. 346.

exercised in invention, and the other in uttering things invented. Privilege of speech is granted, but you must know what privilege you have; not to speak every one what he listeth, or what cometh into his brain to utter; but your privilege is *aye* or *no*. Wherefore, Mr. Speaker, her Majesty's pleasure is, that if you perceive any idle heads, which will not stick to hazard their own estates, which will meddle with reforming the churches, and transforming the commonwealth, and do exhibit any bills to such purpose, that you receive them not until they be viewed and considered by those who, it is fitter, should consider of such things, and can better judge of them."*

Sir Simon d'Ewes, in his journal, gives the only notice I have met with of a slight indisposition of Sir Edward Coke. At the first meeting of this parliament, he tells us that

“ On Saturday the 24th of February 1592, the house being set, and a great number of the members of the same assembled, Mr. Speaker, not being as yet come to the house, some of the house said one to another, they heard he was sick; and one affirmed it to be so; indeed, shewing that he had been with him that morning him-

* Parl. History, vol. 4, p. 349.

self, and left him sick in his bed, and his physician and his wife with him. And some others supposing that he would shortly signify unto the house the cause of his absence, moved that the clerk might in the mean time proceed to saying of the litany and prayers.

“ Which being so done accordingly, the sergeant of this house, presently after the said prayers finished, brought word from Mr. Speaker unto the Right Honorable Sir John Wooley, Knight, one of his Majesties most Honorable Privy Council and a member of the house, that he had been this last night, and also was this present forenoon, so extremely pained in his stomach, that he could not as yet without his farther great peril and danger adventure into the air, at this time, which otherwise he most willingly would have done.

“ And he further willed, that the clerk of this house, might signify unto the house the said estate of his case, and in his name desire their good and favourable considerations of the same, not doubting their gentle and courteous acceptance of that, his so reasonable excuse, as by this house hath also been in former time used in like cases, towards other his predecessors in the place he now serveth; and to shew them

farther that he trusteth in God he shall be able to attend them in this house upon the next day of sitting, which will be on Monday next.

“ The effect of which message, being signified unto this house by the said clerk of the house, all the said members being very sorry for Mr. Speaker’s sickness, rested well satisfied, and so the house did rise, and every man departed away.”*

D’Ewes has probably given a wrong date to this indisposition ; for, according to the Parliamentary History, on that day, an important debate arose in the Commons ; which could not have been the case if the speaker had been absent.

According to this authority, on the 24th of February, Sir Henry Bromley and Sir Peter Wentworth, having presented a petition to the lord keeper, desiring the lords of the upper house to be supplicants with the lower house to her Majesty, for her concurrence in a bill they had drawn for “ entailing the succession to the crown,” they were speedily summoned before the Privy Council, and committed to the Tower and Fleet Prisons, in company with Mr Stevens and Mr. Welch, two other members of the house, who had

* Sir Simon d’Ewes’ Journal 470.

been concerned with them in drawing the petition. Such was the cowardice of the Commons, that, although Mr. Wroth moved for an address to the Queen, yet the house resolved to do nothing. The speaker sat silent, and the house remained quiet, as if conscious of having committed some great crime. Camden, in his annals of the reign of Elizabeth, passed the transaction over in silence ; and no one afterwards, during the reign of “ Good Queen Bess,” dared to mention in parliament the question of the succession to the throne.

This caution was not confined to this subject ; for, on the 27th of February, after a long debate on a bill introduced by Mr. Morris to reform the abuses of the Ecclesiastical Courts, the house resolved to commit the bill to the examination of Sir Edward Coke, their speaker ; who, previously to their coming to this complimentary resolution, had addressed them to the following effect :*

“ In favour and free love, above my merits or deserts, you have elected me, which should bind me to do all my best service, and to be faithful towards you.

“ This bill delivered me, is long and containeth important matters of great weight, and

* Parl. Hist. vol 4, p 378.

such matters as cannot be expressed in few words. It hath many parts, and if you put me presently to open it, I cannot so readily understand it, and do it, as I should ; for indeed it is a matter far above my ordinary practise ; and to deliver a thing before I conceive it, I could not. Wherefore if it would please you to give me leave to consider of it, I protest I will be faithful and keep it with all secrecy.”

This careful mode of proceeding was adopted by the house, to avoid giving offence to the Queen ; who had warned them, on the opening of the session, not to meddle with pretended reforms in the Church, and alterations in the Commonwealth.

All their caution, however, failed of its intended result ; for, on the afternoon of the day on which Mr. Morris made his motion, Sir Edward Coke was sent for to court, and on the next day delivered to the house a message from the Queen, forbidding the house to meddle with either Church or State !

This message Coke delivered with his usual ability ; not being restrained by the unpleasant nature of the communication, or the difficulty of serving two masters, from executing the Queen’s commands entirely to her satisfaction.

“ Yesterday,” said Coke, “ a great member

of this house, after a speech used and his reasons laid forth, delivered to me two bills, which bills, through not being read, were diversely spoken of. They being long, the matters grave, and of great importance and the day being almost spent, I desired further time to consider of these bills. I humbly thank this honourable house, time was granted me freely, it being almost twelve of the clock.

“ A little after I had perused the bills, I was sent for by a special messenger from her Majesty. Coming into her royal presence, I was commanded to deliver these words from her most excellent Majesty, unto the Body of the Realm (for so she termed this house.)

“ The matter I have to speak is great, yea it is the greatest matter I ever had to deal in, wherefore I pray God direct “ *mentem et linguam hanc*.

“ I must be short, for her Majesty’s words were not many and I may perhaps fail in the delivery of them. For though my auditors be great, yet who is so impudent that the presence of such a majesty would not appal him ?

“ And it did greatly fear me, when I did see none of these honourable persons in her presence who were present at the holding of this matter in this house ; yet so God in his providence, had

appointed it, that even in this while, came some persons here present, who, if I fail in delivering what was given me in charge, can report it unto you ; and I am glad that there are witnesses, with me, in this action, what was my faithful service for the house. I protest a greater comfort never befel me, than that this my integrity and faithful promise to the house is not violated, for her Majesty in her most gracious wisdom, before my coming, determined not to press me in this, neither indeed did she require this bill of me, for this only she required of me, ‘ *what were the things spoken of by the house?*’ which points, I only delivered, as they which heard me can tell.

“ The message delivered me from her Majesty consisteth of three things : first the end for which the parliament was called ; secondly the speech which her Majesty used by my lord keeper ; thirdly what her pleasure and commandment now is.

“ ‘ For the first, *it is in me and my power,*’ (I speak now in her Majesty’s person) ‘ *to call parliaments ; and it is in my power to end and determine the same ; it is in my power to assent or dissent to any thing done in parliament.*’

“ The calling of this parliament was only that the majesty of God might be more religiously served, and those that neglect this service might

be compelled by some sharper means to a more due obedience and more true service of God than there hath been hitherto used ; and farther, that the safety of her Majesty's person and of the realm might be by all means provided for against our great enemies, the Pope and the King of Spain.

“ Her Majesty's most excellent pleasure being known, there was delivered unto us by the lord keeper, ‘ it was not meant we should meddle with matters of state, or in causes ecclesiastical ;’ (for so her Majesty termed them) ‘ she wondered *that any would be of so high commandment to attempt*’ (I use her own words) ‘ *any thing contrary to that which she hath so expressly forbidden ;*’ wherefore with this she was highly displeased.

“ And because the words then spoken by my lord keeper are not now perhaps well remembered, or some be now here that were not there, her Majesty's present charge and express command is. ‘ *That no bills touching matters of state, or reformations in causes ecclesiastical, be exhibited.*’

“ And upon my allegiance, I am commanded if any such bill be exhibited not to read it.”*

These commands of the Queen, her submis-

* Parl. Hist. vol. 4, p. 395.

sive parliament very gravely, and with all dignified tameness and gratitude, strictly obeyed. They meddled not again with church or state affairs for that session ; they suffered their four members to remain in prison without the slightest remonstrance, or other effort to extricate them ; and yet they listened with due complacency and without self-reproach, on the tenth of the following April, when the Queen put an end to the session in person, to their speaker, who, in addressing the Queen, told her that “ the High Court of Parliament is the greatest and most ancient court within this your realm.”*

The remainder of his speech was adapted to the spirit of the age and the character of the Queen. He gave a short history of the origin of parliaments, which he traced from the West Saxons ; gave a summons of King Ina to all his “ fatherhood, aldermen, and wisest commons with the Godly men of his kingdom ;” shewed that by these were intended bishops, lords and commons ; proceeded to compare, “ this sweet council” to the “ sweet commonwealth of the little bees ;” informed the Queen, that “ the little bees have but one governor whom they all

* Parl. Hist. vol. 4, p. 395.

serve, he is their king ;” proceeded to describe, partly in English, and partly in Latin, the natural history of those insects ; informed her that the working bees “ forage abroad, sucking honey from every flower to bring to their King ;” spoke of the drones who have no stings, and are turned out of the hives, and that the king bee, not having a sting, the working bees sting every thing that attacks their sovereign. He then applied these facts to the Queen at considerable length, and came to the very correct conclusion, “ I fear I have been too long, and therefore do come now to your laws.

“ The laws we have conferred upon this session of so honourable a parliament, are of two natures : the one such as have life, but are ready to die, except your Majesty breathe spirit into them ; again, the other are laws that never had life, but being void of life, come to your Majesty to seek life.

“ The first sort, are those laws which had continuance until this parliament, and are now to receive new life, or are ready to die for ever. The other that I term capable of life, are those which are newly made, but which have no essence until your Majesty giveth them life.

“ Two laws there are, but I must give the honour where it is due, for they come from the

noble, wise lords of the upper House, the most honourable and beneficial laws that could be desired : the one a confirmation of all letters patent from your Majesty's most noble father, of all the ecclesiastical livings which the King of most renowned memory, your father, took from those superstitious monasteries and priories, and translated them to the erecting and setting up of many foundations of cathedral churches and colleges, greatly furthering the maintenance of learning and true religion.

“ The other law, to suppress the obstinate recusant and the dangerous sectary, both very pernicious to your government.”

Much in the way usually adopted by speakers, Coke then concluded his address :

“ I have in many ways since the beginning of this parliament, by ignorance and insufficiency to perform that which I should, offended your Majesty. I, therefore, most humbly crave to be a partaker of your Majesty's pardon.”

In reply to this, the lord keeper, by instructions from the Queen, spoke at much length, and did not omit to notice every theme on which the Queen had felt offended at the conduct of the Commons.

“ In some things,” said the Queen's minister, “ you have spent more time than was needful.

The Queen perceives that some men do it more for their satisfaction than the necessity of the thing deserved. She mislikes, also, that such irreverence is shewn towards privy councillors, who are not to be accounted as common knights and burgesses of the House, that are counsellors only during the parliament."

When the lord keeper had finished his speech, some little interval elapsed, and then the Queen, seated in her chair of state, addressed the parliament.

The opening part of Her Majesty's speech would sound harsh to the refined ears of modern statesmen.

"This kingdom," said this Amazonian Queen, "hath had many wise, noble, and victorious princes. I will not compare with any of them in wisdom, fortitude, and other virtues; but, saving the duty of a child, that is not to compare with his father, in love, care, sincerity, and justice, I will compare with any prince that ever you had, or shall have. It may be thought simplicity in me, that all the time of my reign I have not sought to advance my territories and enlarge my dominions; for opportunity hath served to do it. I acknowledge my womanhood and weakness in that respect. But it hath not been the hardness to obtain, or how to keep the things so obtained, that only hath

withheld me from these attempts. My mind was never to invade my neighbours, or to usurp over any. I am contented to reign over my own, and to rule as a just prince. Yet the King of Spain doth challenge me to be the quarreller and the beginner of these wars. He doth me the greatest wrong, for my conscience doth not accuse my thoughts wherein I have done him the least injury, so that I am persuaded in my conscience, if he knew what I knew, he would be sorry himself for the wrong he hath done me. I fear not all his threatenings. His great preparations and mighty forces do not stir me, for though he came against me with a greater power than ever was his invincible navy, I doubt not but (God assisting me, upon whom I always trust,) I shall be able to defeat him, and overthrow him ; for my cause is just. I heard say, that when he first attempted his last invasion, some upon the sea coasts forsook their towns and fled into the country, and left all naked and exposed to his entrance ; but I swear to you by God, that if I knew those persons, or may know of any that shall do so hereafter, I will make them know and feel what it is to be so fearful in so urgent a cause. The subsidy you give me, I accept thankfully, if you give me your good will with it ; but if the ne-

cessity of the time, and your preservation did not require it, I would refuse it.”*

Such was the energetic speech of Elizabeth ; an address, by a comparison with which, modern royal speeches I fear will not appear in any way to advantage.

She evidently inclined to reprove the House of Commons, for its tardiness in granting the supplies which she required for the next three years ; and to expedite which grant, the House of Lords had demanded a conference with the lower House ; but the meeting was not productive of any effect, since the Commons were, in those days, nearly as tenacious in reserving to themselves the exclusive right of granting the public money, as they are now.

When, after much debate, they finally agreed to pass the subsidy bill, they deemed it proper to introduce into its long and carefully drawn up preamble, this declaration : “ That these large and unusual grants, which are made to an excellent Princess, on a most urgent, and pressing, and extraordinary occasion, must not at any time hereafter be drawn into a precedent.”†

Sir Edward Coke held the speakership but

* Parl. Hist. vol. 4, p. 401.

† Stowe's Chronicle, p. 765.—Parl. Hist. vol. 4, p. 393.

for one session ; it being not then usual to hold it longer. Neither was it an office sought for with avidity ; it was then almost in the gift of the crown, and the chief duty of its holder was to prevent the Commons from meddling with church or state affairs, and to stimulate them to a cheerful and ready grant of subsidies, tenths, and sixteenths.

The form of electing a speaker, and the munimery of presenting him to the King for his approval, are of ancient date ; but the present ceremony was of slow growth.

Richard de Walgrave, in the parliament of 1382, was the first speaker who made a formal apology for his inability to fulfil the duties of his office ; and, twelve years afterwards, John Busby was the first who was presented by the Commons to the King for his approval.

In 1484, William Catesby was chosen, presented, and approved by the King, according to the modern practice. Previously to this, many irregularities had occurred : thus, in 1451, the speaker, Thomas Thorpe, being arrested for debt and in jail, the House of Lords decided that he was not privileged from imprisonment, and, in consequence, the House very quietly chose another speaker, Sir Thomas Charlton.

In 1542, Thomas Moyle Esq. was the first

speaker who petitioned the King for freedom of speech.

In the reign of Elizabeth, barristers were invariably chosen for speakers.

In her parliament of 1558, the speaker was William Cordell, Esq. Master of the Rolls.

In 1559, Sir Thomas Gargrave, the Queen's Counsel.

In 1563, Thomas Williams, Esq.

In 1566, Solicitor General Onslow.

In 1571, Wray, afterwards Lord Chief Justice.

In 1572, Bell, afterwards Lord Chief Baron.

In 1581, Popham, afterwards Lord Chief Justice.

In 1585, Puckering, afterwards Lord Keeper.

In 1589, Sergeant Snagg.

In 1592, Sir Edward Coke.

In 1597, Christopher Yelverton, afterwards a judge.

In 1601, Croke, afterwards a judge.

It is probable that the early speakers of the House of Commons were stout, strong voiced members, who were sometimes civilians, at other periods, soldiers. The first speaker of whom we have any account (1260,) was slain, fighting gallantly at the battle of Evesham.

* Parl. Papers, vol. 1, p. 8.

In fact, the very office of speaker was a later improvement ; since, in the early meetings of parliament, the Lords and the Commons sat in the same room, and, of course, only one chairman was required.

Almost immediately after the dissolution of the parliament of 1592, Sir Edward Coke was appointed the Queen's attorney-general ; and he held that office during the rest of her reign.

The attorney-general was then regularly summoned to advise the House of Lords, and attended during all their sittings ; consequently, we find no parliamentary notices of Sir Edward Coke for some years, until, by losing all his offices under the crown, he had again become eligible to be elected into the House of Commons.

It will be well, however, to follow the proceedings of the Commons during his absence.

When, in 1597, after an interval of nearly four years, the parliament again assembled, Egerton, afterwards Lord Ellesmere, was lord keeper, and in virtue of his office addressed the Commons with some plain advice, which was evidently earnest and sincere. " The number of laws," said this great and accomplished lawyer, " already made are very great, some of them obsolete and worn out of use, others idle and vain, serving to

no purpose, some again over heavy and too severe for the offence, others too loose and slack for the faults they are to punish, and many of them so full of difficulties to be understood that they cause many controversies. You are, therefore, to enter into a due consideration of the said laws ; and, where you find a superfluity, to prune and cut off ; where defect, to supply ; and where ambiguity, to explain,—that they be not burthensome, but profitable to the Commonwealth.”*

In consequence of Egerton’s directions, the Commons proceeded to the choice of a Speaker, and they chose as Coke’s successor Sergeant Yelverton.

It was very long the custom for speakers to beg his Majesty to excuse them from this office. It was even a regular farce for him to be forced into the chair, by the gentle violence of his mover and seconder. Yelverton, however, seemed in earnest ; he possessed the same open sincerity which distinguished his son, the great Yelverton ; for he thus addressed the Commons :†

“ Whence your unexpected choice of me to be your mouth or speaker should proceed, I am

* Parl. Hist. vol 4, p. 405.

† D’Ewes’ Journal.

utterly ignorant. If from my merits, strange it were that so few deserts should purchase suddenly so great an honour.

“ Nor from my ability doth this your choice proceed ; for well known it is to a great number in this place now assembled, that my estate is nothing correspondent for the maintenance of this dignity ; for my father dying, left me a younger brother, and nothing to me but a bare annuity.

“ Then growing to man’s estate and some small practise of the law, I took a wife by whom I have had many children, the keeping of us all being a great impoverishment to my estate, and the daily living of us all, nothing but my daily industry.

“ Neither from my person nor nature doth this choice arise, for he that supplieth this place ought to be a man big and comely, stately and well spoken ; his voice great, his courage majestic, his nature haughty, and his purse plentiful and heavy ; but contrarily, the stature of my body is small, myself not so well spoken, my voice low, my carriage lawyer-like and of the common fashion, my nature soft and bashful, my purse thin, light, and never yet plentiful.

“ Wherefore, I now see the only cause of this

choice is a gracious and favourable censure of your good and undeserved opinions of me. But I most humbly beseech you to recall this your sudden election ; and, therefore, the more sudden, the sooner to be recalled.

“ But, if this cannot move your sudden choice, yet let this one thing persuade you, that myself not being gracious in the eye of her Majesty, neither ever yet in account with any great personages, shall deceive your expectation in those weighty matters and great affairs which should be committed unto me.”

Yelverton was too good a man to be excused. All his eloquence availed not : he was compelled to take the chair, and distinguished himself as an able, upright and eloquent speaker. The prayer composed by him for the use of the house was an admirable specimen of devotional eloquence.*

Little worthy of particular notice occurred during the session ; and the Queen in person dissolved it on the 9th of February 1597.

During its continuance, the house had been employed on the question of the monopolies granted by the crown ; and Egerton, as lord keeper, noticed this, in his parting address to the parliament.

* Parl. Hist. vol 4, p. 413.

.. “ Touching the monopolies, her Majesty hoped that her dutiful and loyal subjects would not take away her prerogative, which is the chiefest flower in her garden, the principal and head pearl in her diadem. They shall be examined to abide the trial and true touchstone of the law.”

The Queen then gave her assent to forty-three bills, and rejected forty-eight ; a prerogative then very commonly exercised.

I find Sir Edward Coke's name but rarely mentioned during the session. No doubt he was closely in attendance upon the House of Lords.

The following year, he lost his great friend Burleigh, lord treasurer of England, to whom he owed much of his preferment and advancement at court. Burleigh invariably patronized profound men in all professions ; his discernment rarely deceived him. Both Burleigh and Elizabeth distrusted the legal knowledge of the great Bacon.

Queen Elizabeth again met her parliament on the 27th of October 1601. By an unlucky accident, the lord keeper Egerton addressed the Lords with closed doors, the Commons not even being summoned to the bar. Of this parliament, Sergeant Croke, recorder of London, a relative of the great judge Croke, was chosen speaker.

He received a rebuke from Queen Elizabeth, which did credit to her understanding. He was speaking of the state of the kingdom, "which had been defended," as he said, "by the mighty arm of our dread and sacred Queen."

Elizabeth instantly exclaimed, from the throne, in a manner which must have caused no mean sensation: "No, Mr. Speaker, but rather by the mighty hand of God."

When Croke had finished, Egerton, by the Queen's command, addressed them, in an able speech, which I can almost believe was intended for the ears of a more modern senate.

"Touching your requests for freedom of speech, her Majesty willingly consenteth thereto, with this caution, that the time be not spent in idle and vain matter; painting the same out with froth and volubility of words, whereby the speakers may seem to gain some reputed credit, by emboldening themselves to contradiction, and by troubling the house of purpose, with long and vain orations, to hinder the proceedings in matters of greater and more weighty importance.

"She further willeth you, to have an especial eye and regard, not to make new and idle laws

and trouble the house with them; but rather look to the abridging and repealing of divers obsolete and superfluous statutes.”

In this session, Lord Bacon, then a commoner, brought in a bill for the regulation of weights and measures; a question, which even to this day, has engaged the attention of the house, and has been productive of many wise regulations, and several absurdities. The subject is naturally encompassed with difficulties; it is a question of trade; and upon commercial transactions, the efforts of the legislator are seldom attended with the desired results.

The Commons, in the course of the session, finding that the patents, granted by the Queen, had produced a very serious monopoly in various staple articles, seriously began to investigate the injuries thus produced; and ultimately the Queen withdrew them all, and Cecil, afterwards Earl of Salisbury, announced the fact to the Commons in a humorous speech, wherein he told them: “And because you may eat your meat more savoury than you have done, every man shall have salt as cheap as he can buy or make it, without danger of that patent, which shall be previously revoked.

“ The same benefit shall they have which have

cold stomachs, both for *aqua vitæ* and *aqua composita* ; and they that have weak stomachs, for their satisfaction, shall have vinegar and alegar, and the like, set at liberty. Train oil shall go the same way ; oil of blubber shall march in equal rank ; bottles and brushes endure the like judgment ; the patent for poldavy canvass, if it be not called in, it shall be. Those that desire to go sprucely in their ruffs may at a less charge than accustomed, obtain their wish, for the patent for starch, which hath been so much prosecuted, shall now be repealed.”

The labours of this parliament were not very important. It was the last during the reign of Elizabeth, who personally dissolved them on the 19th December, 1601.

The Lords and Commons had, during this session, few conferences ; few messages had to be brought down ; and, in consequence, Sir Edward Coke's name does not appear often as the messenger of the upper house.

No sovereign ever laboured more successfully than Elizabeth to curtail the duration of parliaments ; her warning against long, frothy orations, were regular, energetic, and generally successful.

She died at Richmond, two years after the dissolution of this parliament ; leaving to the

crown a parliament rapidly increasing in knowledge, riches and independence ; but a successor infinitely her inferior in talents, and personal qualifications. Consequently, when her long and glorious reign terminated, the timid and subservient Commons began to assume a courage and to assert an independence that were in those days novel and surprising.

James I naturally concluded, when he ascended the throne of England, that he carried with him all the power, and every prerogative, exercised by his predecessor. Actuated by this feeling, and ignorant of the newly acquired independence of the Commons, we shall not feel surprised, that he speedily came in collision with them on a question of privilege. This was in the great case of Goodwin and Fortescue, each of whom claimed to be a knight of the shire, for the county of Buckingham.

Our surprise at this misunderstanding, and at the boldness and success of the claim of the house to judge of the legality of the parliamentary returns, is not lessened by a cursory retrospect of the manner in which Elizabeth treated the house on similar occasions.

Thus, in the session of 1571, the Queen being displeased with the speeches of Mr. Strick-

land, on the question of reforming the Book of Common Prayer, she desired him to keep away from the house; which command he very dutifully obeyed, and the house took no notice of the Queen's interference. Not but that the house wished to appear a little independent; for, in the same session, finding that a simple fellow, one Thomas Long, had been returned for the borough of Westbury, they inquired of him how the electors came to choose him; and he being very candid, as well as simple, informed them very readily, that he had given the Mayor of Westbury, Mr. Anthony Garland, and a Mr. Watts, four pounds for his place in parliament. The house were highly indignant at the Mayor's baseness, and summoned him to the bar of the house, and fined the corporation twenty pounds.*

The members of the house, however, were by no means consistent in the maintenance of their own privileges; for, on the first day of the session, Mr. Paul Wentworth, member for Tregony, having made a warm speech in favour of their claims, the Lords and Commons in a great fright sequestered him the house, committed him first to the custody of the Sergeant at arms, and finally to the Tower, from whence

* Parliamentary History, vol. 4, 155.

he was only liberated by a message from the Queen.

Mr. Paul Wentworth was in truth rather a turbulent person ; for, in spite of this warning, I find him again, in 1577, speaking of the privileges of the Commons, and again sent to the Tower, by order of the House. At the same time, the Privy Council thought fit to commit to the Fleet Prison, for a similar offence, four other members, Messrs. Cope, Lewknor, Harlston and Baynbrigg.

In the last parliament of Queen Elizabeth, the members of the House of Commons appear to have paid frequent visits to the Tower.

In 1592, Mr. Wentworth was again committed, by the Privy Council, to his old prison ; and Sir Henry Bromley, with Messrs. Steven and Welsh, were sent to the Fleet, for proposing to introduce a bill to entail the succession to the crown ; and when Mr. Morrice proposed, soon afterwards, to introduce a bill to regulate the Ecclesiastical Courts, he was speedily sent for to court, and committed to the care of the chancellor of the exchequer.

To these violations of their privileges, not a complaint was made by the Commons. The parliament submitted to the aggressions of the Queen without a murmur ; and the word

“ privilege ” was a word they were evidently, in her reign, afraid to breathe. She was imperious ; they were subservient.

James came to the throne with an equal desire to maintain the privileges of the crown ; but he had not the talents or energy of Elizabeth ; the parliament owed him no debt of gratitude for past favours ; they had, moreover, rapidly been increasing in wealth, intelligence, and independence.

In the very first session, therefore, of the first parliament of James, when the writs for a new parliament had all been returned to the High Court of Chancery, from whence they originally emanated, Sir Francis Goodwin being elected a knight of the shire for the county of Bucks, the clerk of the crown refused to accept this return, because Goodwin was an outlaw.* A second writ being then issued by the crown, to the sheriff of Buckingham, Sir John Forrescue was returned.

Upon this question, the Commons and the King disagreed. The Commons summoned the clerk of the crown office to appear before them on the 22nd of March 1603, with both returns ; and the next day they resolved that Sir Francis

* He had been outlawed, in two actions, for sixty pounds and sixteen pounds.

Goodwin was lawfully elected and returned, and ought to be received*.

On the 27th of March, Sir Edward Coke and Dr. Hone brought a message from the Lords, begging a conference on the case.

The Commons, after much debate, determined that they should not confer with the Lords on the question; and they informed the peers that it did not comport with the honour and order of the house, to give account of any of their proceedings or doings.

To this communication, Sir Edward Coke, Dr. Carew, Dr. Hone and Mr. Tyndal, brought a reply from the Lords, in which they informed the Commons, that it was the pleasure of the King that the two houses should confer on the case.

Upon this, the House resolved to seek an audience of the King, which was granted them on the following day. Other conferences, lengthened debates, and sundry committees followed. The House and the King were evidently equally puzzled; and precedents were brought forward on both sides, in which it was clearly shewn that sometimes the King, sometimes the sheriffs, and sometimes the House of Commons, decided the contested returns.

* Journal of the House of Commons. 1 James I.

Finally, the matter was compromised, by the House declaring that neither Fortescue nor Goodwin was duly elected, and that a new writ should issue ; which was accordingly done,* by a warrant from the speaker, directed to the clerk of the crown.

The issue, however unsatisfactory to both parties, betrayed the first great feeling, on the part of the parliaments of the house of Stuart, to assert their independence, and to maintain their privileges.

Yet, long after this, the chancellor was wont to issue his writs to supply vacancies in the representation of the people ; and when the King, his master, had the power, (which he certainly had, down to the reign of Charles II,) of creating boroughs at pleasure, and nominating electors, it would seem to be a very slight extension of the privileges of the King, to decide upon the validity of their returns. The very writ from the King to the sheriff, on which Goodwin was returned, expressly forbids the election of outlaws ; and it was, therefore, absurd to contend, that in case of the return of such outcasts, they were to sit in judgment upon themselves.

Such, however, has long ceased to be the election law of England. There is now only one

* 5 Parliamentary History, 57.

court to appeal to, in cases of controverted elections ; namely, the House of Commons ; and by them all cases of disputed returns are, under the provisions of George III, c. 16, commonly called the Grenville Act, referred to a committee chosen by ballot.

This plan has removed many causes of complaint, as to the partiality displayed by former committees of privilege ; but still it is open to many objections ; it is attended with much delay, expense, and many contradictory determinations. It would be much more satisfactory if the house could appoint, annually, certain judges to determine all election petitions. They would, by such a course, ensure uniformity in their decrees, escape all suspicion of political partialities, and effect much greater despatch.

Sir Edward Coke's name often appears during the progress of this affair: he was on most of the committees and conferences ; bringing down, as attorney-general, several of the messages from the Lords, whom he attended in virtue of his office.

In those days, the attorney-general was regularly summoned to be in attendance upon the House of Lords ; which writ is even now formally issued, though never obeyed.

Coke himself tells us* that, in his time, the

* 4 Institutes, 48.

House of Commons resolved, that the attorney-general was ineligible to be a member of their house. If, however, they were members of the Commons previously to their appointment to the office, then the house claimed them as members, and they were not compelled to attend the House of Lords*.

Since the time of Charles II, if the attorney-general has been a member of the House of Commons, his attendance in the upper house has been always dispensed with. Sir Heneage Finch, afterwards chancellor Nottingham, member for Oxford University, and attorney-general in 1670, was the first who enjoyed this privilege.†

The attorney-general, when in attendance upon the Lords, had not the power of voting, unless he was a peer. He was in exactly the same position, in this respect, as the judges and masters in chancery, who regularly attend the House of Lords, at this day, to be ready to offer their advice when called upon. Even the secretaries of state still receive their summons to attend the Upper House.

* Moor's Reports, 551.

† 1. Blackstone's Comm., 168. Christian's note. Commons Journals, 11th April 1614. 8th February 1620.

CHAPTER IV.

1593—1603.

Coke's residence at Huntingfield Hall—The mansion and its remains—Coke's children—His wife—Her death—Her epitaph—Coke again thinks of marriage—The treaty with Lady Hatton successful—His illegal marriage—Whitgift puts him into the Spiritual Court—Death of Burleigh—Notice of Sir William Hatton—Rivalry of Bacon—Letters of Lord Essex—Character of Lady Hatton—Trial of Essex and Southampton—Speech of Coke—Notice of Essex and of his son—Criminal trials of that age—The public quarrel of Coke and Bacon—Queen Elizabeth—Her conduct to Coke—Her gift to him—Her death—Coke continued attorney-general by her successor.

FROM the time of his first marriage in 1582, Coke appears to have resided, during vacation time, at Huntingfield in Suffolk; and it is most probable that nearly all his children were born there, for the baptisms of seven of them are recorded in the register of the parish; and Elizabeth, one of his daughters, who died an infant, in 1586, was buried in the church of that place.

It appears that Coke occupied Huntingfield Hall jointly with his mother-in-law, Lady Beddingfield, on whose death, in 1595, he came into the sole possession of the estate.

Of this fine old mansion no remains are now existing. It was sold from the Coke family, by Lord Leicester, to Sir Joshua Vanneck, who pulled down the family residence, and erected a farmhouse on its site. By the Reverend Henry Uthoff, the present intelligent rector of Huntingfield, a drawing of the old house has been recovered, and the following description of this interesting relic is in his own words :*

“ It is an old coarse painting, probably done in the time of Elizabeth ; its size, without the frame, about four feet square, but much confused, from an attempt to take in a portion of the grounds as a forest. It corresponds, pretty exactly, with the following description of it given by the Reverend C. Davy, rector of Onehouse in Suffolk, in a letter to his son, a gentleman with whom I was intimately acquainted, and upon the accuracy of whose description you may rely. This has been further confirmed to me by the *vivâ voce* evidence of the tenant of the park farm, who formerly resided in the old hall, and was resident in the new one for

* Letter to the author.

many years during my incumbency. A labourer likewise, now in my service, who was born in the parish, stated to me, in consequence of my inquiries, that he perfectly well remembered seeing it when a boy, and that it was a very *large square house*. This all corresponds with the drawing."

"The Queen's oak at Huntingfield," says Davy, "called Queen Elizabeth's oak, is situated in a park of the Lord Hunsdon, about two bow shots distant from the old Mansion House of Huntingfield Hall, where Queen Elizabeth is said to have been entertained by this nobleman, and to have enjoyed the pleasures of the chase in a kind of rural majesty. The approach to it (the hall) was by a bridge over an arm of the River Blythe, and, if I remember rightly, through three square courts. A gallery was continued the whole length of the building, which, opening with a balcony over the porch, gave an air of grandeur, with some variety, to the front. The great hall was built round six massy oaks! which originally supported the roof *as they grew*. Upon these, the foresters and yeomen of the guard used to hang their nets, crossbows, hunting poles, great saddles, calivers, belts, &c., &c. The roots of them had been long decayed when I visited this romantic

building, and the shafts, sawn off at the bottom, were supported either by irregular logs of wood driven under them, or by masonry.

“ Part of the long gallery, where the Queen and her attendants used to divert themselves, was converted into an immense cheese chamber ; and, upon my first looking into it in the dusk of a summer’s evening, when a number of those huge circular things were scattered on the floor, it struck me that the maids of honour had just slipped off their fardingales, to prepare for a general romping.”

Davy adds, “ I have so much of the anti-quary about me, as to wish that some memorial of its simple grandeur could have been preserved.”

“ The oak above mentioned,” continued Mr. Uthoff, “ is still standing, (August 1836) a most magnificent relic. The trunk, a mere shell, is about thirty-three feet in circumference, and still supporting branches widely extended in all directions, clothed with beautiful foliage.”

It was in this mansion, surrounded by his family, that Coke passed the happiest of his days ; blessed for seventeen years with an excellent and affectionate wife ; prosperous in his profession, honoured by his sovereign, and applauded by even his rivals for his industry and learning.

But continued felicity is not the lot of mortals ; and Coke was not an exception to this unpalatable lesson of experience.

The year 1598 may be regarded as the one in which his domestic misfortunes, and sources of disquietude, commenced ; for in that he lost his first wife.

By this lady, he had ten children. I find no particulars of her habits and disposition. She died, according to the inscription on her monument, on the 27th of June ; and the register of Tittleshall records that she was buried on the following 24th of July. Though sensible and affectionate, she was probably not highly accomplished ; for their's was not the age for general literature. Coke ever spoke of her with warm affection ; and his testimony is decisive of her merits : for he had no taste for the poetry of life, was seldom enthusiastic, and never too full of feeling.

According to the register of Huntingfield, she must have been about thirty-three years of age at the period of her decease ; for she was baptized on the 4th of March 1565.*

In the book of memorandums, kept for his own exclusive use, Coke thus spoke of her virtues : “ Most beloved and most excellent

* On the authority of Mr. Uthhoff.

wife, she well and happily lived, and as a true handmaid of the Lord, fell asleep in the Lord, and now lives and reigns in Heaven.”

Three years previously he had lost his mother-in-law, whom he thus described, on a monument which he erected in the Church of Huntingfield, where it still remains :

“ Here resteth the body of Ann, daughter of John Moulton Esq. first married to Nices Smythe Esq. of Huntingfield Hall, secondly to John Paston of Sporle Esq. (by whom she had issue Bridget) thirdly to Edmund Bedingfield of Ox-boroughs, Esq. She was a godly, wise and virtuous woman and kept a bountiful house in Huntingfield Hall, especially for the poore, nere fifty years. She departed this life in her good old age, the 20th of June, 1595.

“ Edward Coke, Esq. attorney-general to the Queen’s Majesty, (who married the said Bridget) for the great duty and reverence he *ought* (owed) to the said Ann, caused this monument in memory of her to be made.”

His wife could not have been long in her grave, before he again began to turn his thoughts towards matrimony, and soon commenced his treaty for a union with Lady Elizabeth Hatton, the beautiful, young, and wealthy widow of Sir William Hatton, the daughter of Thomas Cecil,

first Earl of Exeter, and consequently granddaughter of the great Burleigh.

The treaty for Coke's second marriage must have been hurried forward with great speed. The interest of the Cecils was on this occasion zealously and successfully employed in his favour. The persuasion of friends, not the ardour of the wooer, obtained the lady's speedy consent, and the nuptials appear to have been celebrated before he had been many months a widower. He was then forty-eight, the father of ten children, rich, and rising in his profession.

This rash and ill-considered union commenced, continued, and terminated most disastrously. Coke probably thought that his interests would not be injured by a transient neglect of propriety; but it eventually proved a sacrifice of his peace and happiness on the altar of his ambition. Both parties were ill-tempered, talented, and haughty. with too much obstinacy in their characters to give way, in the slightest degree, to each others failings. Yet they each could stoop too much, when it suited the purpose of their ambition. This is proved by the very commencement of their union. Coke was then the first law officer of the crown, yet he allowed the marriage to be illegally solemnized. In the year of its celebration, Archbishop Whitgift had desired the clergy

of his province to be very particular in the celebration of marriages, both as to time, form and place.* This great prelate further desired

* The following extract from the Archbishop's letter to the Bishops of his province, will give the reader some idea of the gross irregularities then practised in the solemnization of matrimony.

“ There came daily complaints to him out of several parts of this, his province, that some ministers, neither regarding her Majesty's pleasure nor careful of their credit, did marry some couples in private houses; others did marry those who came to be married at unreasonable hours, others never staid asking the banns three several festival days as is by law required, but did ask them twice upon some holiday and the third time the next morning, when they were married, as if ordinances were to be restrained and ministers to be left at large to break all good order; for redress and prevention of all which disorders he had thought good and did hereby require his lordship to give both public and particular warning to all the ministers of or within his diocese, that they should observe the hours as well as the places limited in the aforesaid constitution and not otherwise marry any either by license or by banns published, and marry only such inhabitants within their parishes not licensed otherwise, who were three several festival days publicly asked, upon the penalty within the provincial constitutions inflicted;—which his lordship and his officers, whom in that case it concerned, were to have a vigilant care to see diligently observed, for the avoiding of all future scandals and offences which might justly grow therein.” Dated, Lambeth, November 19, 1598. (a)

(a) Strype's life of Whitgift, p. 522—3.

them to cause all persons who offended against the canons of the church, to be diligently prosecuted.

Coke was either ignorant of these salutary regulations, or he thought his rank and that of Lady Hatton would exempt them from the just consequences of not obeying the ordinance. The marriage ceremony was performed in a private house, without either banns or a licence.

In consequence of this irregularity, Coke and his lady, with the Rev. Henry Bathwell, Rector of Okeover, Thomas Lord Burleigh, afterwards Earl of Exeter, the bride's father, and several others present at the marriage, were prosecuted in the Archbishop's court.

By a timely and respectful submission, however, by their proxies, they escaped the greater excommunication; since, as the record says, they offended not so much out of contumacy, as through ignorance of the law. This was probably the only instance in the life of Coke, of his being accused and condemned for a deficiency of legal knowledge; and on this occasion it is only just possible that he was unaware of the salutary enforcement of the marriage laws by the great Whitgift, and had relied upon the clergyman to perform the ceremony with the customary correctness.

If, in this instance, he erred through ignorance, we have a modern case, almost as extraordinary, where the will of a learned judge was set aside, although throughout his judicial career he had presided in a court in which the validity of such testamentary documents is continually disputed and adjudged.

The law of marriages, for a lengthened period, was a disgrace to England. The irregularities practised at their celebration,—of which Coke's was an example; the false oaths, the deplorable neglect with which the registers were kept; the Fleet marriages; and a number of other minor sources of litigation; have but very lately been removed.

Coke's wife, like her husband, must have displayed her bridal dress in public, before she ought to have ceased to appear in those of grief and mourning; for, on the 4th of August 1598, the very year of their marriage, she lost her grand-father, William Cecil Lord Burleigh.

This great and good minister of the crown of England, had on many important occasions been the friend of Coke, whom he perseveringly patronized, in opposition to the great Francis Bacon, who had the support of Essex. He never wavered in this preference; and, when he died, his son Robert Cecil, who inherited his father's

talents, seems also to have adopted towards Coke the same partial feelings.

Burleigh had to preside over the destinies of England in strange and difficult times,—when Popery and Protestantism were contending for the supremacy with doubtful and varying success, and when it required talents of no mean order to bring the cause of the Reformation in triumph through the struggle. He had to contend, as Elizabeth's minister, with a great and powerful party, supported by the wealth, the intrigue, and the power of Rome; a party, moreover, justly exasperated by the unprincipled spoliations of Henry VIII.

England had not then attained that concentrated power, riches, and glory which we have enjoyed in our age. Its position was one of extreme danger and difficulty. It was assailed by inveterate and powerful catholic states; was weakened by continued rebellion in Ireland—a portion of its own empire; and had its borders threatened by its then agitated neighbour, Scotland. This must account for many of the measures of apparent harshness which distinguished Cecil's administration. It rendered necessary much intrigue and state dissimulation; obliged him often to adopt rigorous measures, of which, more peace-

ful and refined ages have doubted the necessity, and correctly reprobated the inhumanity.

Burleigh was born in 1520 ; became a member of Gray's Inn when he was twenty-one ; and, in the same year, he married his first wife, Mary Cheeke, by whom he had Thomas, the first Lord Exeter.

His second wife, Mildred Cooke, was a woman of extraordinary mind and virtues. By her he had his second son, Robert Cecil, afterwards Earl of Salisbury.

Burleigh was an especial favourite of Queen Elizabeth. She protected him from the malice of all his enemies ; supported him even against her minion, Leicester, and her still greater favourite, Essex ; condoled with him in his misfortunes, and rejoiced at his triumphs. Many of her well-known letters to him breathe the most friendly spirit. He was, indeed, a man after her own heart ;—cautious, faithful, talented, and courageous, who could temporize and be gentle, or energetic and severe, just as the occasions of state required.

Burleigh shares with his mistress Queen all the odium of the death of Mary of Scotland. There is every probability that he was the counsellor to whom Mary owed her trial and condemnation. This unfortunate Queen expressed herself,

during that mockery, decidedly to that effect ;— openly charging him at Fotheringay with being her enemy.*

Burleigh died surrounded and lamented by his children. His sovereign shared their sorrow ; and she manifested the truth of her declarations, by carefully protecting and promoting his sons. They were both ennobled, and their titles are still possessed by their descendants, the Marquises of Salisbury and Exeter.

Burleigh was succeeded in his title and estate by his eldest son, Thomas Cecil, who married the daughter of Lord Latimer, and had issue eight daughters, one of whom, Elizabeth, became the wife, first of Sir William Hatton, and afterwards of Coke.†

* State Trials, vol. 1, p. 147.

† Of Sir William Hatton, Lady Coke's first husband, I have few particulars. He was the nephew of Sir Christopher Hatton, the Lord Keeper and Chancellor of Oxford, being the son of his sister, Lady Newport. Sir Christopher died a bachelor in November, 1592, when his great estates devolved to his nephew, Sir William Newport, who thereupon changed his name to Hatton. He was created Master of Arts by the University of Oxford in July, 1592,(a) and must have died soon after his marriage ; for his lady, Elizabeth Hatton, was a widow in 1597, and in possession of his large estates.

(a) Wood's Fasti Oxoniensis, vol. 1, p. 141.

In the treaty of marriage for Lady Hatton, Coke was again opposed by his illustrious rival, the great Bacon, who was supported by the zealous advocacy of his warm-hearted friend, the Earl of Essex. Coke was sustained in his suit by the interest of the Cecils, and stood well with all the members of the lady's family. Had it been otherwise, there is little doubt that Bacon, backed as he was by the royal favourite, would have succeeded.

Birch has given two letters of Essex to the parents of the lady, in favour of his friend ;* and they are striking evidences of the zeal with which he pleaded for his friends. Both are dated on the eve of his embarkation on an expedition from Sandwich, June 24, 1597. In the first to Sir Thomas Cecil, he says :

“ I write this letter from the sea-side, ready to go abroad, and leave it with my secretary to be delivered by him to you, whensoever he shall know that my dear and worthy friend, Mr. Francis Bacon, is suitor to my Lady Hatton, your daughter. What his virtues and excellent parts are, you are not ignorant ; what advantages you may give, both to yourself and to your house, by having a son-in-law so qualified, and so likely to rise in his profession, you may

* Memoirs, vol. 1, p. 547.

easily judge. Therefore, to warrant my moving of you to incline favourably to his suit, I will only add this, that if she were my sister, or daughter, I protest I would as confidently resolve to further it as I now persuade you. And, though my love to him be exceedingly great, yet is my judgment nothing partial, for he that knows him as well as I do, cannot but be so affected."

The other letter was to the lady's mother, Lady Thomas Cecil, daughter of Lord Latimer, in which he told her :

"The end of my writing to your Ladyship, now, is to do that office to my worthy and dear friend, which if I had staid in England, I would have done by speech, and that is to solicit your Ladyship to favour his suit to my Lady Hatton, your daughter, which I do in behalf of Mr. Francis Bacon, whose virtues I know so much, as you must hold him worthy of very good fortune. If my judgment be anything, I do assure your Ladyship I think you shall very happily bestow your daughter ; and, if my faith be any thing, I protest if I had one as near to me as she is to you, I had rather match her with him than with men of greater titles."

This contest was certainly one of the many sources of animosity which subsisted between

Coke and Bacon. The lady was not a common prize ; *she* could not be an ordinary woman, for whom two such great lawyers were rival suitors, and to win whom they made such strenuous exertions.

Of the Lady Elizabeth Hatton, we shall find, as we proceed, many disagreeable notices. She was evidently a lady little suited to be the wife of Coke. Of her exact age I can find no memorials, but she was certainly very young, and one of the court beauties,—gay, proud, high spirited and clever.

She was the fourth daughter of Thomas Cecil, first Earl of Exeter, who was born in 1542 ; so that, in all probability, she was barely of age when, in 1598, she became the wife of Coke.

No two persons could be more dissimilar in their habits and tastes. Lady Hatton was an admired courtier, delighting in festivals, plays, court masques, and every variety of revelry ; whilst Coke was a grave, elderly lawyer, and gave, it appears, but few large entertainments, took no pleasure in festivities, studied hard and unceasingly, went to bed with the sun, and rose at three o'clock in the morning.

Of their domestic affairs during the first years of their marriage I have no account. They probably travelled on in quiet apathy, uncomfortable,

and silent ;—Coke employed in the courts, and the lady enjoying dissipation, and ashamed of her husband.

Yet, she could not be insensible to his well-merited honours. In 1606, eight years after their union, he became Lord Chief Justice of the Court of Common Pleas, and soon after was removed to the King's Bench. This, however, will appear as we proceed in tracing the future years of his life.

I have now to recur to other sources of rivalry and complaint, between Coke and Bacon, which, in order that the notices of Coke's domestic life might not be interrupted, I omitted in their proper place.

When Coke was promoted to be attorney-general, Bacon became a candidate for the solicitor-generalship ; and the Earl of Essex warmly interested himself in his behalf. Cecil did the same. But Sir Henry Hobart was preferred,—to the great annoyance of Bacon, who suspected Coke to be the source of the opposition to his pretensions. He did not forget this, years afterwards, when he wrote his well-known letter to Coke, inserted in a future page : “ I missed the solicitor's place,” are his words, “ I rather think by your means.”

While the solicitor's place was yet vacant,

Bacon wrote the following curious letter to the Earl of Essex, which is now in the Lambeth Library, folio 283.*

“ My Lord,

“ I thought it not amiss to inform your Lordship of that which I gather, partly by conjecture, and partly by advertisement, of the late recovered man, that is so much at your devotion, of whom I have some cause to think that he (perhaps Lord Keeper Puckering,) worketh for the *Huddler* (Coke,) underhand. And, though it may seem strange, considering how much it importeth him to join straight with your Lordship, in regard both of his enemies and of his ends, yet do I the less rest secure upon the conceit, because he is a man likely to trust so much to his art and finesse, (as he that is an excellent wherryman, who you know, looketh towards the bridge when he pulleth towards Westminster,) that he will hope to serve his turn and yet to preserve your Lordship’s good opinion.

“ This I write to the end, that if your Lordship do see nothing to the contrary, you may assure him more, or trust him less ; and chiefly that your Lordship be pleased to sound again

* Bacon’s Works, vol. 6, p. 8.

whether they have not among them drawn out the nail which your Lordship had driven in for the negative of the *Huddler*, which if they have, it will be necessary for your Lordship to reiterate more forcibly your former reasons whereof, there is such copia, as I think you may use all the places of logic against them."

Bacon adds in a postscript : " I pray, Sir, let not my jargon privilege my letter from burning ; because it is not such but the light sheweth through."

Queen Elizabeth had, in truth, no great opinion of Bacon's legal knowledge. She told the Earl of Essex on this occasion what Essex thus reported to Bacon, May 18, 1594.*

" She did acknowledge that you had a great wit, and an excellent gift of speech, and much other good learning ; but in law, she rather thought you could make shew to the utmost of your knowledge, than that you were deep."

This reason was not likely to be regarded by Bacon as the real cause of his being neglected by the court. He was dissatisfied and angry with his rival,—who, in the mean time, regardless of his enmity, was busily employed in the duties of his profession.

* Bacon's Works, vol. 6, p. 14.

Thus, as attorney-general to Queen Elizabeth, Coke conducted the trial of the Earls of Essex and Southampton, in Westminster Hall, for high treason. This took place on the 19th of February, 1600, before the House of Lords ; and, on the occasion, he conducted himself much as king's counsel were in those days accustomed to do, namely, with much energy, but with no tenderness towards the prisoners. The speech of Coke to the assembled peers was in his usual style ; keeping close to the facts of the case, and indulging in few illustrations.

Lord Buckhurst sat as high steward, and to him Coke addressed his opening sentence :—

“ May it please your grace ; the lords and judges, who are the fathers of the law, are aware that the thought of treason to the Princess is death by the law, and he that is guilty of rebellion is guilty, by the laws of England, of an intent to seek the destruction of the Prince, and it is, therefore, adjudged to be treason. I will prove this unto your Lordship by two several cases : First, if he raiseth power and strength in a settled government, the law will not suffer it, but it is construed as in case of high treason. He that doth usurp upon it,

the law doth intend that he hath purposed the destruction of the Prince.

He that doth assemble power, if the King doth command him upon his allegiance to dissolve his company, and he continue it, without any question it is high treason. He that doth levy forces to take any town in the Prince's dominion, it is likewise treason.

“ But my Lord of Essex hath levied power to take the Tower of London, and to surprise the Queen's own court ; then this treason must be higher than the highest ; and he that doth fortify himself against the Prince's power must needs be within the compass of treason.”

Coke then proceeded to address Essex, “ By your favour, my Lord of Essex, I will now speak a word unto you, for I know you can speak well as any man ; that whereas you say the law of nature compelled you to do this, which in judgment you have, although most treacherously, attempted, I will, in a word, disprove your own judgment, admitting you must make that freely your argument.

“ First, I will open the quality of your rebellion ; secondly, the manner of it ; thirdly, I will touch the circumstances : and, lastly, I will observe the person.

“ The quality hath high treason, for which I think I shall not need to say any more.

“ For the manner of it—I hold it an unnatural act, for a subject to commit treason against his sovereign : and, methinks, it cannot, by any possibility, be denied but that this high treason is, and must be, both against the law of God, nature, and reason. Under your grace’s favour, my Lord, the manner of it being of so high a nature as it is, must needs be high treason, which was not only carried into their hearts, but, for a continual remembrance, kept in a black purse, which my Lord of Essex wore on his breast next his skin.

“ Let me note unto you, good Lord, that they being both born under the government of this Princess, and so highly advanced by her Majesty’s favour, should have trembled to think of such a rebellion as they have enterprized.

“ Doth not my Lord of Essex now enjoy his earldom of Essex by the gift of Henry the eighth to his father ? Was he not made master of her Majesty’s horse at twenty-two years of age ?—one of her Majesty’s council ? To be earl marshal of England ?—General of her Majesty’s forces in Ireland ? And, lastly, hath he not received

divers gifts and sums of money, to his own use, of her Majesty's gracious and princely bounty, to the value of thirty thousand pounds? Yet all these were as cleverly forgotten as if they had never been.

“ Now shall I show you the person whom this concerns?—Even her Majesty's sacred person, against whom their attempts have been only for the undertaking of God's cause, and exercising of justice with admirable mercy; and, although I cannot speak without reverent commendations of her Majesty's most honourable justice, yet I think her overmuch clemency to some persons, turneth to overmuch cruelty for herself; for, although the rebellious attempt were so exceeding heinous, yet out of her princely mercy, no man was racked, tortured, or pressed to speak any thing farther than of their own accord and willing minds, for discharge of their consciences, they uttered, and then to see the mercy of God that will have the truth known is admirable beyond the conceit of man's capacity, for they being severally examined, notwithstanding all agreed directly without varying.

“ But, when her Majesty sent a counsellor of state, to have the Earl come before her, when she heard of his rebellion, for no other end and

purpose but for his admonishment, he refused to come ; and, having a guilty conscience, and suspecting his treasons were laid open, took consultation to surprise the court and the Tower of London all at one instant, and for this purpose had appointed Blunt the custody of the gates : Sir John Davis of the hall : Sir Charles Davers of the presence, and himself of her Majesty's person.

“ Whereupon, Blunt said, ‘ Ah ! what humour shall we find them in at the court ?’

“ This was not all, for the Earl he must call a parliament, and he would decide matters, not making for his purpose ; but now in God's most just judgment he of his earldom shall be Robert the last, that of a kingdom thought to be Robert the first.

“ And my Lord did not any whit amuse himself to give order, that if he and his accomplices should miscarry in London, then the counsellors which he had caused to be imprisoned in his house should be slain.

“ It was plain treason in him to stand out, being by them charged to dissolve his company upon his allegiance.

“ What shall I need to stand upon farther proofs ? It is so evident, and my Lord himself will not deny but that he had a schedule con-

taining in it divers of his friends' names, which as I conjecture must needs contain some other matter, for he durst not let it come to light, but burnt it."

The Earl of Essex here became impatient. "Will your Lordships," he demanded, "give us our turns to speak? for he playeth the orator and abuseth your Lordships' ears, and us with slanders; but they are but fashions of orators in corrupt states. Considering some privileges which we might challenge, equal answers and equal hearing were indifferent: for, unless it will please your Lordships that we might answer to every particular, we shall soon confound our own memories and give liberty and advantage to our enemies, whereupon to lay hold for lack of precise answer to each particular question."

Robert Devereux, Earl of Essex, against whom Coke so earnestly pleaded, figured as one of the chief personages of the reign of Elizabeth. This royal favourite had the rare fortune to be at once in possession of the warmest smiles of his mistress queen, and the command of the popular voice. His birth protected him from the suspicion of being overproud of his elevation; and, in truth, he appeared on every occasion to act towards

his sovereign with a freedom, an energy and sometimes with an insolence, which shewed that he was fully conscious of his own hereditary and acquired claims.

That Queen Elizabeth was warmly attached to him, is quite certain. He was endowed with a handsome person; had some accomplishments; was brave, open hearted, and generous; advocated the cause of his friends at all hazards; and was not altogether an unsuccessful military commander.

Of his zeal for his friends, many instances have been remembered. He pleaded on several occasions for Sir Francis Bacon; and once had his ears boxed, by Queen Elizabeth, for the angry obstinacy which he displayed when recommending his friend, Sir George Carew, to be Lord Lieutenant of Ireland;—a petulance the more remarkable, since the Queen was in favour of Sir Francis Knolles, uncle to Essex on his mother's side.

His popular qualities endeared Essex to the people of England. They regarded him as the only courtier whom the smiles of Elizabeth did not render a slave; and his merits would, perhaps in their eyes, appear the greater, from being contrasted with those of his predecessor

at court, the profligate Dudley, Earl of Leicester.

Many of his errors were the errors of youth. He came to court, at first very unwillingly, in his seventeenth year, served there several years, commanded in one or two expeditions, was Lord Deputy of Ireland, engaged in his treasonable sally into the city of London, was tried and executed before he was more than thirty-four years of age.

He had the advantage of having for his guardian the great Lord Burleigh by whom in 1578, when he was only twelve years, he was sent to Cambridge, and entered of Trinity College, of which Coke's old friend, Dr. Whitgift, was still the master. Burleigh steadily befriended his ward; and his death, in 1698, deprived Essex of a warm influential friend who had served him on many critical questions.

Essex, as already noticed, was the friend of Sir Francis Bacon. He several times unsuccessfully recommended him to the Queen, for vacant law offices—and, when he found all his endeavours fruitless, actually presented him with an estate.

The after conduct of Bacon towards the Earl did not display a very grateful sense of his patron's services, for he appeared against him

on his trial as one of the counsel with Coke and Yelverton, and evidently by so doing annoyed the unfortunate Essex, who told the court he must produce Bacon as a witness of the wrongs he had suffered, since it appears he had written a letter for Essex to the Queen.

Bacon advised him to confess. " My Lord, all you have said or can say in answer to these matters are but shadows, and therefore methinks it were your best course to confess and not to justify."—" My Lord," he soon after added, " I spent more hours to make you a good subject, than upon any man in the world besides. I dare warrant this letter of mine will not blush."* Bacon here forgot the claims which Essex had to his gratitude for many great disinterested services. His brother counsellor Yelverton, refused, when similarly situated, to appear against even the infamous Car, Earl of Somerset, and all posterity has applauded him for the action.

With regard to the crime for which Essex was beheaded, there is much doubt as to his intentions, and he probably had no very distinct plans laid down for his own guidance. He evidently considered himself injured, and fan-

* State Trials, vol. I, p, 197.

ced his power with the citizens of London to be much greater than it really was. He intended, by their assistance, to remove from the Queen's councils, Cecil, Egerton, and several others, by whom he fancied himself wronged, and his views certainly extended no farther.

The reluctance of the Queen to sign his death-warrant, betrayed her feelings of regard. Had he intended her any personal injury, this reluctance would probably not have been felt. The disputed story of the ring, which Essex held as the token which should ensure his safety has some foundation. It was undoubtedly believed to be authentic in the family of the Countess of Nottingham, by whom the ring was said to be detained. Her reported confession of the fact, on her death-bed, to Queen Elizabeth is so far supported by the fact that she died some few weeks before the Queen, who only survived Essex about two years.*

He met his death on Tower Hill, February 25th 1600, with all the gallantry of a soldier, and all the meekness of a Christian, mourned by his friends, and pitied even by his enemies. Had he not been flattered by the warmth of the Queen's affection for him, and inflated by the

* Hume, Dr. Birch, Horace Walpole, and many other writers less authentic, unite in giving credit to the story.

multitude of favours he received from her, he would probably have shone better as a soldier or a courtier. Of his courage and good military conduct there was no doubt ; and, if he was unfitted to direct a campaign against more experienced officers, he had yet sufficient knowledge of the art of war for the age of Elizabeth, whose martial operations were almost exclusively confined to naval exertions.

His son, Robert Devereux, who succeeded him in the earldom of Essex, and by whose death in 1646, the title became extinct, was nearly as extraordinary a character as his father. He volunteered as a soldier in the Low Countries ; had considerable military talents ; served the King against the Scotch ; was divorced from two wives ; commanded the Parliamentarians against Charles at Edgehill and many other places, and, had he survived, Cromwell would perhaps never have been commander-in-chief of the army.

The conduct of Essex in joining the parliament against the King, might perhaps in some measure be attributed to the base conduct of the court in supporting the divorce of his first Countess, who married immediately the favourite Somerset, and who, with her husband, was afterwards condemned for the murder of Overbury.

It is impossible to read the trials, in cases of treason, which took place in that age, without feelings of more than ordinary regret. The pleadings of the King's counsel were in general harsh, and often degenerated into unfeeling abuse. The judges very seldom interfered to protect the prisoner from the coarseness of their attacks; and even sometimes joined in the invective. The accused were, in fact, very disproportionately supported; the slightest proofs were often deemed sufficient evidence of their guilt, and they were not allowed the unfettered assistance of counsel. This has long since been remedied, for, by an act of the seventh of William III, in 1695, prisoners accused of treason are allowed a greater means of defence than other criminals formerly enjoyed, their counsel being permitted to address the jury at any length, and this favour is granted because the law of England, in its humanity, deems it fit and proper that the prisoner should, in such a case, have every assistance against the weight and influence of the crown. A different doctrine was held in the days of Essex and Southampton; they had to defend themselves, and had no counsel to address the peers on their behalf.*

* State Trials, vol. I, p. 190.

The rivalry and ill-will of Coke and Bacon displayed itself again, and that very publicly, long after Coke became attorney-general, in an altercation in the Court of Exchequer. Bacon was evidently sorely annoyed ; and, by his own account, browbeaten by Coke. That he gave his rival some cause of offence is pretty certain, but unfortunately we have only his own account of the fray, and that is contained in this letter to Mr. Secretary Cecil,* dated Gray's Inn, the 24th of April, 1601.

“ It may please your honour,

“ Because we live in an age where every man's imperfections is but another's fable ; and that there fell out an accident in the Exchequer, which I know not how, nor how soon may be traduced, though I dare trust rumour in it, except it be malicious or extreme partial ; I am bold now to possess your honour, as one that ever I found careful of my advancement, and yet more jealous of my wrongs, with the truth of that which passed, deferring my farther request until I may attend your honour, and so I continue your honour's very humble and particularly bounden,

“ FRANCIS BACON.”

* From the Hatfield Collection, 6 vol. Bacon's Works, 46.

“ A true remembrance of the abuse I received of Mr. Attorney-General, publicly in the Exchequer, the first day of term, for the truth whereof I refer myself to all that were present.

“ I moved to have a re-seizure of the lands of George More, a relapsed recusant, a fugitive, and a practising traitor, and shewed better matter for the Queen against the discharge by plea, which is ever with a *salvo jure*. And this I did in as gentle and reasonable terms as might be.

“ Mr. Attorney kindled and said: ‘ Mr. Bacon, if you have any tooth against me, pluck it out ; for it will do you more hurt than all the teeth in your head will do you good.’ I answered coldly, and in these words : ‘ Mr. Attorney, I respect you ; I fear you not ; and the less you speak of your own greatness, the more I will think of it.’

“ He replied : ‘ I think scorn to stand upon terms of greatness towards you who are less than little, less than the least ;’ and other strange light terms he gave me, with that insulting which cannot be expressed.

“ Herewith stirred, yet I said no more than this : ‘ Mr. Attorney, do not depress me so far,

for I have been your better, and may be again when it please the Queen.'

"With this he spake, neither I nor himself could tell what, as if he had been born attorney-general; and, in the end, bade me not meddle with the Queen's business, but with my own, and that I was unsworn, &c. I told him, sworn or unsworn, was all one to an honest man; and that I ever set my service first and myself second, and wished to God he would do the like.

"Then he said it were good to clap a *capias ut legatum* upon my back; to which I only said, he could not, and that he was at a fault, for he hunted upon an old scent.

"He gave me a number of disgraceful words besides, which I answered with silence, and shewing that I was not moved with them."

The accusation of Essex and Southampton was the last important trial in the reign of Queen Elizabeth, that Coke conducted. Many grave historians have asserted with some shew of probability, that the end of this great Queen was hastened by the trial and execution of her favourite, Essex. It is certain she survived his death little more than a twelve-month.

To Coke, Elizabeth was always a tender and generous mistress ; discerning his merits, advocating his superior pretensions as a barrister, and commanding his promotion to the best law office then in the gift of the crown, even when Essex was warmly pleading for his friend, the great Bacon. Her favour followed him even into private life, for, at the christening of one of his children in 1600, she presented him with a gilt bowl and cover, weighing forty-three ounces and a half.*

The gifts of Elizabeth were valuable from their rarity ; she bestowed them as she did her titles of honour, not without they were well deserved. Money could not buy them, flattery was powerless. In the wise disposal of public rewards, this Queen evinced a discernment never excelled in any after age. She reigned in a period when her country was contending for its very existence against the most powerful monarchy of the day, was surrounded with difficulties, beset with papal intrigues and traitors, and yet by a wise unerring choice of her ministers, officers and judges, she set all her enemies at defiance, and triumphed over every difficulty.

* Nichol's Progresses of Queen Elizabeth, vol. 8, p.p. 467, 568.

King James, her successor, continued most of her ministers, and amongst the rest, Coke was retained in his office of attorney-general.

CHAPTER V.

1602—1606.

Coke knighted—Trial of Raleigh—His speech — Raleigh's defence—His condemnation—Sir Henry Montague's speech to him on judgment being passed—Notice of Raleigh—The gunpowder plot—Trial of the conspirators—Coke's speech to the judges—Notice of this plot and of the conspirators—Many of its particulars doubted—Coke made Chief Justice of the Common Pleas—Coke's emoluments when at the bar—His fees of office.

It was not usual for the solicitor and attorney-general of those days to receive the honour of knighthood, when they obtained their appointments. Coke was not made a knight until the 22nd of May, 1603. The King being then at Greenwich, bestowed upon him this honour.*

* Nichol's Progresses of King James I.

He had hardly received confirmation of his office when a series of treasons, either real or imaginary, gave him abundance of employment. Thus, on the following 17th of November, he conducted the trial of Sir Walter Raleigh at Winchester, to which place the court was adjourned on account of the plague being in London. Raleigh was accused of high treason, and defended himself with the highest talent and self-possession. Coke appeared on this trial with little advantage: his language was coarse; his observations brutal; his temper savage. He had to make up by the violence of his demeanour for the poverty of his case, and no master could have been more zealously served than James I was in this instance by his attorney-general.

Coke acted as the zealous counsellor who looked only to his client, and so far we may plead for his over-anxious efforts. He procured the prisoner's condemnation. But his master, James, perpetrated a viler part. He reprieved his prisoner for seventeen years; he employed him in his service; and then brought him to the scaffold for pretended crimes he had committed against Spain, but under the wretched plea of his former conviction.

It is disgusting to dwell upon these melan-

choly instances of brutality. The truth is but too apparent; Raleigh was charged by the Spanish ambassador; Raleigh, the King's servant, needed assistance, and then the King abandoned him, for James was a Stuart, was of a family known to a proverb, for deserting their distressed friends and relations.

There is, perhaps, no reported case in which the proofs against the prisoner were weaker than in this trial of Sir Walter Raleigh. Never was an accused person condemned on slighter grounds. Yet Coke, in his address to the court, with much gravity warned the jury: "I perceive these honourable Lords and the rest of this great assembly are come to hear what hath been scattered upon the wrack of report. We carry a just mind to condemn no man but upon plain evidence."

The manner in which the judges then suffered the counsel for the crown to harangue the prisoner, is most revolting to our modern sense of a fair trial. When Coke, in the course of his speech, mentioned the King, he said: "I shall not need, my Lords, to speak anything concerning the King, nor the bounty and sweetness of his nature; whose thoughts are innocent, whose words are full of wisdom and learning, and whose works are full of honour. But to whom

do you bear your malice," he continued, turning to Raleigh; "to the children?"

"To whom speak you this?" said Raleigh. "You tell me words I never heard of."

"Oh do I, Sir?" exclaimed Coke. "I will prove you the notoriousst traitor that ever came to the bar, after you have taken away the King, you would alter religion, as you, Sir Walter Raleigh, have followed them of the bye, in imitation, for I will charge you with the words."

"Your words," retorted Raleigh, "cannot condemn me, my innocency is my defence; prove one of these things wherewith you have charged me, and I will confess the whole indictment, and that I am the most horrible traitor that ever lived, worthy to be crucified with a thousand torments."

"Nay," replied the attorney-general; "I will prove all: thou art a monster; thou hast an English face and a Spanish heart. Now you must have money, Aremberg was no sooner in England, but thou incitest Cobham to go unto him, and to deal with him for money to bestow on discontented persons."

RALEIGH.—Let me answer.

COKE.—Thou shalt not.

RALEIGH.—It concerneth my life.

COKE.—Oh! do I touch you?

Chief Justice Popham here observed: “ Sir Walter Raleigh, Mr. Attorney-General is but yet in the general; but, when the King’s counsel have given all the evidence, you shall answer every particular.”

Coke then proceeded. “ Will you dispose of so good a King, lineally descended? he came of Elizabeth, eldest daughter of Edward IV. Why then, must you set up another? I think you meant to make Arabella a titular Queen, of whose title will I speak nothing. But, of this I am sure, you intended to make her a stale mate. You could mean her no good.”*

RALEIGH.—You tell me news, Mr. Attorney.

COKE.—Sir, I am the more large, because I know with whom I deal, for we have to deal to-day with a man of wit.

Such was the wretched altercation allowed at this trial during Coke’s address to the jury, an address which he thus concluded: “ You, my masters of the jury, respect not the wickedness and hatred of the man, respect his cause; if he be guilty, I know you will have care of it,

* When Sergeant Heale addressed the jury, he gravely observed: “ As for the Lady Arabella, she, upon my conscience, hath no more title to the crown than I have, which before God, I utterly renounce.

for the preservation of the King, the continuance of the authorized gospel, and the good of us all.”

At this period of the trial, another altercation took place, still more wretched and disgraceful than the first. Raleigh now observed :—

“ I do not hear yet that you have spoken one word against me ; here is no treason of mine done ; if my Lord Cobham be a traitor, what is that to me ?”

COKE.—All that he did was by thy instigation, thou viper : for I *thou* thee, thou traitor.”*

RALEIGH.—It becometh not a man of quality and virtue to call me so ; but I take comfort in it : it is all you can do.”

COKE.—Have I angered you ?”

RALEIGH.—I am in no case to be angry.

Chief Justice Popham here again interfered ; he was evidently ashamed of Coke’s unrelenting ferocity. “ Sir Walter Raleigh,” said the judge, “ Mr. Attorney speaketh out of the zeal of his duty, for the service of the King, and you for your life ; be patient on both sides.”

* Shakspeare has been supposed to allude to the violence of Coke’s language in this trial, when in his “ Twelfth Night,” he makes Sir Toby Belch say to Sir Andrew Ague Cheek whom he is persuading to challenge Viola, “ If thou *thou’st* him some thrice, it shall not be amiss.”

This rebuke for some time seemed to produce its intended effect. They proceeded to read the proofs, which merely consisted of Lord Cobham's confession; and the evidence of one Dyer, who deposed to some words he had heard spoken by a Portuguese in a merchant's house, at Lisbon; and upon this evidence Coke and Sergeant Philips commented. At the conclusion of their speeches, Raleigh remarked, "If truth be constant, and constancy be in truth, why hath he forsworn that, that he hath said.* You have not proved any one thing against me by direct proofs, but all by circumstance."

COKE.—Have you done? the King must have the last.

RALEIGH.—Nay, Mr. Attorney, he which speaketh for his life, must speak last. False repetitions and mistakings must not mar my cause; you should speak, *secundum allegata et probata*. I appeal to God and the King, in this point, whether Cobham's accusation be sufficient to condemn me?

COKE.—The King's safety, and your clearing cannot agree. I protest, before God, I never knew a clearer case of treason.

* Cobham had retracted his confession.

Here another noisy, disgraceful dispute took place. Coke, being reprimanded by Lord Salisbury, sat down, and was, with some difficulty, persuaded to resume the prosecution of his case. He exclaimed: "If I may not be patiently heard, you will encourage traitors and discourage us. I am the King's sworn servant, and must speak. If he be guilty, he is a traitor; if not, deliver him."

He then proceeded to recapitulate the evidence; and upon being told by Raleigh: "You do me wrong," he again burst forth with renewed rage, "Thou art the most vile and execrable traitor that ever lived."

"You speak" said Raleigh, "indiscreetly, barbarously, and uncivilly."

"I want words," retorted Coke, "sufficient to express thy viperous treason."

The wit of Raleigh never deserted him, even in the most trying moments; it shone equally here, as it did years afterwards, upon the scaffold. Coke was no match for him in this quality. "I think," rejoined Raleigh, "you indeed want words, for you have spoken one thing half a dozen times."

Coke grew still more angry. "Thou art an odious fellow; thy name is hateful to all the realm of England for thy pride."

“ It will,” replied Raleigh, “ go near to prove a measuring cast between you and me, Mr. Attorney.”

“ Well,” concluded Coke. “ I will now make it appear to the world, that there never lived a viler viper, upon the face of the earth, than thou.”

The judges took no notice of this renewed squabble. Our astonishment at this apathy is not diminished, when we reflect, that among the number of the judges who were specially appointed to try him, were the chief justices, Popham and Anderson, judges Warburton and Gawdye, and Robert Cecil, Earl of Salisbury. But our surprise, with regard to this memorable trial, is not confined to any particular portion of it; for equally surprising is the commencement of the prosecution—its miserable details—its successful conclusion by the verdict of the jury—and the suspension of the execution of the sentence for seventeen years.

It is evident that the chief justice Popham believed that Raleigh was an infidel; for, when he was addressing him, preparatory to passing sentence, he observed, “ You have been taxed by the world with the defence of the most heathenish and blasphemous opinions. You should

do well before you go out of the world, to give satisfaction therein, and not to die with these imputations upon you.”* Popham’s opinion need not surprise us. He presided that day over a court in which very extraordinary things were believed; it was then thought equity to admit as evidence a written confession of Lord Cobham’s, when Cobham was yet alive and in custody: it was believed by that court to be just and lawful to admit that confession, but not equally just to allow of the retraction of that evidence by another written communication of him whose confession it had been. The same court thought it quite a sufficient reason for refusing personally to examine either Cobham or his brother Brooke; which Raleigh eloquently and indignantly} demanded, “Because,” said the chief justice, “the accuser may be drawn by practice, whilst he is here in person.”

The trial lasted, according to Stow,† from morning until six o’clock in the evening. It was a mere mockery of justice. The conviction was extorted by clamour. Whatever was Raleigh’s guilt, the evidence adduced against him was such as would in a petty larceny case, in our

* State Trials, vol. 1, p. 221.

† Annals, p. 830.

age, have been laughed at for its absurdity ; no counsel would offer it, no judge would allow it.

When, seventeen years after his trial, Raleigh was brought up, for the second time, preparatory to his execution, Sir Henry Montague, who presided in the Court of King's Bench, Coke having been removed nearly two years, addressed Sir Walter Raleigh in a very feeling manner, but at the same time like a judge who felt the iniquity of the case.

This speech has been sometimes erroneously ascribed to Coke.

“ I know that you have been valiant and wise ; I doubt not but you retain both these virtues, for now you shall have occasion to use them. Your faith hath heretofore been questioned, but I am resolved, you are a good christian ; for your book, which is an admirable work, doth testify as much. I would give you counsel ; but I know you can apply unto yourself far better than I am able to give you ; yet will I, with the good neighbour in the gospel, who, finding one on the way wounded and distressed, poured oil into his wounds and relieved him, give unto you the oil of comfort, though in respect that I am a minister of the law, mixed with

vinegar. Sorrow will not avail you in some kind ; for, were you pained, sorrow would not ease you ; were you afflicted, sorrow would not avail you ; were you tormented, sorrow would not content you : and yet the sorrow for your sins, would be an everlasting comfort to you.

“ You must do as the valiant captain did, who, perceiving himself in danger, said in defiance of death, ‘ Death thou expectest me, but malgre thy spite, I expect thee.’

“ Fear not death too much, nor fear not death too little ; not too much lest you fail in your hopes : not too little lest you die presumptuously.

“ And here I must conclude with my prayers to God for it, and that he would have mercy on your soul.”*

On the reality of the plot, for which Raleigh was tried, there have been many strangely varying opinions. It is confessed by all the contending historians that if there was such a plot in existence, Arabella Stuart, in whose favour it was said to have been concocted, was entirely ignorant of its existence. She was present, in the court at Winchester, when

* Howell's State Trials, vol. 2, p. 84.—Croke, Jam. 495.

Raleigh had his trial, and then clearly exonerated him. It is certain that even the court of James I. had considerable doubts of his guilt, for otherwise they would not have delayed the execution of the sentence for so many years, and James would hardly have afterwards employed a man who had plotted to deprive him of his throne.

If the accomplished Raleigh had engaged in such a conspiracy, we might fairly conclude that he would have sought assistance among the talented and influential of the land, and not have intrusted such persons; as Brooke and Cobham with secrets of such vital importance. Coke himself is said, in after-life, to have confessed that he had treated his prisoner with unnecessary harshness; although I cannot immediately refer to my authority for this statement.

Raleigh was a man of genius, of learning, and a wit. Prince Henry, the eldest son of James I, who died in his youthful days, used to express his astonishment that his father kept such a bird shut up in a cage. He had a turn for military and naval affairs—was a poet—an historian—a speculator in voyages of discovery, and an alchymist.

A mind constituted like Raleigh's, of neces-

sity was restless and enterprising. His humour, no scenes, however serious, could destroy. When upon his trial at Winchester, his cool sarcasms and fund of wit, evidently annoyed, and finally exasperated Coke. Shut up in the Tower of London, he employed himself in writing his very excellent history of the world, in two folios, which few persons, even in our literary age, have even glanced at, and still fewer have fairly perused.* Even at the last, when he was brought on to the scaffold, in Palace-Yard, he appeared as full of wit, as light-hearted, and as sarcastic as he was in his days of freedom.

He was, in truth, a very extraordinary person ; brave, talented, and generous ; and yet he appears not to have been a popular character. He confesses as much in the preface to his " History of the World," speaking of which he says :—" To the world I present them, to which I am nothing indebted ; neither have others (fortune changing) sped much better in any age. For prosperity and adversity have evermore tied and untied vulgar affections. And as we see it in experience, that dogs do always bark at those they know not, and that it is their

* It comprehends the period from the creation to the conquest of Macedon by the Romans.

nature to accompany one another in these clamours, so it is with the inconsiderate multitude, who wanting that virtue which we call honesty in all men, and that gift of God which we call charity, condemn without hearing, and wound without offence given ; led thereunto by uncertain report only, which his Majesty truly acknowledges to be the author of all lies.

“ For myself, if I have in anything served my country, and prized it before my private interest, the general acceptance of this, can yield me no other profit at this time, than doth a fair sunshining day to seamen after shipwreck ; and the contrary, no other harm than an outrageous tempest after the port is attained.”

The high-spirited style in which, during this long, pious, and able preface, he addressed his readers, is very remarkable. Eleven years imprisonment had not destroyed the ardent courage of his youth.

“ It may be laid to my charge,” he says, “ that I use divers Hebrew words in my first book, in which language others may think, and myself acknowledge it, that I am altogether ignorant. But it is true, that some of them I find in Montanus. Of the rest, I have borrowed the interpretation of some of my friends. But say I had been beholden to neither, yet were it

not to be wondered at, having had eleven years leisure to attain the knowledge of that or any other tongue. I know that it will be said by many, that I might have been more pleasing to the reader, if I had written the story of mine own times, having been permitted to draw water as near the well head as another. To this I answer, that whoever, in writing a modern history, shall follow truth too near the heels, it may, perchance, strike out his teeth. There is no mistress or guide that hath led her followers and servants into greater difficulties: he that goes after her too far off, loseth her sight, and loseth himself, and he that walks after her at a middle distance, I know not whether to call that kind of course temper or baseness."

" I forbear to style my readers, gentle, courteous, and friendly, thereby to beg their good opinions, or to promise a second and third volume (which also I do intend), if the first receive grace, and good acceptance. For that which is already done, may be thought enough, and too much; and it is certain, let us claw the reader with never so many courteous phrases, yet shall we be evermore thought fools that write foolishly."

The continuation of his history to which he thus alludes never made its appearance. He com-

mitted the manuscript to the flames some time before his death. In the last paragraph of this volume he refers to it, when in speaking of the reasons for his forbearance, he says, "it hath pleased God to take that glorious Prince, Henry, out of the world to whom they were directed, besides many other discouragements persuading my silence."

Chief Justice Montague's address to him, when he was brought up in the sixty-eighth year of his age to have execution awarded against him, I have already noticed. His heroism on the scaffold is yet matter of astonishment. If anything would add to the contempt with which I hold the character of James I, Raleigh's execution would be its occasion. Cecil, Raleigh's friend, was now dead; Buckingham and James had all the disgrace to themselves, and time has not yet rendered their conduct, in this melancholy affair, less the object of horror.

Coke appeared to much greater advantage in the trial of the conspirators in the gunpowder plot; the two Winters, Guy Fawkes, Sir Everard Digby, and others, who were indicted on the 27th January, 1605.

This case, perhaps the blackest that ever came into a court of justice, was admirably managed by Coke. He spoke at great length, but

in an undefended cause. The prisoners were speedily condemned and executed.*

Time has hardly rendered this plot less appalling. It was marked by circumstances of atrocity, which are a disgrace to human nature. It demonstrated that no zeal is so unpitying as that of a bad religion—no crime too horrid, if by such the glory of God is pretended to be served.

The case against the prisoners in this memorable trial being opened by Sir Edward Philips, Coke addressed the jury in a very able speech, the longest I can find of all his recorded addresses :—

“ It appeareth to your Lordships,” he said, “ and to the rest of this most honourable and grave assembly, even by that which Mr. Sergeant Philips hath already opened, that these are the greatest treasons that ever were plotted in England. But when this assembly shall farther hear, and see discovered the root and branches of the same, not hitherto published, they will say indeed, that when these things shall be related to posterity, they will be reputed matters feigned, not done.

Therefore in this so great a cause, upon the

* Parl. Hist. vol. 5, p. 145. State Trials, vol. 1, p. 224.

carriage and event whereof the eye of all Christendom is at this day bent, I shall desire that I may, with more patience, be somewhat more copious, and not so succinct as my usual manner hath been, and yet will I be no longer than the very matter itself shall necessarily require."

"But, before I enter into the particular narrative of the case, I hold it fit to give satisfaction to some, and those well affected amongst us, who have not only marvelled, but grieved, that no speedier expedition hath been used in these proceedings, considering the monstrousness and continual horror of this so desperate a case."

Coke here alluded to the time which had elapsed from the 4th of November, when the plot was discovered, until the day of trial;—a period of nearly three months. The prisoners had no cause to complain of the rapidity of their prosecutors.

"1. It is," continued Coke, "*ordo naturæ*, agreeable to the order of nature, that things of great weight and magnitude, according to that axiom of the poet,

" 'Tarda solet magnis rebus adesse fides.'

"And surely we may truly say, *nunquam ante*

dies nostros talia acciderunt: neither hath the eye of man seen, nor the ear of man heard the like things to these.

“ 2. *Veritas temporis filia*. Truth is the daughter of time, especially in this case, wherein by timely and often examinations, First, matters of the greatest moment have lately been found out. secondly, some known offenders and those capital, but lately apprehended. Thirdly, sundry of the principal arch traitors before unknown, now manifested as the Jesuits. Fourthly, heretical, treasonable, and damnable books lately found out, one of equivocation, and another *de officio Principis Christiani*, of Francis Tresham's.

“ 3. There have been already twenty and three several days spent in examination.”

“ 4. We should otherwise have hanged a man unattainted, for Guy Fawkes passed under the name of John Johnson, so that if by that name greater expedition had been used, and he hanged, though we had not missed of the man, yet the proceedings would not have been so orderly or justifiable.

“ 5. The King, out of his wisdom and great moderation, was pleased to appoint this trial in time of assembly of Parliament, for that it concerned especially those of the Parliament.”

“ And now,” continued Coke, “ touching the offences themselves, they are so exorbitant and transcendant, and aggregated of so many bloody and fearful crimes, as they cannot be aggravated by any inference, argument, or circumstance whatever, and that in three respects,”

“ 1. Because this offence is *Primæ impressionis*, and therefore *sine nomine*, without any name, which might be *adæquatum*, sufficient to express it, given by any legist that ever made or writ of any laws.”

“ For the highest treason that they could imagine, they called it *Crimen læsæ majestatis*, the violating of the majesty of the prince. But this treason doth want an apt name, as tending, not only to the hurt, but to the death of the king : and not the death of the king only, but of his whole kingdom : *Non regis sed regni*, that is, to the destruction and dissolution of the frame and fabric of this ancient, famous, and ever-flourishing monarchy, even the deletion of our whole name and nation.” And, therefore, hold not thy tongue, O God, keep not still silence, &c. Psalm 83. v. 1, 2, 3, 4, 5.

“ 2. It is *sine exemplo*, beyond all examples, whether in fact or fiction, even of the tragic poets, who did beat their wits to represent the most fearful and horrible murders.”

“ 3. It is *sine modo*, without all measure, and stint of iniquity, like a mathematical line, which is *divisibilis in semper divisibilia*, infinitely divisible.

“ It is treason to imagine or intend the death of the king, queen, or prince.

“ For treason is like a tree, whose root is full of poison, and lieth secret and hid within the earth, resembling the imagination of the heart of man, which is so secret as God only knoweth it.

“ Now the wisdom of the law provideth for the blasting and nipping both of the leaves, blossoms, and buds, which proceed from this root of treason ; either by words which are like to leaves, or by some overt act, which may be resembled to buds and blossoms, before it cometh to such fruit and ripeness, as would bring utter destruction and desolation upon the whole state.

“ It is likewise treason to kill the lord chancellor, lord treasurer, or any justice of one bench or the other, justices of assize, or any other judge, mentioned in the statute of 25 Edward III, sitting in their judicial places and exercising their offices. And the reason is, for that every judge, so sitting by the King's authority, representeth the majesty and person of the King, and,

therefore, it is *Crimen læsæ majestatis* to kill him, the King being always, in judgment of law, present in court.

“ But in the High Court of Parliament, every man by virtue of the King’s authority, by writ under the Great Seal, hath a judicial place ; and so consequently the killing of every of them had been a several treason and *Crimen læsæ majestatis*. Besides that, to their treasons were added, open rebellion, burglary, robbery, &c. ; so that this offence is such as no man can express it, no example pattern it, no measure contain it.”

After carefully exonerating all foreign princes from being implicated in this plot, Coke proceeded to observe :

“ As the powder treason is in itself prodigious and unnatural, so it is in its conception and birth most monstrous, as arising out of the dead ashes of former treasons. For it had three roots, all planted and watered by Jesuits and English Roman Catholics, that is to say, in England, in Flanders, and in Spain.”

“ In December, 1601, Henry Garnet, superior of the English Jesuits, Robert Tesmond, a Jesuit, Robert Catesby (who was well trained—having a versatile talent and profoundly deceitful), together with Francis Tresham and others, in the names, and for the behalf of all the English

Roman Catholics, employed Thomas Winter to travel into Spain, for the general good of the Roman Catholic cause. By him, Garnet wrote his letters to Father Cresswell, a Jesuit residing in Spain, on that behalf. With Thomas Winter doth Tesmond, alias Greeneway, the Jesuit, go as an associate and confederate in the conspiracy.

“The message (which was principally committed unto the said Winter) was, that he should make a proposition and request to the King of Spain, in the behalf and names of the English Catholics, that the King would send an army hither into England, and that the forces of the Catholics in England should be prepared to join with him and do him service. And because that in all attempts upon England, the greatest difficulty was ever found to be the transportation of horses, the Catholics in England would assure the King of Spain to have always in readiness for his use and service 1500 or 2000 horses against any occasion or enterprise.

“Concerning the place for landing the King of Spain’s army, it was resolved that if the army were great, then Essex and Kent were judged fittest; but, if the army was small, and trusted for succour in England, then Milford Haven was thought more convenient.”

In the midst of these negotiations, which pro-

ceeded very slowly on the part of the Spanish government, the fate of the Armada having taught them a lesson, not likely to be speedily forgotten, Queen Elizabeth died. Garnet then sent Christopher Wright as his agent into Spain, who soon after his arrival at that court, met with Guy Fawkes, who had arrived there from Flanders with a similar commission, to inform the King of Spain that James I of England "was like to proceed rigorously with the Catholics, and to run the same course which the late Queen did, and withal to entreat that it would please him to send an army into England, to land at Milford Haven, where the Roman Catholics would be ready to assist him. And these several messages did Christopher Wright and Guy Fawkes in the end intimate and propound to the King of Spain. But the King then very honourably answered them both, that he would not in any wise further listen to any such motion, as having before dispatched an embassy into England to treat for peace.

"Therefore, this course by foreign princes failing, they fell into the Gunpowder Plot. For the persons offending—touching those of the laity, it is by some given out, that they are such men as admit just exception, either desperate in estate, or base, or not settled in their wits, such

as are without religion, without habitation, without credit, without means, without hope. But (that no man though never so wicked may be wronged) true it is, that they were gentlemen of good houses, of excellent parts, however perniciously seduced, abased, corrupted, and Jesuist-ed, of very competent fortunes and estates.

“ Besides that, Percy was of the house of Northumberland. Sir William Stanly who principally employed Fawkes into Spain, and John Talbot of Grafton, both of great and honourable families.

“ Concerning those of the spirituality, it is likewise falsely said, that there is never a religious man in this action. For I never yet knew a treason without a Romish priest; but in this there are very many Jesuits, who are known to have dealt, and passed through the whole action; three of them are Legiers and Statesmen, as Henry Garnet, alias Walley, the superintendant of the Jesuits; Legier here in England; Father Cresswell, Legier Jesuit in Spain; Father Baldwin, Legier in Flanders, as Parsons at Rome, &c.—So that the principal offenders are the seducing Jesuits: men that use the reverence of religion, yea, even the most sacred and blessed name of Jesus, as a mantle to cover their impiety, blasphemy,

treason, and rebellion, and all manner of wickedness."

The oath which they solemnly and severally took, as well for secrecy as perseverance, and constancy in the execution of the plot, is in form as follows: " You shall swear by the blessed Trinity and by the sacrament you now purpose to receive, never to disclose, directly or indirectly, by word or circumstance, the matter that shall be proposed to you to keep secret, nor desist from the execution thereof, until the rest shall give you leave."

Coke laboured hard, and unfortunately for the character of the Catholic priests of that period, with ample materials, to blacken them in the eyes of the world.

Concerning Thomas Bates, who was Catesby's man, as he was brought into this treason by his master, so he was confirmed when he doubted of the lawfulness thereof by the doctrines of the Jesuits. " For the manner it was after this sort, Catesby noting that his man observed him extraordinarily, as suspecting somewhat of that which he Catesby went about, called him to him at his lodging in Puddle Wharf; and, in the presence of Thomas Winter, asked him what he thought the business was

they went about, for that he of late had so suspiciously and strongly marked them.

“ Bates answered that he thought, they went about some dangerous matter.

“ Whereupon they asked him again, what he thought the business might be, and he answered that he thought they intended some dangerous matter about the Parliament House, because he had been sent to procure a lodging near unto that place.

“ Then they make Bates take an oath to be secret in the action; they then told him that it was true, that they were to execute a great matter, namely to lay powder under the Parliament House to blow it up.

“ Then they also told him that he was to receive the sacrament for the more assurance, and thereupon he went to confession to the said Tesmond, the Jesuit; and, in his confession told him, that he was to conceal a very dangerous piece of work, that his master, Catesby and Thomas Winter had; and said he much feared the matter to be utterly unlawful, and therefore therein desired the counsel of the Jesuit, and revealed unto him the whole intent and purpose of blowing up the Parliament House upon the first day of the assembly; at

which time, the King, the Queen, the Prince, the Lords spiritual and temporal, the Judges, the Knights, Citizens, and Burgesses, should all have been there collected, and met together."

But the Jesuit being a confederate therein before, resolved and encouraged him in the action, and said that he should be secret in that which his master had imparted unto him, for that it was a good cause. " Adding moreover, that it was not dangerous unto him, nor any offence to conceal it ; and, therefore, the Jesuit gave him absolution, and Bates received the sacrament of him, in the company of his master, Robert Catesby and Thomas Winter.

" Also when Rookwood in the presence of sundry of the traitors (having first received the oath of secrecy) had by Catesby imparted unto him the plot of blowing up the King and State ; the said Rookwood being greatly amazed thereat, answered that it was a matter of conscience to take away so much blood.

" But Catesby replied, that he was resolved, and that by good authority (as coming from the superior of the Jesuits) that in conscience it might be done ; yea though it were with the

destruction of many innocents, rather than the action should quail."

Coke then proceeded at some length to enumerate those great persons, who would in all probability have suffered in such a terrific explosion.

" I tremble," he exclaimed, " even to think of it ; miserable desolation ! no king, no queen, no prince, no issue-male, no counsellors of state, no nobility, no bishops, no judges. Barbarous, and more than Scythian or Thracian cruelty ! no mantle of holiness can cover it, no pretence of religion can excuse it, no shadow of good intention can extenuate it. God and heaven condemn it, man and earth detest it, the offenders themselves were ashamed of it, wicked people exclaim against it, and the souls of all true Christian subjects abhor it ; miserable yet sudden, had their ends been, who should have died in that fiery tempest, and storm of gunpowder ; but more miserable had they been which had escaped."

After enlarging upon similar topics in a very able manner, Coke concluded his long and elaborate address, with bestowing his prayers for the speedy repentance of those very miserable and benighted conspirators in such

language as this :—“ True repentance is indeed never too late ; but late repentance is seldom found true ; which yet I pray the merciful Lord to grant unto them, that having a sense of their offences, they may make a true, and sincere confession both for their souls’ health, and for the good and safety of the King and this state. And for the rest that are not yet apprehended, my prayer to God is, *Ut aut convertantur ne pereant, aut confundantur ne noceant* ; that either they may be converted, to the end they perish not, or else confounded, that they hurt not.”*

The general facts of this conspiracy are known to all readers of English history, but I shall insert some particular statements. An official account came from the press by the king’s printer at the time of the discovery of the plot, annexed to a copy of his Majesty’s Speech, delivered on the occasion. It was republished by Bishop Barlow in 1679, with a preface of sixty pages. The following are extracts :—

“ The King being upon his return from his hunting exercise at Royston upon occasion of the drawing near of the Parliament, which had been twice prorogued already, partly in

* State Trials, vol. 1, p. 235.

† The Gunpowder Treason, p. 27.

regard to the season of the year, and partly of the term. — The Saturday of the week immediately preceding the King's return, which was on a Thursday (being but ten days before the parliament), the Lord Mouteagle, son and heir to the Lord Morley, being in his own lodgings ready to go to supper, at seven of the clock at night, one of his footmen (whom he had sent of an errand over the street,) was met by an unknown man of a reasonable tall personage, who delivered him a letter, charging him to put it in my Lord, his master's hands; which my Lord had no sooner received, but that having broken it up, and perceiving the same to be of an unknown and somewhat illegible hand, and without either date or subscription, did call one of his men unto him, for helping him to read it.

“ But no sooner did he perceive the strange contents thereof, although he was somewhat perplexed what construction to make of it, (as whether of a matter of consequence—or whether some foolish devised pasquil, by some of his enemies to scare him from his attendance at the parliament), yet he concluded not to conceal it—whereupon, notwithstanding the lateness and darkness of the night, in that season of the year, he presently repaired to his Majesty's

palace of Whitehall, and there delivered the same to the Earl of Salisbury, his Majesty's principal secretary."

The Earl of Salisbury communicated the letter to the Lord Chamberlain, (the Earl of Suffolk), the Lord Admiral, and the Earls of Worcester, and Northampton, and "according to their determination, did the said Earl of Salisbury, repair to the King in his gallery upon the Friday, being Allhallow day, in the afternoon, which was the day after his Majesty's arrival."—where, without any other speech or judgment, of the letter, but only relating simply the form of the delivery thereof, he presented it to his Majesty.

The following is a copy :

" My Lord, out of love I bear to some of your friends, I have a care of your preservation. Therefore, I would advise you, as you tender your life, to devise some excuse to shift off your attendance at this parliament, for God and man have concurred to punish the wickedness of this time. And think not slightly of this advertisement, but retire yourself into your country, where you may expect the event in safety. For, though there be no appearance of any stir, yet I say they shall receive a terrible blow this parliament, and yet they shall not see who

hurts them. This counsel is not to be contemned, because it may do you good, and can do you no harm; for the danger is past, so soon as you have burnt the letter, and I hope God will give you the grace to make good use of it, to whose holy protection I commend you.”*

King James, it has been said, though erroneously, was the first to express the opinion, that the mysterious warnings of this letter, referred to some intended explosion of gunpowder. It was, however, resolved to search the vaults, under the House of Parliament.

“The Lord Chamberlain, according to his custom and office, was directed to make an inspection both above and below, and consider what likelihood or appearance of any such danger might possibly be gathered by the sight of them. But yet, as well for staying of idle rumours, as for being the more able to discern any mystery, the nearer that things were in readiness, his journey thither was ordained to be deferred till the afternoon, before the sitting down of the parliament which was upon the Monday follow-

* This letter is supposed to have been written by Sir Thomas Percy—one of the conspirators, and the intimate friend of Mouteagle.

ing. At which time, accompanied by the Lord Mounteagle, he went to the Parliament House, where, having viewed all the lower rooms, he found in the vault under the Upper House, great store and provisions of billets, faggots, and coals: and inquiring of Whyneard, keeper of the wardrobe, to what use he had put those lower rooms and cellars, he answered, that Thomas Percy had hired both the house and part of the cellar and vault under the same, and that the wood and coals therein was the said gentleman's own provision.

Whereupon the Lord Chamberlain, casting his eye aside, perceived a fellow standing in a corner there, calling himself the said Percy's man, and keeper of the said house for him, but indeed was Guido Fawkes, the owner of that hand, which should have acted that monstrous tragedy."

Of this preparatory search the Lord Chamberlain made his report to the King. "Noting that Mounteagle had told him, that he no sooner heard Thomas Percy named to be the possessor of that house, but considering his backwardness in religion, and the old dearness in friendship between himself and the said Percy, he did greatly suspect the matter, and that the letter should come from him.

“ The said Lord Chamberlain also told the King, that he did not wonder a little at the extraordinary great provision of wood and coal in that house, where Thomas Percy had so seldom occasion to remain, as likewise, it gave him in his mind, that his man looked like a very tall and desperate fellow.

“ This report could not but increase the King’s former apprehension and jealousy ; whereupon he insisted that the house was narrowly to be searched, and that those billets and coals should be searched to the bottom, it being most suspicious that they were laid there only for covering of the powder.

“ Of the same mind also were all the counsellors then present. But upon the fashion of making of the search, was it long debated ; for upon one side they were all so jealous of the King’s safety, that they all agreed that there could not be too much caution used for preventing his danger. And yet upon the other part, they were all extreme loth and dainty, that in case this letter should prove to be nothing but the evaporation of an idle brain ; then a curious search being made, and nothing found, should not only turn to the general scandal of the King and the state, as being so suspicious of every light and frivolous toy,

but likewise lay an ill favoured imputation upon the Earl of Northumberland, one of his Majesties greatest subjects, and councillors ; this Thomas Percy being his kinsman, and most confident familiar.

“ It was at last concluded, that nothing should be left unsearched in those houses, and yet for the better colour and stay of rumour, in case nothing was found, it was thought meet, that upon pretence of Whyneard’s missing some of the King’s stuff or hangings, which he had in keeping, all those rooms should be narrowly examined for them.

“ And to this purpose was Sir Thomas Knevet employed (a gentleman of his Majesty’s privy chamber) being a justice of the peace in Westminster, and one of whose ancient fidelity both the late queen and our now sovereign had large proof, who according to the trust committed to him, went about the midnight next after, to the Parliament House, accompanied by such a small number as was fit for that errand ; but before his entry into the house, finding Thomas Percy’s alleged man standing without the doors, his clothes and boots on, at so dead a time of the night, he resolved to apprehend him, as he did ; and therefore went forward to the searching of the

house; where, after he had caused to be overturned some of the billets and coals—he first found one of the small barrels of gunpowder and afterwards all the rest, to the number of thirty-six barrels, great and small. And therefore, searching the fellow, whom he had taken, found three matches, and all other instruments fit for blowing up the powder ready; which made him instantly confess his own guiltiness, declaring also unto them, that if he had happened to be within the House, when they took him, as he was immediately before (at the ending of his work) he would have blown them and himself up—House and all.

“ Thus, after Sir Thomas had caused the wretch to be surely bound and well guarded by the company he had brought with him, he himself returned back to the King’s palace, and gave warning of his success to the Lord Chamberlain and Earl of Salisbury, who immediately warning the rest of the Council, who lay in the House, as soon as they could get themselves ready, came with their fellow-councillors to the King’s bed-chamber, being at that time near four of the clock in the morning.

“ And at the first entry of the King’s chamber door, the Lord Chamberlain being not any longer able to conceal his joy for the preventing of so

great a danger, told the King, in a confused haste, that all was found and discovered, and the traitor in hands and fast bound.

“ Then order being first taken for sending for the rest of the council that lay in the town, the prisoner himself was brought into the House, where, in respect of the strangeness of the accident, no man was stayed from the sight, or speaking with him. And, within a while after, the council did examine him ; who, seeming to put on a Roman resolution, did, both to the council, and to every other that spake with him that day, appear so constant and settled upon his grounds, as we thought we had all found some new Mutius Scævola born in England.

“ For, notwithstanding the horror of the fact, the guilt of his conscience, the sudden surprising, the terror which should have been stricken in him by coming into the presence of so grave a council, and the restless and confused questions that every man all that day did vex him with, yet was his countenance so far from being dejected that he often smiled in a scornful manner, not only avowing the fact, but repenting with the said Scævola, his failing in the execution thereof, whereof he said, the Devil, and not God, was the discoverer ; answering quickly to every man’s objection, scoffing at any idle questions

which were propounded unto him, and jesting with such as he thought had no authority to examine him. All that day could the council get nothing out of him touching his accomplices, refusing to answer to any such questions, as he thought might discover the plot, and laying all the blame upon himself, whereunto he said he was moved only for religion and conscience sake, denying the King to be his lawful sovereign, or the anointed of God, in respect he was an heretic; and giving himself no other name than John Johnson, servant to Thomas Percy; but the next morning, being carried to the Tower, he did not there remain above two or three days, being twice or thrice in that space re-examined, and the rack only offered and shown unto him, when the masque of his Roman fortitude did visibly begin to wear and slide off his face, and then did he begin to confess part of the truth, and thereafter to open the whole matter, as doth appear by the following confession, which is entitled, "A true copy of the declaration of Guido Fawkes taken before eleven privy councillors."

"I confess that a practice in general was first broken unto me, against his Majesty, for relief of the catholic cause, and not invented or propounded by myself.

“ And this was first propounded unto me about Easter last was twelvemonths, beyond the seas in the Low Countries, by Thomas Winter, who came thereupon with me into England, and there we imparted our purpose to three other gentlemen more, namely, Robert Catesby, Thomas Percy, and John Wright, who all five consulting together of the means how to execute the same, and taking a vow among ourselves for secrecy; Catesby propounded to have it performed by gunpowder, and by making a mine under the Upper House of Parliament; which place we made choice of, the rather because religion having been unjustly suppressed there, it was fittest that justice and punishment should be executed there. This being resolved amongst us, Thomas Percy hired a house at Westminster for that purpose, near adjoining to the Parliament House, and there we began to make our mine, about the 11th of December, 1604.

“ The five that first entered into the work, were Thomas Percy,* Robert Catesby, Thomas Winter, John Wright, and myself; and soon after we took another unto us—Christopher

* Thomas Percy was one of the Band of Gentlemen Pensioners. Stowe's Chronicle.

Wright, having sworn him also, and taken the sacrament for secrecy. When we came to the very foundation of the wall of the house, which was about three yards thick, and found it a matter of great difficulty, we took unto us another gentleman, Robert Winter, in like manner, with oath and sacrament as aforesaid.

“ It was about Christmas when we brought our mine under the wall, and, about Candlemas, we had wrought the wall about half through ; and, whilst they were in working, I stood as sentinel to descry any man that came near, whereof I gave them warning, and so they ceased until I gave notice again to proceed ; all seven lay in the house, and had shot and powder, being resolved to die in that place before we should yield or be taken.

“ As they were working upon the wall, they heard a rushing in a cellar of removing of coals, whereupon we feared we had been discovered, and they sent me to go to the cellar, who finding that the coals were selling and the cellar was to be let, viewing the commodity thereof for our purpose, Percy went and hired the same for yearly rent.

“ We had before this provided and brought into the house, twenty barrels of gunpowder,

which we removed into the cellar, and covered the same with billets and faggots, which were provided for that purpose.

“ About Easter, the Parliament being prorogued until October next, we dispersed ourselves, and I retired into the Low Countries, by advice and direction of the rest, as well to acquaint others with the particulars of the plot, as also least by my longer stay, I might have grown suspicious, and so have come in question.

“ In the meantime, Percy, having the key of the cellar, laid in more powder and wood unto it.

“ I returned about the beginning of September last, and then receiving the key again of Percy, we brought in more powder and billets to cover the same again, and so I went for sometime into the country, till the 30th of October.

“ It was further resolved amongst us, that the same day that this act should have been performed, some other of our confederates should have surprised the person of the Lady Elizabeth, the King's eldest daughter, who was kept in Warwickshire, at the Lord Harrington's house, and presently have proclaimed her Queen, having a project of a proclamation ready for the purpose, wherein we made no mention of altering of religion ; nor would we have avowed the

deed to be ours until we should have had power enough to make our party good, and then we would have avowed both.

“ Concerning the Duke Charles, the King’s second son, we had sundry consultations how to seize on his person ; but because we found no means how to compass it, (the Duke being kept near London where we had not forces enough,) we resolved to serve our turn with the Lady Elizabeth.”

Such was the cool, unruffled, and proud confession of Guido Fawkes. He evidently gloried in the crime ; regarding it as an action praiseworthy, religious, and one which God would approve. That a few innocent Catholics might perish in the explosion, was not thought to be a circumstance that counterbalanced the advantages to be derived to their religion, by the destruction of the Royal Family, and the flower of the English senate. The reader almost trembles, even at this distance of time, when he reflects how nearly the plot was carried into execution ; on what a single chance rested the safety of the three estates of England.

The seizure of Fawkes, of course, put the conspirators into confusion. Bishop Barlow gives the confession of Thomas Winter, and in that confession he tells us that “ on Sunday, at

night, in came one to my chamber, and told me that a letter had been given to my Lord Mounteagle to this effect, that he wished his Lordship's absence from the Parliament, because a blow would then be given ; which letter he presently carried to my Lord of Salisbury.

“ On the morrow, I went to White Webbs (a house near Hatfield Chace), and told it to Mr. Catesby, assuring him withal, that the matter was disclosed, and wishing him in any case to forsake his country. He told me he would see further as yet, and resolved to send Mr. Fawkes to try the uttermost, protesting, if the part belonged to himself, he would try the same adventure.

“ On Wednesday, Mr. Fawkes went and returned at night, of which we were very glad.

“ Thursday, I came to London ; and Friday, Mr. Catesby, Mr. Tresham and I, met at Barnet, where we questioned how this letter should be sent to my Lord Mounteagle, but could not conceive, for Mr. Tresham forswore it, whom we only suspected.

“ On Saturday night, I met Mr. Tresham again in Lincoln's Inn Walks, wherein he told me such speeches that my Lord of Salisbury should use to the King, that I gave it lost the second time; and repeated the same to Mr. Catesby, who hereupon was resolved to be gone,

but stayed to have Mr. Percy come up, whose consent therein we wanted.

“ On Sunday, Mr. Percy being dealt with to that end, would needs abide the uttermost trial. This suspicion put us all in such confusion, that Mr. Catesby resolved to go down into the country, on the Monday that Mr. Percy went to Sion (House?), and Mr. Percy resolved to follow the same night or early the next morning.

About five of the clock, being Tuesday, came the younger Wright to my chamber, and told me that a nobleman called, (the Lord Mouteagle), saying arise, and come along to Essex House; for I am going to call upon my Lord of Northumberland saying, withal, the matter is discovered.

“ ‘ Go back, Mr. Wright,’ said I, ‘ and learn what you can, about Essex house gate ;’ shortly he returned, and said, ‘ surely, all is lost ; for Lepton is got on horseback at Essex House door, and, as he parted, he asked if their Lordships would have any more with him ; and being answered, no, is rode fast up Fleet Street as he can ride.

“ ‘ Go you then,’ said I to Mr. Percy, ‘ for sure, it is for him they seek, and bid him be gone ; I will stay and see the uttermost.’

“ Then I went to the court-gates, and found

them straightly guarded, so as nobody could enter. From thence, I went down towards the Parliament house, and in the middle of King street, found the guard standing that would not let me pass—and as I returned, I heard one say, there is a treason discovered, in which the King and the Lords should have been blown up. So then I was fully satisfied, that all was known, and went to the stable, where my gelding stood, and rode into the country.

“Mr. Catesby had appointed our meeting at Dunchurch, but I could not overtake them, until I came to my brothers, which was on Wednesday night.

“On Thursday, we took our armour, at my Lord Windsor’s, and went that night, to one Stephen Littleton’s house, where the next day (being Friday), as I was early abroad, to discover, my man came to me, and said that a heavy mischance had severed all the company; for that, Mr. Catesby, Mr. Rookwood, and Mr. Grant were burned with gunpowder;* upon hearing which the rest dispersed.

“Mr. Littleton wished me to fly—and so would he.—I told him, ‘I would first see the

* By the explosion of powder which had been carelessly placed to dry before a fire.

body of my friend and bury him, whatsoever befel me.'

"When I came, I found Mr. Catesby reasonably well, Mr. Percy, both the Wrights, Mr. Rookwood and Mr. Grant. I asked them what they resolved to do; they answered, 'We mean here to die'—I said again, 'I would take such part as they did.'

"About eleven of the clock, came the company to beset the house (the sheriff of Worcestershire, Mr. Richard Walsh, and his followers), and, as I walked into the court, I was shot into the shoulder, which lost me the use of my arm. With the next shot was the elder Wright struck dead; after him the younger Mr. Wright, and fourthly, Ambroise Rookwood.

"'Then,' said Mr. Catesby to me (standing before the door they were to enter), 'stand by me, Tom, and we will die together'—'Sir,' said I, 'I have lost the use of my right arm, and I fear that will cause me to be taken.'

"So as we stood close together, Mr. Catesby, Mr. Percy and myself; the two were shot (as far as I would guess with one bullet), and then the company entered upon me, hurt me in the belly with a pike, and gave me other wounds, until one came behind, and caught hold of both my arms."

Such was the discovery—such were the proceedings of the conspirators in this astonishing plot. It was not the conspiracy of a few broken tradesmen, or ruined thieves—destitute of character—and without the means of subsistence; but it was the calm determination of four or five gentlemen of rank and fortune.—Catesby was the richest of the band; he contributed £1500 to the purposes of the conspiracy. Percy was of the house of Northumberland. Sir Everard Digby was young (only 24 at his execution), was married,—rich, a courtier, and even owed his knighthood to James I.

The papers which Digby left behind him, breathe sentiments of benevolence, and betray a feeling of honour, totally irreconcilable with so detestable a crime. His principal anxiety, when in the Tower, was that he should not betray any of his confederates. He says:—“Yesterday I was before Mr. Attorney (Coke) and my Lord Chief Justice, who asked me if I had taken the sacrament to keep secret the plot, as others did. I said that I had not, because I would avoid the question of at whose hands it were.

“They told me that five had taken it of

Gerrard, and that he knew of the plot ; which I said was more than I knew.

“ Now for my intention, let me tell you, that if I thought there had been the least sin in the plot, I would not have been of it for all the world : and no other cause drew me to hazard my fortune, and life, but zeal to God’s religion.”*

In his last hours, he wrote a long letter of advice to his two sons, full of the most excellent paternal advice. They were both knighted when they attained the age of manhood ; one was Sir Kenelm Digby, the celebrated philosopher, and the other Sir John Digby.

The catholic clergy long denied that this plot emanated from the professors of their religion ; they called it Cecil’s plot, and attributed the whole of this dark affair to his contrivance. The absurdity of such an assertion needs no refutation ; the persons who engaged in the designs, told their own story ; the very inventors acknowledged the authorship ; not one of the principals was spared ; no one was ever even suspected of wilfully betraying them. That the catholic clergy were concerned in it, is certain.

* Bishop Barlow’s Gunpowder Treason, 241.

Garnett, the chief of the English Jesuits, on the scaffold, acknowledged the justice of his punishment.

The courtiers of that day readily and servilely attributed to the King, on the perusal of Mounteagle's letter, the sagacious discovery of a threatened danger by gunpowder ; and some of them, justly deeming it rather too remarkable, that the King should make so very fortunate and so complete a guess, even went the length of attributing it to the direct influence of the Holy Ghost. They saw that to allege something miraculous was necessary to preserve the King from suspicion.

King James was perhaps the most experienced monarch in mysterious plots, and incomprehensible conspiracies, that ever sat on a throne. In Scotland, he figured as the chief personage in that, known to all historians, as the "Raid of Ruthven;" and afterwards in the, to this day disputed, "Gowrie conspiracy." The same description of adventures followed him into England. He was hardly seated on the English throne, when the gunpowder plot was announced. That of Raleigh, still disputed, only just preceded it, and remains the greatest plot of his reign. A long experience, therefore, must have made James familiar with treasons, and ready in their detection.

He seemed at home in an examination of a suspected traitor ; delighted in controversy ; was an adept at an argument ; was naturally timid and suspicious ; had the good fortune to be served by some of the ablest of ministers ; and yet was ruled by the most profligate and weakest of favourites.

There is no doubt but that Cecil knew a plot was in progress, before the anonymous letter to Lord Mouteagle. He acknowledges as much in a letter to Cornwallis. Dr. Welwood * boldly asserts, when speaking of King James “ The only uncontroverted treason that happened in his reign, was the gunpowder plot ; and yet the letter to Lord Mouteagle, that pretended to discover it, was but a contrivance of his own, the conspiracy being discovered to him before, by Henry IV of France ; through the means of M. de Rosny, afterwards Duc of Sully,”—then the French ambassador in England.

The claim of James to the credit of discovering the gunpowder proceedings, from the bare perusal of the anonymous letter to Mouteagle, are still more completely disproved by the letter of Cecil, Earl of Salisbury, dated November 9, 1605,

* Memoirs, p. 20.

giving an account of the transaction ; in which he says :*

“ I imparted the lettre to the Earl of Suffolke, Lord Chamberlaine, to the end I might receive his opinione. Whereupon perusing the words of the letter, and observing the writing : ‘ *that the blow should come, without knowledge who had hurt them,*’ we both concieved, that it could not be more proper than the tyme of Parliament nor by any other way like to be attempted, than with gunpowder, whilst the King was sitting in the assembly. Of which the Lord Chamberlain (shewed) the more probability, because there was a great vault, under the said chamber, which was never used for anything but for some wood and cole, belonging to the keeper of the old palace. From which consideration, after we had imparted the same to the Lord admiral, the Earle of Worcester, and the Earle of Northampton, and some others, we all thought fit to forbear to impart it to the King, untill some three or four days before the session.

“ At which tyme, we shewed His Majestie the lettre, rather as a thing we would not conceal (because it was of such a nature) than

* Harl. M.S. 1875—88.

any way persuading him, to give any further credit to it, untill the place had been visited.

“Whereupon His Majestie (whoe hath a naturall habite to condemn all false feares, and a judgement so strong, as never to doubt anything, which is not well warranted by reason) concurred oneley thus farre with us, that seeing such a matter was possible, that should be donne, which might prevent all danger, or ells nothing at all.”

To return, however, to the trial of the conspirators. On the 28th of March 1606, Sir Edward Coke spoke long and ably for the crown, in the case of Henry Garnett, who was eventually condemned, and executed as a conspirator in the plot. Of the guilt of this person, the superior of the English Jesuits, there could be no doubt. All speeches appeared superfluous, yet the addresses of Coke, and the commissioners, appointed by the town, were of no ordinary length.* Coke thus described the prisoner to the jury :

“The principal person offending here at the bar, is as you have heard, a person of many names, Garnett, Wally, d’Arcy, Roberts, Farmer,

* State Trials, vol. i, p. 240.

Phillips. He is by country an Englishman, by birth a gentleman, by education a scholar ;— afterwards a corrector of the common law print with Mr. Tottle the printer, and now is to be corrected by the law. He hath many gifts, and endowments of nature :—by art learned ; a good linguist ; and by profession a Jesuit and a superior. Indeed, he is superior to all his predecessors in devilish treason ; a doctor of Jesuits ; that is, a doctor of five D's as—dissimulation ; deposing of princes ; disposing of kingdoms ; daunting, and deterring of subjects ; and destruction.”

The conspiracy was not more remarkable for the atrocity of the object, than for the energy and perseverance, in spite of many obstructions, and untoward events, with which it was conducted. Coke, in the course of his speech, thus alluded to this remarkable fact :

“ This treason being long since plotted, the Providence of God did continually from time to time divert and put off the executing thereof, by unexpected puttings off the times of assembly in Parliament. For the Parliament began the 19th of March, in the first year of His Majesty's reign, and continued till the seventeenth of July following, before which time the conspirators could not be ready ; from thence it was prorogued until

the seventh of February, against which time, they could not make the mine ready, in respect that they could not dig there ; for that the commissioners of the union sat near the place, and the wall was thick, and therefore they could not be provided before the seventh of February, and on that day the Parliament was prorogued until the fifth of October. After this, they found another course and altered the place, from the mine to the cellar.”*

This was the last important trial, on which Coke appeared as pleader. His career at the bar was rapidly drawing to a conclusion ; for, on the thirteenth of June '1606, he was appointed Chief Justice of the Court of Common Pleas. It is difficult, at this distance of time, to ascertain the emoluments of Coke, while a barrister. Sir Thomas Moore is said to have had a first rate practice ; yet his son-in-law and biographer, Roper, tells us he made but four hundred pounds per annum.

In Coke's time the dissolution of religious houses, and the increase of commercial wealth, by setting the lands of one class at liberty, and by adding to the riches of the great bulk or

* State Trials, vol. 1, pag. 249.

middle ranks of the community, had greatly increased the practice and fees of the barristers. Bacon made six thousand pounds per annum, when Attorney-General; and it was said by Daines Barrington to have been, in his day, the common tradition of Westminster Hall, that the emoluments of Coke in the same office were equal to those of a modern Attorney-General.*

The fees usually paid to a barrister, were much smaller than they are now. Even in 1688, at the great trial of the seven bishops, the highest fees were only twenty pounds, and all the counsel's fees together did not amount to two hundred and fifty. In 1476, the fees seem to have been very small indeed, if we may credit an entry in the churchwarden's book of St. Margaret's Westminster, by which it appears that they paid one Mr. Roger Fylpott, learned in the law, for his counsel, three shillings and eight pence, with four pence for his dinner!

The annual value of the Attorney-Generalship to Coke, including its official fees, was about seven thousand pounds. The salaries of the law officers of the crown, were then very small.

* Observations on the Statutes, p. 451.

Sir Francis Bacon, (Coke's successor) received for his salary as

| | |
|---|---------|
| Attorney General | £81 6 8 |
| Sir Henry Yelverton, Solicitor General | 70 0 0 |
| Sergeant Montague | 41 6 10 |
| Sergeant Carew | 41 6 10 |
| Sergeant Davy | 41 6 10 |
| Henry Martin, Advocate for } Ecclesiastical causes.* | 20 0 0 |

* Abstract of the present state of his Majesty's revenue, 616, p. 41.

CHAPTER VI.

1606—1614.

Coke's upright character as a judge—Ceremony of his investiture—Is previously made a king's serjeant—His introduction into the Court of Common Pleas—Bacon's letter to him—The case of Marmaduke Langdale—Opposes the court—Refuses to give his opinions—Opposes the Court of High Commission—History of this court—Coke nominated a commissioner—Refuses to sit—Conference in consequence—Archbishop Bancroft's speech to him—The Court of Common Pleas, and the High Commission Court come into contact in the case of chancery—Coke summoned before the Privy Council—Coke succeeds in his opposition—Is made Chief Justice of the Court of King's Bench—The real cause of his promotion—The case of Edward Peacham—the King desirous of ascertaining Coke's opinion—Bacon demands it—Coke finally baffles him—King James writes his opinion—Coke made High Steward of Cambridge.

I now enter upon a period crowded with incidents, and these highly honourable to the

subject of my biography; for the unsullied independence of his judicial career, the fortitude and energy with which he maintained the dignity of the court, and the fearless manner in which he struggled, even with the crown, for the independency of the judges, cannot but extort our unqualified approbation. His integrity was never impeached; no suitor ever complained of his delaying justice; he was never even suspected of bribery; he left the courts unattended by any accusations of that kind. His crimes, if they were crimes, were committed against the high and mighty of the land—against those who made him Chief Justice, and who had the power to unmake him. The tears of the widow, the execrations of the impoverished orphan, were not the requiem of Coke's judicial career. His charges to the juries, forming our estimate from the few which have been reported, were not remarkable for their elegance, but they abound in sound legal lore. That he made few mistakes as a judge, is proved by the silence of his enemies. He was, probably, generally correct in his law; not very eloquent; and, occasionally, too little refined in his expressions. His temper was never of the very best, and we have no right to conclude that it improved when he no longer

practised before his superiors in rank. He was in fact irritable and domineering.

He was made a sergeant on the twentieth of June, 1606, preparatory to his being elevated to the chief justiceship of the Common Pleas. This formal promotion proceeded merely from the rule, that all judges shall be previously sergeants; for, in former days, the office of sergeant was not deemed worth the expenses which attended the assumption of the coif.*

In his case, the appointment was made with great haste, and the ceremony of investiture was not delayed for the preservation of the usual formalities†. The forms attending the writ of a sergeant's appointment is thus given by Judge Dyer‡. At the stated day, the sergeant elect, with the benchers, readers, and others of the inn of court to which he belongs, the warden of the Fleet, and others, appear before the two chief justices, and all the justices of the courts of King's Bench and Common Pleas, who choose to attend at Sergeant's Inn, where the Chief Justice of the King's Bench addresses him, and he then shortly opens a fictitious case, and to

* Parl. Rot. 5 Henry V. Cotton. Abb. 558. 2 Inst. 214.

† Croke, vol. 3, p. 3. 4.

‡ Reports, 72 a, 10 Rep. Preface.

this a defence is made by an ancient serjeant. The writ of appointment being previously prepared, is then delivered to him ; his coif of white silk and a scarlet hood put upon him ; and being further arrayed in a gown, parti-coloured, of blue and brown, the ceremony is ended.

Afterwards, still attended by the benchers, &c. of his inn, he proceeds to Westminster Hall, into the Court of Common Pleas, where his plea, the defence to it, and his writ, being all read, he delivers a mottoed gold ring to each of the judges, and takes his seat. He afterwards gives an entertainment to the law officers, his friends, &c. at Serjeant's Inn.*

In the time of Fortescue, the feast lasted seven days, and cost at least four hundred marks, and the gold rings for the judges fifty pounds. It was then ordered that no serjeant was to put off his coif, even in the King's presence ; and also, that none but serjeants should plead in the Court of Common Pleas. This, however, has been altered by a recent regulation†.

The oath of a serjeant binds him well and truly to serve the King's people, as one of the serjeants of the law, — that he will truly counsel,

* Croke, vol. 3. p. 3, 4.

† Fortescue de Laud. Leg. p. 50.

and not delay causes, but will give due attendance, &c.*

On the rings given by Coke were inscribed, “*Lex est tutissima cassis*”—The law is the safest helmet;—a motto which has been thought very well to apply to his future fortunes.

This custom of giving rings is of very old standing. Chancellor Fortescue, who wrote about 1465, tells us, that all sergeants, at their appointment, “shall give rings of gold to the value of forty pounds at the least, and your Chancellor well remembereth, that at the time he received this state and degree, the rings which he then gave stood him in fifty pounds.”† He also mentions to which officers of state these rings were given, and their regulated value, namely twenty-six shillings for every duke, lord chancellor, or archbishop present at the solemnity. These were the most valuable rings, others of less value were to be allotted to the judges, &c.; lastly, barons of Parliament, abbots, &c., were to receive rings of the value of a mark.

Dugdale gives us an account of the sergent’s feast in 1555, and of the charges of one Nicholas

* Coke’s 2nd Institute, p. 214.

† Laud. Leg. c. 59.

Deering, their goldsmith, who contracted to supply them with rings. At this feast, the rings made for the King and Queen, Philip and Mary, cost each three pounds eight shillings and eight-pence, "besides fashion." The judges were careful, it seems, to have the rings of full value, for when the seventeen sergeants were made in the Michaelmas Term of 1669, the rings which they presented were found by the judges to be wanting in weight. In consequence, Chief Justice Keyling, the first time Sergeant Powis came into court, told him, "that he had something to say to him. viz. that the rings which he and the rest of the sergeants had given, weighed but eighteen shillings each, whereas they ought to have weighed twenty shillings a-piece; and that he spoke thus, not expecting a recompense, but that it might not be drawn into a precedent, and that the young gentlemen there might take notice of it."*

Judge Croke thus describes the ceremony of inducting Coke into his office of Chief Justice of the Court of Common Pleas.

"He was sworn in Chancery as sergeant, and afterwards went presently into the Treasury of the Common Bench (Pleas), and there, by Pop-

* Modern Reports, vol. i, p. 9.

ham, Chief Justice, his party robes were put on, and he forthwith, the same day, was brought to the bar as sergeant, and presently after, his writ read and count pleaded, he was created Chief Justice, and sate the same day, and afterwards rose, and put off his partie robes, and put on his robes as a judge, and the second day after he went to Westminster, with all the Society of the Inner Temple attending upon him.”*

Upon the promotion of Coke to the Common Pleas, Sir Henry Hobart succeeded him as Attorney-general, and the great Francis Bacon followed Hobart in the Solicitor's place.

It was the misfortune of Coke, that through all his lengthened career, Bacon was his most unceasing, as well as his most gifted rival. It has already been noticed, that Bacon had long before this time endeavoured to obtain the Solicitor generalship ; but Coke had supplanted him, and Bacon, naturally enough, felt highly indignant. This indignation was not of a transient nature. Time did not seem to allay it ; for, after some years, judging by a curious letter still extant, his sense of the injuries he had received seemed as acute as ever.

This letter was addressed to Sir Edward Coke,

* Croke Jac. 125.

and although without a date, was evidently written about the period that Coke was elevated to the bench.

“ Mr. Attorney,—I thought it best, once for all, to let you know in plainness what I find of you, and what you shall find of me. You take to yourself a liberty to disgrace and disable my law, my experience, my discretion. What it pleaseth you, I pray, think of me; I am one that knows both my own wants and other men’s, and it may be, perchance, that mine mend while others stand at a stay.

“ And surely, I may not endure in public to be wronged, without repelling the same to the best advantage, to right myself.

“ You are great, and therefore have the more enviers, which would be glad to have you paid at another’s cost.

“ Since the time I missed the Solicitor’s place (the rather I think by your means), I cannot expect that you and I shall ever serve as Attorney and Solicitor-general together; but either to serve with another, upon your remove, or to step into some other course, so as I am more free than ever I was from any occasion of unworthy conforming myself to you, more than general good manners, or your particular good

usage shall provoke ; and if you had not been short-sighted in your own fortune (as I think) you might have had use of me ; but that side is passed.

“ I write not this to shew my friends what a brave letter I have written to Mr. Attorney. I have none of those humours ; but that I have written, is to a good end, that is, to a more decent carriage of my master’s service, and to our particular better understanding one of another.

“ This letter, if it shall be answered by you, in deed, and not in word, I suppose it will not be worse for us both ; else it is but a few lines lost, which, for a much smaller matter, I would have adventured.

“ So this being to yourself, I, for my part, rest, &c.”*

I can find no traces of any reply to this curious, half angry, half conciliatory letter. It is clearly the language of a man afraid of his opponent, yet deprecating the existence of such fear, whilst he wished to intimate a willingness to hold out the right hand of friendship. Of a conciliatory feeling in Coke towards Bacon, I

* Bacon’s Works, vol. iv, p. 570.

can find few or no traces. He seemed to have an ill opinion of his legal knowledge, and had an equally mean estimate of his philosophy, of which last branch of knowledge, however, he was totally unqualified to be a judge.

The judicial conduct of Coke was, from the first, excellent; ever perfectly upright, and fearlessly independent, although he lived in days when the judges held their places merely at the pleasure of the crown, and were, almost as a matter of course, expected to be high prerogative lawyers.

He had but just acquired promotion, when the Lords of the Council having called the judges before them, to answer for their decision in the case of Marmaduke Langdale,* Coke said to them, on behalf of his brethren, "We do hope, that where the judges of this realm have been more often called before your Lordships, than in former times they have been, which is much observed, and gives much emboldening to the vulgar, that, after this day, we shall not so often, upon such complaints, your Lordships being truly informed of our proceedings, hereafter be called before you."

* 12 Reports, 50.

It had long been the custom of the court to consult the judges upon causes, which were afterwards to be submitted to their decision. To this practice, at once illegal and disgraceful, Coke declined to accede.

He was first consulted on the 20th of September, 1610, by the law officers of the crown, upon the power of the King to issue proclamations which should have the same force of law, as an act of Parliament. The result cannot be better given than in his own words.*

“ I was sent for to attend the Lord Chancellor (Lord Ellesmere), Lord Treasurer, Lord Privy Seal, and the Chancellor of the Duchy of Lancaster, the Attorney and Solicitor-General, and the Recorder.

“ Two questions were then put to me by the Lord Treasurer. The one, ‘ If the King, by his proclamation, may forbid new buildings, in and about London,’ &c. The other, ‘ If the King may prohibit the making of starch from wheat.’ And the Lord Treasurer said, these were preferred to the King as grievances by the House of Commons, as against the law and justice. And the King hath answered, that he will confer with his Privy Council and his judges, and then

* 12 Reports, 74.

he will do right to them. To which I answered, first, that these questions were of great importance, and secondly, that they concerned the answer of the King to the body, viz. to the commons of the House of Parliament; thirdly, that I did not hear of these questions until this morning, at nine of the clock; for the grievances were preferred and the answers made while I was on my circuit; and, lastly, that both the proclamations which were now shewed were promulgated in the fifth year of the present King, after my time of being attorney-general; and for these reasons I did humbly desire them, that I might have conference with my brethren the judges, about the answer of the King, and then to make an advised answer, according to law and reason.

“ To which the Lord Chancellor said, that every precedent must have first a commencement, and that he would advise the judges to maintain the power and prerogative of the King, and in cases in which there is no authority and precedent, to leave it to the King to order it according to his wisdom and the good of his subjects, for otherwise the King would be no more than the Duke of Venice; and that the King was so much restrained in his prerogative, that it is to be feared, that the bonds would be

broken ; and the Lord Privy Seal said, that the physician was not always bound to a precedent, but to apply his remedy according to the quality of the disease ; and all concluded it should be necessary at that time to confirm the King's prerogative with our opinions, although that there were not any former precedent or authority in law, for every precedent ought to have a commencement.

“ To which I answered, that true it is that every precedent hath a commencement, but where authority and precedent are wanting, there is need of great consideration before any anything of novelty is established, and to provide that this be not against the law of the land ; for, I said, the King cannot change any part of the common law, nor create any offence by his proclamation, which was not an offence before, without Parliament ; but at this time I only desire to have a time for consideration and conference with my brothers, for *deliberandum est diu quod statuendum est semel*. To which the solicitor said, that divers sentences were given in the Star Chamber, upon the proclamation against the building, and that I myself had given sentence in divers cases against the said proclamation ; to which I answered, that precedents were to be seen, and consideration to be

had of this upon conference with my brethren for that ‘*melius est recurrere quam male currere,*’ (better it is to recede than to persevere in evil). And that the indictment includes ‘*contra leges et statuta;*’ but I never heard an indictment to conclude ‘*contra regium proclamationem.*’ And at last, my motion was allowed; and the Lords appointed the two Chief Justices, Chief Baron, and Baron Altham, to have consideration of it.”

The report of these great judges gave no satisfaction to the court. The Lords of the Council seem to have anticipated, in some degree, their decision, by the pains some of them took to warn them of the necessity of deciding in favour of the King’s prerogative.

In Michaelmas Term, 1611, Coke behaved with great firmness with regard to the Court of High Commission, of which he and his brother judges, without their consent, were nominated members. This Court originated from an Act of Parliament, in the reign of Elizabeth;* by which, on the abolition of all spiritual foreign jurisdictions in England, the King was empowered to appoint certain clerical and lay commissioners, to examine, punish, and reform, any spiritual or ecclesiastical errors, heresies, and

* 1 Eliz. c. 1, sec. 16.

schisms, which they might discover throughout the kingdom.

The legislature conferred no extraordinary powers on these commissioners. No person was to be convicted of heresy, unless by the testimony of two credible witnesses, who were to be brought face to face with the accused party ; and they were not to adjudge anything as heresy which is sanctioned by Scripture : moreover, they were not authorized to summon a witness ; the Act did not even empower them to administer an oath.

Thus constituted, the High Court of Commissioners acted at first with great caution, mildness, and discretion ; confining their examinations and punishments entirely to heresies, and other ecclesiastical cases. They gradually, however, during the long reign of Elizabeth, began to acquire power, and to interfere in cases of a temporal nature, entirely foreign to their legal jurisdiction ; their decrees became perfectly arbitrary ; were not subject to the revision of any superior court ; and finally, they became exceedingly tyrannical and unpopular.

Sir Edward Coke regarded this court with feelings of great jealousy. He saw that it more and more infringed upon the right of the subject to a trial by his equals, and that it interfered

in cases belonging exclusively to the courts at Westminster. When, therefore, the court nominated him, and some of his brother judges, to be High Commissioners, he boldly and manfully refused the disgrace of being concerned in this arbitrary court, for reasons which he himself gives us.*

“ Upon Thursday in this Term, a High Commission in cases ecclesiastical, was published in the great chamber of the Archbishop, in which I, with the Chief Justice, Chief Baron, Justice Williams, Justice Croke, Baron Altham, and Baron Bromley, were named Commissioners; together with all the Lords of the Council, divers Bishops, the Attorney and Solicitor (General), and divers Deans and Doctors of the Canon and Civil Law; and I was commanded to sit, by force of the said Commission; which I refused for these causes:—

“ 1. That I, nor any of my brethren of the Common Pleas, were acquainted with the Commission, but the Judges of the King’s Bench were.

“ 2. That I did not know what was contained in the new commission. And that no judge can execute any commission with a good conscience,

* 12 Report, 87.

without knowledge ; and that always the gravity of the judges hath been to know their commission ; for, *tantum sibi est permissum quantum commissum*, and if the commission be against law, they ought not to sit by virtue of it.

“ 3. That there was not any necessity that I should sit, who understand nothing of it, so long as the other judges were there, the advice of whom had been had, in the new commission.

“ 4. That I have endeavoured to inform myself of it, and have sent to the Rolls to have a copy of it, but it was not enrolled.

“ 5. None can sit by force of any commission, until he have taken the oath of supremacy, according to the statute of the 1st of Elizabeth.

“ And for this, if they will read the commission so that we may hear it, and have a copy to advise upon it, then I will either sit or show cause to the contrary.

“ But the Lord Treasurer would, for divers reasons, persuade me to sit ; which I utterly denied.

“ And to this the Chief Justice, Chief Baron, and some others of the judges, seemed to incline, upon which the Lord Treasurer conferred, in private, with the Archbishop Abbott, who said to him, that he had appointed divers causes of

heresy, incest, and enormous crimes, to be heard upon this day, and for that reason he would proceed ; but at the last, he was content that the commission should be solemnly read, and so it was, and it filled three great skins of parchment, and contained divers points against the laws and statutes of England. And when this was read, all the judges rejoiced that they did not sit by force of it ; and then the Lords of the Council, viz. the Archbishop, the Lord Treasurer, the Lord Privy Seal, the Lord Admiral, the Lord Chamberlain, the Earl of Shrewsbury, the Earl of Worcester, with the Bishops, took the oath of supremacy and allegiance ; and then we, as commissioners, were required to take the oath, which I refused until I had considered of it. But as the subjects of the King I and the judges also took the oath of supremacy and allegiance.

“ Then the Lord Archbishop made an oration in commendation of the care and providence of the King, for the peace and quiet of the church ; also he commended the commissioners ; also the necessity of the commission to proceed summarily in these days, wherein sins of detestable nature, and factions and schisms did abound, and protested he should proceed sincerely by force of it : and then he caused to be called, a

most blasphemous heretic, and after him another, who was brought thither by his appointment to show, to the Lords and the auditory, the necessity of that commission.

“ And afterwards the Archbishop came to the Chief Justice and to me, and promised us that we should have a copy of the commission, and then we should observe the diversity between the old commission and this.

“ And all the time the long commission was reading, the oath taking, and the oration made, I stood, and would not sit as I was required by the Archbishop and the Lords, and so by my example did all the rest of the Judges.

“ And the Archbishop said, that the King had commanded him to sit by virtue of this new commission, in some open place, and at certain days ; and for that cause he had appointed the great chamber at Lambeth in winter, and the Hall in the summer, and every Thursday in the Term time, at two of the clock in the afternoon ; and in the forenoon he would have a sermon for the better informing of the commissioners of their duty in the true and sincere execution of their office.”

This periodical address of Archbishop Abbott was evidently proposed in the true spirit of christianity, being in his eyes the most charit-

able mode of reconciling the High Court of Commissioners and the Courts of Westminster, with whom, in the two previous terms, it had been strongly at variance. The courts came into contact in Easter Term, concerning the case of Sir William Chancey.* The High Court of Commissioners had committed him to the custody of the warden of the Fleet prison, at the suit of his lady "for adultery, and for expelling her his company; and for cohabitation with another weman, without allowing his wife any competent maintenance." Sir William, by *habeas corpus*, was brought into the Court of Common Plcas, by the gaoler.

As the high commissioners had no power to commit their prisoner, the court at first were inclined to discharge him out of custody, but they afterwards resolved to set him free on bail, until the next term.

This bold and fearless proceeding evidently annoyed the King; he therefore resolved to bring the twelve judges and the high commissioners to a conference, and, in consequence, as Coke informs us, "upon Thursday before the term of Holy Trinity, all the justices of England, where was also Abbot, Archbishop of Canterbury, and

* 12 Report, 82.

with him two bishops and divers civilians, where the Archbishop did complain of prohibitions to the high commissioners out of the Common Pleas, and the delivery of prisoners committed by them by *habeas corpus*, and principally of Sir William Chancey, where I defended our proceedings.”

This he did at great length, learnedly and unanswerably, to the great mortification of the court, who, perceiving that the judges of the Court of Common Pleas were the life and soul of the opposition, determined to summon the judges of each court, and examine them separately.

“Afterwards,” continues Coke, “in this very term the Privy Council sent for the justices of the Common Pleas only, and there the reasons and causes of the said resolution were largely debated, and opposition was made, as much as might be, by Egerton, Lord Chancellor.

“But the Justices of the Common Pleas remained constant in their former opinion.

“And afterwards the Council sent for the Chief Justice of the King’s Bench (Fleming), and Justices Williams and Cook ; Tanfield, Chief Baron, Snig, Altham, and Bromley, who were not acquainted with the reasons and causes of the rule of the Common Pleas, neither did they

know for what cause they came before the Council, and yet, after hearing the Lord Chancellor affirm, that the high commissioners have always, by the act of the first of Elizabeth, imposed fines and imprisonment for exorbitant crimes (without any conference with us), were of sudden opinion with us, without any conference among themselves, and without hearing the matter debated.

“ And after, at another day this very term, the said Judges of the King’s Bench, Barons of the Exchequer, and Justices Fenner and Yelverton, who were omitted before, and are the Justices of the Common Pleas, were commanded to attend the Privy Council, when we of the Common Pleas were commanded to retire, for that, as the Lord Treasurer said, we had contested with the King, and, in our absence, the King and the Prince sat with the Council, and then the Justices of the King’s Bench and the Barons of the Exchequer were *seriatim* with the Council, and the King demanded their opinions in certain points concerning the High Commission, with which they were not acquainted before, which were not related to us.

“ In all which it appears they were not unanimously agreed, and after two hours and a half, we, the Justices of the Common Pleas, Coke,

Walmsley, Warberton, and Foster, were commanded to come before the King, the Prince, and the Council, when the King declared, that by the advice of the Council, and by the advice of the Justices of the King's Bench and the Barons of the Exchequer, he will reform the High Commission in divers points, and reduce it to certain spiritual causes.

“ And the Lord Treasurer said, that the principal feather was plucked from the High Commissioners, and nothing but stumps remaining, and that then they should not meddle with matters of importance, but with pettit crimes.”*

It is most probable that the King, seeing the decided, fearless opinion of the Judges of the Court of Common Pleas, with regard to the illegality of this High Court of Ecclesiastical Commissioners, made no farther attempts to induce Sir Edward Coke to sit in it as a judge; for I have not met with any farther notice of such an endeavour.

This obnoxious court gradually became more unpopular, until, by the act of the 16th of Charles the First, it was finally abolished; being, as the second section declares, a court by which

* The power of this court is examined at great length by Sir Edward Coke, 4 Institute, c. 74.

the King's subjects sustained "great and insufferable wrongs and oppressions." James the Second unsuccessfully proposed to revive this court. The attempt was one of the many causes which finally hurled him from his throne.

In several minor instances, Sir Edward Coke shewed his love of the supremacy of the law, in cases where his judgments gave little satisfaction to the ruling powers. This did not, for certain court reasons, prevent, at first, his promotion ; for on the death of Chief Justice Fleming, Coke was, on the twenty-fifth of October, 1613, made Chief Justice of the Court of King's Bench, or, as it was usually called, Chief Justice of England. On the fourth of the following November, he was sworn of his Majesty's Privy Council.

His old rival, Bacon, then Solicitor-General, did not let him attain these honours unopposed. On the death of Fleming, he addressed the King a letter, in which he strongly recommends his Majesty to elevate the attorney-general, Hobart, to the place, and thus make room for the vacant attorneyship.* Bacon, however, speedily came to another opinion ; for, in the next page of his works, and following the letter in which he had

* Bacon's Works, vol. vi, p. 72.

thus advised the King, there is a curious paper, entitled, "Reasons why it should be exceedingly much for his Majesty's service to remove the Lord Coke from the place he now holdeth (Chief Justice of the Common Pleas) to be Chief Justice of England, and the Attorney (Sir Henry Hobart) to succeed him, and the Solicitor (Sir Francis Bacon) the Attorney."

In recommendation of this arrangement, many urgent reasons were adduced.

"First, it will strengthen the King's causes greatly, among the judges, for both my Lord Coke will think himself near a privy-counselor's place, and thereupon turn obsequious, and the attorney-general, a new man, and a grave person, in a judge's place, will come in well to the other, and hold him hard to it, not without emulation between them, who shall please the King best.

"Secondly, the Attorney-general (Hobart appointed July 4, 1606) sorteth not so well with his present place, being a man timid and scrupulous, both in Parliament and in other business, and, in a word, one that was made fit for the late Lord Treasurer's bent*, which was to do little with much formality and protestation; whereas

* Robert Cecil, Earl of Salisbury.

the now Solicitor-general (Bacon), going more roundly to work, and being of a quicker and more earnest temper, and more effected in that he dealeth in, is like to recover that strength to the King's prerogative, which it hath had in times past, and which is due to it.

“ And for that purpose, there must be brought in to be Solicitor, some man of courage and speech, and a grounded lawyer ; which done, his Majesty will speedily find a marvellous change in his business.

“ For it is to no purpose for the judges to stand well disposed, except the King's counsel, which is the active and moving part, put the judges well to it ; for in a weapon, what is a back without an edge ?

“ Thirdly, the King shall continue, and add reputation to, the Attorney's and Solicitor's place, by this orderly advancement of them, which two places are the champion's places for his right and prerogative, and being stripped of their rights, expectations, and successions to great places, will wax vile, and then his Majesty's prerogative goeth down the wind.

“ Besides, the removal of my Lord Coke to a place of less profit, though it be with his will, yet will it be thought, abroad, a kind of discipline to him, for opposing himself in the King's

causes, the example whereof will contain others in more awe."

Such were the reasons offered, to induce King James to make Coke Chief Justice of the Court of King's Bench. His abilities, his industry, his profound legal knowledge, were hardly dwelt upon. They were, it appears, a secondary consideration. The great object, the only question debated was, would it make him more of a prerogative lawyer than before?

The experiment was certainly tried, but its failure was complete. Coke, amid all his obligations to the Court, did not lose his independence, or forget his duty to his country. Lord Bacon, in his *Apothegms*, 98, tells an anecdote which shows, that Coke himself thought, that for this promotion, he was indebted to the management of his rival. We must not forget that it is Bacon who is the historian.

"When Sir Francis Bacon was made the King's Attorney, Sir Edward Coke was put up from being Lord Chief Justice of the Common Pleas to be Lord Chief Justice of the King's Bench, which is a place of greater honour, but of less profit, and withal was made Privy Councillor.

"After a few days, the Lord Coke, meeting with the King's Attorney, said to him, 'Mr.

Attorney, this is all your doing ; it is you that have made this stir." Mr. Attorney answered : ' Ah, my Lord, your Lordship all this while hath grown in breadth ; you must needs now grow in height, or else you would be a monster.' "

Coke was hardly seated in the Court of King's Bench, when, in the Case of Peacham, he again appeared in opposition to the law officers of the crown.

The infamous trial of Edmund Peacham, the unfortunate Somersetshire clergyman, occurred in 1614. In this, Coke's conduct appeared to great advantage, when compared with that of the Court of James I. The prosecution of this person, its conduct, its conclusion, attach indelible disgrace to the age which saw a pedant King of England and the great Lord Bacon his attorney-general.

Edmund Peacham was a minister of the established church, in the county of Somerset. In a search among his papers, the officers of the crown found in his study a sermon never preached—never perhaps, intended to be preached.* This sermon, the court construed to amount to high treason ; although there was a consider-

* Croke Car. 125,

able difference of opinion among the judges on the point. Its nature will be seen from the copy of the questions put to Peacham, in the Tower ; and to obtain answers, they scrupled not to torture, though ineffectually, this venerable old man, then more than sixty years of age. Bacon drew up the interrogatories ; and they will be found in the fifth volume of his Works, p. 336, entitled as follows :

“ Interrogatories upon which Peacham is to be examined.—

“ 1. Who procured you, moved you, or advised you to put in writing these traitorous slanders, which you have set down against his Majesty’s government, or any of them ?

“ 2. Who gave you any advertisement, or intelligence, touching these particulars which are contained in your writings, as touching the sale of the crown lands, the deceit of the King’s officers, the greatness of the King’s gifts, his keeping divided courts, and the rest ; and who hath conferred with you, or discoursed with you concerning these points ?

“ 3. Whom have you made privy and acquainted with the said writings, or any part of them ? And who hath been your helpers or confederates therein ?

“ 4. What use meant you to make of the

said writings? Was it by preaching them in sermon, or by publishing them in treatise? If in sermon, at what time, and in what place, meant you to have preached them? If by treatise, to whom did you intend to dedicate, or exhibit, or deliver such treatise?

“ 5. What was the reason, and to what end did you first set down in scattered papers, and after knit up in form of a treatise or sermon, such a mass of treasonable slanders against the King, his posterity, and the whole state?

“ 6. What moved you to write, the King might be stricken with death on the sudden, or within eight days, as Ananias or Nabal? Do you know of any conspiracy or danger to his person, or have you heard of any such attempt?

“ 7. You have confessed that these things were applied to the King, and that after the example of preachers and chroniclers, kings' infirmities are to be laid open; this sheweth plainly your use must be to publish them: show to whom and in what manner?

“ 8. What was the true time when you wrote the said writings, or any part of them? and what was the last time you looked upon them, or perused them before they were found or taken?

“ 9. What moved you to make doubt whether

the people will rise against the King for taxes or oppressions? Do you know, or have you heard of any likelihood or purpose of any tumults or commotions?

“ 10. What moved you to write, that getting of the crown land again would cost blood, and bring men to say: ‘ This is the heir, let us kill him?’ Do you know, or have you heard, of any conspiracy or danger to the Prince, for doubt of calling back the crown lands?

“ 11. What moved you to prove that all the King’s officers might be put to the sword? Do you know, or have you heard, if any petition is intended to be made against the King’s council and officers, or any rising of people against them?

“ 12. What moved you to say in your writing that our King, before his coming to the kingdom, promised mercy and judgment, but we find neither? What promise do you mean of, and wherein hath the King broken the same promise?”

To the copy of these questions, at once illegal and arbitrary, is appended, in the hand-writing of Secretary Winwood, the following conclusion—at once laconic and appalling:—

“ Upon these Interrogatories, Peacham this day was examined before torture—in torture—between torture, and after torture. Notwithstanding, nothing could be drawn from him, he still persisting in his obstinate and insensible denials, and former answers.”

To this paper, which is dated the 19th of January, 1614, is annexed the signatures of Bacon, Winwood, H. Montague, Yelverton, and four others.

Peacham remained in the Tower of London until the beginning of July 1615, when he was sent down for trial, at Taunton Assizes. Previously, however, on the 10th of March 1614, he was again examined by his inquisitors, with the same ill-success as before. Bacon remarked, in a letter to the King, written two days afterwards :—

“ I send your Majesty enclosed a copy of our last examination of Peacham, taken the tenth of this present, whereby your Majesty may perceive that this miscreant wretch goeth back from all, and denieth his hand and all.

“ No doubt, being fully of belief that he shall go presently down to his trial, he meant now to repeat his part, which he proposed to play in the country, which was to deny all.”

Poor Peacham was tried, according to a MS. letter of Mr. Chamberlain, given in the sixth volume of Bacon's Works, p. 79, on the 7th of August 1615. "He defended himself very simply, but obstinately, and doggedly enough. But his offence was so foul and scandalous that he was condemned of high treason ; yet not hitherto executed, nor perhaps shall be if he have the grace to submit himself, and show some remorse."

He survived, it appears, only a few months after his conviction, dying in Taunton jail, in March 1616 ; where, according to the same authority, he "left behind him a most wicked and desperate writing, worse than that he was convicted for."

The government of that day were evidently conscious that the case of Peacham was miserably weak. They had many doubts if the paper really amounted to treason ; and they found it necessary to proceed with caution. Bacon undertook to ascertain, during the progress of the examinations, the private opinion of the judges ;—but here he found many objections started, especially on the part of Coke, who saw the iniquity of a judge advising on a case he might, perhaps, himself have to try.

The progress of this consultation, and the

difficulties of the attempt, may be seen from Bacon's letters to the King. On the 31st of January 1614, he told his master : *

“ For Peacham's case, I have since my last letter been with my Lord Coke twice ; once before Mr. Secretary's going down to your Majesty, and once since, which was yesterday, at the former of which times I delivered him Peacham's papers ; and at this latter, the precedents, which I had with care gathered and selected.

“ At the former, I told him that he knew my errand, which stood upon two points, the one to inform him of the particular case of Peacham's treasons, for I never give it other word to him ; the other, to receive his opinion to myself, and in secret, according to my commission from his Majesty.

“ At the former time, he fell upon the same allegation which he had begun at the council table, that judges were not to give opinions by fractions, but entirely according to the vote, whereupon they should settle upon conference ; and that this auricular taking of opinions, single and apart, was new and dangerous, and other words more vehement than I repeat.

* Bacon's Works, vol. 6, p. 343.

“ I replied, in civil and plain terms, that I wished his Lordship, in my love to him, to think better of it : for that this—that his Lordship was pleased to put into great words—seemed to me and my fellows, when we spake of it among ourselves, a reasonable and familiar matter for a King to consult with his judges, either assembled or selected, or one by one.

“ And then, to give him a little outlet to save his first opinion, wherewith he is most commonly in love, I added, that judges sometimes might make a suit to be spared for their opinion, till they had spoken with their brethren ; but if the King, upon his own princely judgment, for reason of state, should think it fit to have it otherwise and should so demand it, there was no declining ; nay, that it touched upon a violation of their oaths, which was to counsel the King, without distinction, whether it were jointly or severally.

“ Thereupon, I put him the case of the privy council, as if your Majesty should be pleased to command any of them to deliver their opinion apart and in private ; whether it were a good answer to deny it, otherwise than if it were propounded at the table.

“ To this he said, the cases were not alike, because this concerned life.

“ To which I replied, that questions of state might concern thousands of lives, and many things more precious than the life of a particular person ; as war, and peace, and the like.

“ To conclude, his Lordship, *tanquam exitum quærens*, desired me for the time to leave with him the papers, without pressing him to consent to deliver a private opinion till he had perused them.

“ I said I would ; and the more willingly, because I thought his Lordship, upon due consideration of the papers, would find the case to be so clear a case of treason, as he would make no difficulty to deliver his opinion in private. And so I was persuaded of the rest of the judges of the King’s Bench, who likewise, as I partly understood, made no scruple to deliver their own opinion in private ; whereunto he said, which I noted well, that his brethren were wise men, and that they might make a show as if they would give an opinion as was required, but the end would be, that it would come to this—they would say they doubted of it and so pray advice with the rest.

“ But to this I answered, that I was sorry to hear him say so much, lest if it come to pass, some that loved him not, might make a construction, that that which he had foretold he had wrought.

“ The latter meeting is yet of more importance ; for then coming armed with divers precedents, I thought to set in with the best strength I could, and said, that before I descended to the record, I would break the case to him thus ; that it was true we were to proceed upon the ancient statute of King Edward the Third, because other temporary statutes were gone, and therefore it must be said in the indictment, “ *Imaginatus est et compassavit mortem et finalem destructionem Domini Regis ;*’ then must the particular treasons follow in this manner, namely, ‘ *Et quod ad perimplendum nefandum propositum suum composuit et conscripsit quendam detestabilum et venenosum libellum, sive scriptum in quo inter alia proditoria continetur,*’ etc.

And then the principal passages of treason, taken forth of the papers, are to be entered *in hæc verba*, and with a conclusion in the end, ‘ *Ad intentionem quod ligeus populus et veri subditi Domini Regis cordialem suum amorem a Domino Rege retraherent, et ipsum diminum regem relinquerent, et guerram et insurrectionem, contra eum levarent et facerent,*’ etc.

“ I have in this form followed the ancient style of the indictments for brevity’s sake, though, when we come to the business itself, we shall

enlarge it, according to the use of the later times.

“ This I represented to him, being a thing he is well acquainted with, that he might perceive the platform of that was intended, without any mistaking or obscurity.

“ But then I fell into the matter itself to lock him in as much as I could, namely

“ That there be four means or manners, whereby the death of the King is compassed and imagined.

“ The first by some particular fact or plot.

“ The second by disabling his title ; as by affirming that he is not lawful king ; or that another ought to be king, or that he is an usurper, or a bastard, or the like.

“ The third by subjecting his title to the Pope ; and thereby making him of an absolute king, a conditional one.

“ The fourth by disabling his regiment, and making him appear to be incapable or indign to reign.

“ These things I relate to your Majesty in sum, as is fit ; which, when I opened to my Lord, I did insist a little more upon, with more efficacy, and edge, and authority of law, and record than I can now express.

“ Then I pleaded Peacham’s treason within the last division, agreeable to divers precedents whereof I had the records ready, and concluded that your Majesty’s safety, and life, and authority was thus by law ensconsed and quartered ; and that it was in vain to fortify on three of the sides, and so leave you open on the fourth.

“ It is true he heard me in a grave fashion, more than accustomed, and took a pen and took notes of my divisions, and when we read the precedents and records, would say, this you mean falleth within your first or second division. In the end, I expressly demanded his opinion as that whereto both he and I where enjoined, but he desired me to leave the precedents with him, that he might advise upon them. I told him the rest of my fellows would dispatch their part, and I should be behind with mine, which I persuaded myself your Majesty would impute rather to his backwardness than my negligence. He said, as soon as I should understand that the rest were ready, he would not be long after with his opinion.”

On the 10th of February following, Bacon again, when writing to the King, adverted to the case of Peacham.

“ For Peacham’s, the rest of my fellows are ready to make their report to your Majesty at

such time and in such manner as your Majesty shall require it.

“ Myself yesterday took the Lord Coke aside, after the rest were gone, and told him all the rest were ready, and I was now to require his Lordship’s opinion according to my commission. He said I should have it, and repeated that twice or thrice, as thinking he had gone too far in that kind of negative, to deliver any opinion apart before, and said he would tell it me within a very short time, though he were not that instant ready.”

Three days after this, Coke delivered his opinion to Bacon in writing, which the Attorney-general immediately forwarded to the King.

In this, however, he evidently disappointed Bacon. The written opinion of Coke little suited the purpose of the government. Bacon indirectly confesses this, when he told his Master, February 14, 1614 :*

“ I send your Majesty enclosed my Lord Coke’s answers. I will not call them rescripts, much less oracles.

“ They are of his own hand, and offered to me as they are in writing, though I am glad of it for my own discharge. I thought it my duty,

* 5 Bacon’s Works, 353.

as soon as I received them, instantly to send them to your Majesty, and forbear for the present to speak farther of them.”

Such was the termination of this miserable case. Coke evidently saw it in its true colours; the charge and evidence were equally trumpery, and of this Bacon was fully aware. Yet no means were left untried to ensure the conviction of an aged country clergyman whose abilities do not appear to have been above mediocrity, whose habitation was in an obscure village, and whose means were equally confined.

Against this person, however, all the energies of the government were employed. Crown lawyers examined, privy councillors tortured him; all the judges of the land prejudged him, except Sir Edward Coke—who nobly stood aloof from his dastardly brother judges; and even the King wrote a long paper on the case, with his own hand.*

King James, in this paper, argued the case against poor Peacham as zealously as an old Bailey advocate; and with much farcical gravity he tells us, but not without great horror, that Peacham kept not these papers in a secret and

* 5 Bacon's Works, 357. Sir David Dalrymple's Memorials, p. 86.

safe façon (manner), but in an open house and lidless cask !”

That farther he had the hardihood to confess, “ that in the end he meant to preach it ! !” But though he professed, he intended “ first to have taken all the bitterness out of it,” yet, in his royal eyes, such an excuse was absurd, “ for there is no other stuff in or through it all but bitterness, which being taken out, it must be a quintessence of an alchimy-spirit without a body.” “ And then, to what end would he have published such a ghost or shadow without substance ? *cui bono* ? and to what end did he so farce (stuff) it first with venom, only to scrape it out again ?” The King very sagely adds, “ It had been hard making that sermon to have tasted well that was once so spiced.”

The contemplation of the bare possibility of Peacham being found not guilty by his jury, overwhelmed the King with a fearful agony. The case in his eyes was of transcendent importance to the crown and empire at large. “ But if judges will needs trust better the bare negative of an infamous delinquent”——“ caring more for the safety of such a monster, than the preservation of a crown in all ages following, whereupon depend the lives of many millions ; happy, then are all desperate and seditious

knaves, but the fortune of the crown is more than miserable—*Quod Deus avertat !*”

On the 23rd of June 1614, the University of Cambridge elected Coke their high steward, an appointment which reflected equal credit upon Coke, and the university of which he was a member.*

Whether in those days high stewards went through the ceremony of an installation—or if they did, of the proceedings at that of Coke—I have no account. He paid little attention to this description of ceremony; for we have seen that when he was made Chief Justice of the Common Pleas, he managed to escape the trouble and pantomime then practised.

* The following Copy of the Grace for his election I am enabled to give through the favour of Dr. Wordsworth, Master of Trinity College. (Nov. 17, 1835.)

Conceditur 23d June 1614. Cum seneschalli munus per spontaneam cessionem honoratissimi domini Thomæ Howard, Com. Suffolciæ Cancellarii vestri nuper electi vacuum sit. Placet vobis ut honormus vir dominus Edvardus Cooke Miles supremus Angliæ Justiciarius & Reg. Mag. à consiliis sanctoribus suffragiis vestris dictum officium sub literis vestris patentibus habeat, &c. &c.

CHAPTER VII.

1614—1616.

Benevolences—Coke contributes to them—Presides at the trial of the murderers of Overbury—Weston—Ann Turner—Sir John Elvis—Sir Robert Monson—The Earl and Countess of Somerset—Roger Coke's account of the detection of the plot—King James' fears—The plots which attended him—Coke's address—The declining health of the Lord Chancellor—Bacon intrigues to be his successor—Contest between the Courts of King's Bench and Chancery—Coke consulted by the King.

ALTHOUGH openly and fearlessly opposing himself to the court of James, when it attempted to exercise an undue and overbearing interference with the judges, yet Coke was never backward in contributing to the exigences of the state, or the wants of the King. Thus, in 1614, he gave two thousand pounds as his portion of a "benevolence" to the crown, and it appears that the alacrity and liberality with which he con-

tributed, were very distinguishable from the conduct of the other judges, who paid their contributions very unwillingly.*

Never were taxes more burlesqued by their name, than these vexatious and obnoxious benevolences, or forced gifts, which of necessity fell heavy upon the open hearted and the generous, but left almost untouched the sordid and the mean. These "benevolences" originated in the reign of Edward IV ; but speedily becoming unpopular, they were formally abandoned by Richard III.† Being, however, often resumed, they were at length abolished by an act of Charles II, to whom they were granted for the last time, with the express provision, that this grant should not be regarded as a precedent : " These benevolences being often extorted without a free and voluntary consent."‡ " Benevolences" were, in fact, as misnamed as the French " beds of justice," which were well described by a lively Frenchman, as places where justice sleeps.

From this period, until 1615, when Coke presided at the trial of the Overbury murderers, he was occupied in the peaceful and dignified dis-

* Nicholl's Progresses of James I, vol. 3, p. 7.

† Stowe's Chronicles.

‡ 13 Charles II, 64.

charge of his duties. This murder is one of the black stains upon the reign of James which time will never efface. I shall not lead the reader through the filthy details of these trials. Weston, the Earl of Somerset's agent, was tried on the 19th of October 1615, at the Guildhall in London. He was condemned for administering poison to Overbury, and was executed at Tyburn.

On the 7th of November following, Mrs. Ann Turner was tried for aiding and abetting Weston in the murder. Turner was the agent of the Countess of Somerset ;—the abandoned servant of a profligate mistress. Coke here suffered his feelings to carry him far beyond the bounds of decency, when he told her, that “ she had the seven deadly sins ; for she was a whore, a bawd, a *sorcerer*, a *witch*, a Papist, a felon, and a murderer.”* Unfortunate indeed was the condition of any poor deserted female, who in those days was charged with either sorcery or witchcraft : her doom was sealed. It is revolting to read of such ferocious ignorance falling from the lips of a Chief Justice of England, even in a case so bad as that of Ann Turner ; one in which there was no doubt of the murderer's

* State Trials, vol. 1, p. 324.

guilt, for she, as well as Weston, confessed upon the scaffold the justice of their sentence.

Sir John Elvis, governor of the Tower, was tried and condemned on the 16th of November for participating in the same crime. His execution speedily followed. However atrocious may have been the conduct of the prisoners, however clear their guilt, the government so managed the trials, as to render the whole proceeding full of mystery, real or affected—mystery which all posterior researches have failed to clear away. Of the whole band of conspirators, the case of Sir William Monson seemed the most inexplicable. He was arraigned before Sir Edward Coke, on the 4th of December 1615, and pleaded not guilty; at the same time, desiring the presence of Sir Robert Cotton, then Lord Treasurer, who, according to Monson's professions, had the power of proving his innocence.

Cotton did not come: he sent, however, a letter, which Coke read to the court, in which he said: "I have heard that Sir Thomas Monson thinks I can clear him; but I know nothing of him, to accuse or excuse him; but I hope he is not guilty of so foul a crime."

"You hear," said Coke after reading this

letter, "you hear he will neither accuse nor excuse you."

"I do not," replied Monson, "accuse my Lord Treasurer—but I desire to have an answer to my two questions."

"You shall hear more of that when the time serveth," rejoined Coke, who eventually stopped the proceedings with this remarkable speech:—"I see a great assembly in this court, and, although it has been often shown to you, yet it cannot be said too often, how much the city is bound to God, and to the King his deputy on earth, and my master, for their great deliverance and exact justice. God is always just; and for the King, though they were ever so high in place, or so dear to him, though his own creatures, yet his justice is dearer to him, for which we are upon our knees to give him thanks, and also for so mild a proceeding in so great an affair; for, neither the great man's house in the Tower, nor his lady's house, (meaning those of the Earl and Countess of Essex), nor the prisoner's house, (to my knowledge) have been searched; neither hath this prisoner been committed to the custody of the sheriff, but to an alderman, a man who of all others might be most kind to him (Alderman Anderson, a con-

nection of Monson's). I never knew the like favour, nor do I like it so well, but do declare it as a gentle proceeding from the King. For other things, I dare not discover secrets, but although there was no house searched, yet such letters were produced, which make our deliverance as great as any that happened to the children of Israel."*

In the same trial, Coke was reported to have let fall some other mysterious observations, still more perplexing, which served to raise vague reports, and suspicions, of the death of Prince Henry by poison. It was said that the Chief Justice had intimated that Overbury was concerned in this crime,† and that he was poisoned by way of punishment for this and other misdeeds. Monson was not again brought to trial, but was speedily liberated ;—and Coke was even rebuked for being too rapid and zealous in his proceedings.

If the conduct of King James, in this melancholy transaction, was free from reproach—if he acted throughout as an innocent spectator of the trials of Overbury's murderers—his ill for-

* State Trials, vol. 1, 330.

† Prince Henry, the son of James I, died the year before Overbury was murdered.

tune and bad management were equally deplorable. He certainly succeeded in mystifying what ought to have been clear and public, and managed to involve his own honour in suspicion. The chief criminals in the murder, the Earl and Countess of Somerset, were the last tried. It is perhaps impossible in England's annals to produce a female character more thoroughly degraded than that of Frances Countess of Somerset; who, when she was tried and condemned on the 24th of May, 1616, was the disgraced, divorced wife of Lord Essex; had murdered Overbury, because he opposed her marriage with Somerset, had led a life of the most unblushing profligacy; and yet was not twenty-six years of age. Somerset, her husband, was a far less detestable character. He had been long the King's favourite, but had no claims to the respect of his country. His countess pleaded guilty, but Somerset stood his trial, and was readily condemned; and it is certain both were equally guilty. King James, by an eager desire to induce him to plead guilty, by threats and inuendoes, managed to rouse a suspicion, that even these two profligates were mere tools in the hands of the crown. Their pardon still farther confirmed the public suspicion, and made many persons believe, that Weston, and the other

agents of the Somersets, were sacrificed to save the lives of far greater criminals.* Time has not cleared up the difficulties which enshroud the case; no additional information has been elicited, no facts have been produced, no hidden papers discovered, to implicate or exonerate any other persons; and the suspicions and vague surmises of the historians of the age have therefore supplied imperfectly the want of authentic information. Roger Coke, the grandson of Sir Edward, gives some curious particulars of the apprehension of the favourite, Somerset, which I will give in his own words :†—

“ Sir Thomas Overbury’s murder had been about twenty months concealed, when, about the middle of the month of August (1615), the matter was brought to light, but the manner was variously reported.

“ Some said, that Sir Thomas Overbury’s servant gave notice of it to Sir Edward Coke; others, that my Lord of Canterbury had got

* The Earl and Countess of Somerset, being pardoned by the King, were released from the Tower in January, 1621. The Countess died in obscurity, August 23, 1632, leaving a daughter Ann, who married Lord William Russell, afterwards Duke of Bedford. Somerset died in July, 1645.

† “ A Detection of the Court and State of England,” p. 82. Roger Coke is not, as regards dates, a very accurate historian.

knowledge of it, and made it known to Sir Ralph Winwood, one of the secretaries of state, and that, by searching in a certain place, he should find a trunk, wherein were certain papers, which would disclose the whole business, which Sir Ralph did, and found it so.

“ The King at that time was gone to hunt at Royston, and Somerset with him ; and, when the King had been there about a week, he designed the next day to proceed to Newmarket, and Somerset to return to London ; when Sir Ralph Winwood came to Royston, and acquainted the King with what he had discovered about Sir Thomas Overbury’s murder. The King was surprised herewith, and posted away a messenger to Sir Edward Coke, to apprehend the Earl. I speak this with confidence, because I had it from one of Sir Edward Coke’s sons.

“ Sir Edward Coke lay then at the Temple, and measured out his time at regular hours, two whereof were, to go to bed at nine o’clock, and rise again at three. At this time Sir Edward’s son and some others were in Sir Edward’s lodgings, but not in bed, when the messenger, about one in the morning, knocked at the door, where the son saw and knew him ; says he, I come from the King, and must immediately speak with your father.’ ‘ If you come from ten kings,’

he answered, 'you shall not; for I know my father's disposition to be such, that if he be disturbed in his sleep, he will not be fit for any business; but if you will do as we do, you shall be welcome, and about two hours hence my father will rise, and you may then do as you please,' to which he assented.

“ At three, Sir Edward Coke rang a little bell, to give notice to his servant to come to him; and then the messenger went to him, and gave him the King's letter, and Sir Edward immediately made a warrant to apprehend Somerset, and sent to the King that he would wait upon him that day. The messenger went back post to Royston, and arrived there about ten o'clock in the morning; the King had a loathsome way of lolling his arms about his favourite's necks, and kissing them; and in this posture the messenger found the King with Somerset, saying, 'When shall I see thee again?'—Somerset then designing for London—when he was arrested by Sir Edward Coke's warrant. Somerset exclaimed, that never such an affront was offered to a peer of England in the presence of the King. 'Nay, man,' said the King, 'if Coke send for me, I must go,' and when he was gone, 'Now the devil go with thee,' said the King, 'for I will never see thy face more.'

“ About three in the afternoon, the Chief Justice came to Royston, and so soon as he had seen the King, the King told him that he was acquainted with the most wicked murder by Somerset and his wife upon Sir Thomas Overbury, that was ever perpetrated, and that they had made him a pimp to carry on their lewdness and *murder*, and therefore commanded the Chief Justice, with all the scrutiny possible, to search into the bottom of the conspiracy, and to spare no man, how great soever, concluding, ‘ God’s curse be upon you and your’s, if you spare any of them, and God’s curse be upon me and mine if I pardon any of them.’ ”

That Somerset was in possession of some important secret, that the King dreaded he would divulge, is very apparent. Every endeavour was made to induce him and the Countess to plead guilty; every assurance was offered that their lives would be spared if they complied with the King’s wish.

Until the Earl’s trial was over, the King was full of anxiety. Somerset was repeatedly warned not to accuse or “ tax” the King.

There is in Bacon’s works* a copy of a paper indorsed, “ Memorials touching the course to be

* Vol. vi, p. 96.

had in my Lord of Somerset's arraignment," which betrays the King's fears.

"It were good, after he is come into the hall, so that he may perceive he must go to trial, and shall be retired into the place appointed till the court call for him. Then the lieutenant should tell him roundly, that if in his speeches he shall tax the King, that the justice of England is, that he shall be taken away, and that the evidence shall go on without him, and then all the people will cry, *away with him*, and then it shall not be in the King's will to save his life, the people will be so set on fire."

Whatever was the nature or importance of these secrets, Sir Edward Coke had evidently no knowledge of them. He laboured industriously to discover every thing that related to this dark affair. Bacon tells us, in a copy of an intended speech, "Sir Edward Coke, a person best practised in legal examinations, took a great deal of indefatigable pains in it, without intermission; having, as I have heard him say, taken three hundred examinations in this business." Yet it is evident that Coke had some suspicion, for he acted with great caution. Bacon adds, "It is true that my Lord Chief Justice, in the dawning and opening of the light, finding that

the matter touched upon these great persons, very discreetly became suitor to the King to have greater persons than his own rank joined with him; whereupon your Lordship, my Lord High Steward (the Lord Ellesmere), to whom the King commonly resorteth *in arduis*, and my Lord Steward of the King's house, and my Lord Zouch, were joined with him."*

With the trial of Overbury's murderers, ceased the long-continued adventures of James the First, in plots and mysterious conspiracies. His family misfortunes began at a very early age. A dark plot attended him in his very cradle; for the murder of his father, Darnley, made him King of Scotland when he was hardly twelve

* During the trial of these murderers, it appeared, that when plotting the murder, the Countess of Somerset and Mrs. Turner were used to consult a certain conjurer of Lambeth, Dr. Foreman, who is thus described by Sir A. Weldon, in his "Court of James the First," p. 110.—"A very silly fellow, yet had wit enough to cheat ladies and other women, by pretending skill in telling their fortunes, as whether they should bury their husbands, and what second husband they should have, &c.—But before he would tell any thing, they must write their names in his Alphabetical Book, with their own handwriting. I well remember, there was much mirth made in court, upon the shewing this book, for it was reported, that the first leaf my Lord Coke lighted upon, he found his own wife's name."

months old ; a murder, too, in which his mother has been supposed to have participated.

He was barely fourteen years of age when he adopted for his favourites, Lennox and Arran, the latter the worst of profligates. He was not twenty when, by the public voice, both these favourites were banished from Scotland ; and he was not quite of age when his mother, Mary Queen of Scots, was beheaded at Fotheringay.

The following year occurred the conspiracy, known in Scottish history as the Raid of Ruthven ; in which, being decoyed to Ruthven Castle, James fell into the hands of the confederated nobles, who were resolved, at all hazards, to get him out of the power of his minions.

His behaviour, in this day of trial, was worthy of an overgrown school-boy ; he expostulated, threatened, and finally blubbered like a child. The contempt with which the successful conspirators regarded their King, is easily discernible from the fierce exclamation of the tutor of Glamis : “ No matter—better children weep than bearded men.”

Twelve years after the Raid of Ruthven, occurred the yet unexplained Gowrie conspiracy. Again, when hunting, James was decoyed away from his attendants by two amiable and accomplished brothers, the Lords Ruthven, the eldest

being Earl of Gowrie. Time has not rendered the romance of that day more explicable. James himself published an account of it, full of improbabilities, which few believe. The story, in all its details, is truly characteristic. The silly tale employed to draw the King to Gowrie's house at Perth; the easy manner in which, after dinner, James was led away from his companions through one or two rooms, and some long passages, into the Earl's study; and there, instead of a criminal ready to be examined, his finding a man in complete armour; the consequent fright of James; his inquiry of Ruthven, if that was the prisoner, and Ruthven's reply, after snatching a dagger from the man, "Remember how unjustly my father suffered by your command; you are now my prisoner, submit to my disposal without resistance or outcry, or this dagger shall instantly avenge his blood;" the attempt to bind the King's hands, and the scuffle which ensued in the endeavour; the oath taken by the King, not to make any noise while Ruthven departed to send away the King's attendants, and the omission of any attempt to kill him;—his final success in informing his friends from the window, as they were departing, of his danger, and the contest which ensued,

ending in his rescue, and the death of the two Ruthvens ; all this completes a story which never could have happened in any other country but Scotland, and not in that gallant country to any king except James I.

Such was the Gowrie conspiracy which terminated, in his thirty-fourth year, the mystic Scotch adventures of James I. A fresh series, however, awaited him on his arrival, three years afterwards, in England.

On the very year of his accession, the still disputed plot of Raleigh, Grey, and Cobham, afforded him the first specimen of the entertainment he was likely to meet with in England.

Two years afterwards, he narrowly escaped destruction by the gunpowder conspirators ; an escape which is still annually commemorated in England ; as the 5th of August was long, in Scotland, a day of rejoicing at his escape from the plot of Gowrie.

Prince Henry, his eldest son, died in 1612, with some suspicion of being poisoned ; and the next year Overbury's murder, and the dark plot by which it was managed, concluded the tragic adventures in the horrible and mysterious, which haunted the King thus far in life.

James came of a family with whom misfortune was hereditary ; and his posterity succeeded in

preserving this characteristic of his house. His son, Charles I, died on the scaffold; and his grandson, James, lost the crown of England and Scotland. Ill fortune may account for much; but the series is too continued to be all thus derived; and after making every allowance for fortune's persevering frowns, it must be conceded that James, and others of the house of Stuart, had few claims to our pity; for their reverses generally sprang from their own vices or follies; and although I am little inclined to adopt the dark suspicions of contemporary historians, there can be little doubt that in the case of James I, his meagre talents, and still more slender virtues, did not redeem his manifold defects and vices.

The prosecution of Overbury's murderers naturally excited, at that time, much warm discussion; many were the rumours and whisperings of the public. The court was evidently annoyed at them, and vigilant to detect their propagators; therefore, the King readily took advantage of some indiscreet words of Sir John Hollis, Sir John Wentworth, and Mr. Lumsden, to prosecute them, in the Court of Star Chamber, for traducing the public justice. These gentlemen were all the friends of Somerset, and had thus

zealously but indiscreetly acted, from an impression of the Earl's innocence.*

In this trial, Bacon, as Attorney-General, conducted the prosecution. Sir Edward Coke, as one of the Chief Judges, delivered the opinion of the court.

The prisoners, having thought fit to impugn the opinion of Coke, in his conduct of the trial of Overbury's murderers, Bacon in his opening address took occasion to say, speaking of a paper for the King delivered by Lumsden, "in which writing he doth falsify and pervert all that was done on the first day at the arraignment of Weston, turning the pike and point of his imputations principally upon my Lord Chief Justice of England, whose name (thus occurring) I cannot pass by; and yet I cannot skill to flatter, but this I will say of him, and I would say as much to after ages if I should write a story, that never man's person and his place were better met in business than my Lord Coke, and my Lord Chief Justice, in the cause of Overbury."

The prisoners defended themselves very modestly and eloquently. They had, no doubt, been indiscreet, but their crime was of a very mild

* State Trials, vol 1, p. 322.

nature, even in those high prerogative days. They were speedily declared guilty ; principally of delivering a petition to the King, and of asking Weston, at the place of his execution, some questions as to the justice of his sentence.

Upon this, Coke delivered the sentence of the court. I will give his speech, pretty much at length, since it is a fair specimen of his few judicial addresses which have been preserved.

“ He would say of this business, and his dealing therein, as Abimelech said of himself : ‘ Thou knowest, Lord, what I have done in simplicity of heart, and cleanness of hands,’ and therefore would boldly affirm, that there were none brought into question of this great business of poison, but such as in his soul and conscience were apparently guilty.

“ He had found some records of poisoning, which he would show, as namely, in the treasury, 31st Edward III ; for the King had two treasuries,—the one of records, the other of gold and silver ; where a woman committed adultery, and afterwards poisoned her husband.

“ And in the 21st of Edward I.—Solomon de Rock was poisoned by a monk, who afterwards prayed to be delivered over to the censure of the Church ; but this favour he was denied, since it is a wrong done to the State to poison a judge.

“ And it is to be observed, that in the first case, that poison and adultery went together ; and in the second case, poison and popery.

“ From the time of Edward III down to the 22nd of Henry VIII (which was a long period), no mention is made in our Records of poisoning any man ; then, however, a statute was made that those who did poison anybody, should be boiled to death, and were first to be put into the water at the feet.

“ In this business I will tell no news, but I am not yet at the root. God forbid that those kind of offences should be unsearched and unpunished, wheresoever they are found.

“ There are divers sorts of poisoning, by some of which a man shall die a month, or a quarter of a year afterwards, *ut sic se sentiat mori*, and yet shall not know in what manner he is poisoned ; thus, one Squire, a priest, should have killed Queen Elizabeth by poisoning her saddle.

“ This kind of poisoning came first from popery.

“ In the case of the murderer Weston, he would not confess the crime because the indictment was, that he poisoned Sir Thomas Overbury with arsenic, rosaker, and mercury sublimate ; whereas, indeed, it was not known what poison killed him.

“ In this case, the poor man conceived a scruple, that if we did not know with which of the poisons Overbury was killed, that he was not guilty of the offence laid in the indictment ; and he therefore said he was not guilty of the offence.

“ Now, *ut obstructor est iniqui*, that the mouth of the wicked man may be fully stopped, after that it was fully resolved unto him, that the manner of killing laid in the indictment, was not the point of the indictment, but the matter of killing—as if the indictment be that a man was killed by a sword, whereas indeed he was killed with a dagger, yet the party is guilty, because the killing of a man is the point of the indictment—then he confessed the fact.

“ And for this, gentlemen, Mr. Lumsden, a Scottish gentleman, of a nation that he loved well (and to his Majesty, both Scotch and English were equally dear, *Scoti & Angli nullo discrimine &c.*—

“ He that infuseth into his Majesty’s ears the least falsehood concerning his judges is like him that infuseth never so little copper into coin : they both commit a kind of treason. And a little to divert from this business—you, Mr. Lumsden, were a pander to the Earl of Somerset, and were his favourer in deed, but his follower in evil.

“ *Afflictio dat intellectum*—let your affliction now give you sense, and a feeling of your sins—your service of a pander is apparently to be shown you by a letter under my Lord of Somerset’s own hand, and your answer to it.

“ Let it then enter your heart and soul to assure yourself that there is now no safety, protection, or assurance, but under a religious faith in Jesus Christ ; and that *Radix Justitiæ est pietas*—the foundation and root of justice is piety.

“ I confess I had a great suspicion out of whose quiver the murder came first ; but because I had no certain proofs ; I would never question them.

“ This resolution of Weston’s to be mute was very great. When he was persuaded by the Bishops of London and Ely to plead, he would not, and after being promised, that if he would speak he should have a Popish priest, he thereunto answered : ‘ have I refused the Godly persuasions of the Bishops of London and Ely, and shall I answer to a Popish priest ? ’

“ And for your professions, Mr. Lumsden, that you will not be an accuser, this is a contemptuous answer, for this is not to be an accuser, being examined of another to discover him ; but your refusal in this kind to answer, is

a manifest contempt, and for the like offence a great lady of the land lieth now in the Tower, and that only for refusing to answer when examined.

“ As for Sir John Hollis, his fault of questioning and counselling is very great, the same being made after a verdict.

“ Sir John said, that it hath been a custom to ask questions at those times, and that he did usually go to executions.

“ For my own part, I say that ever since I was a scholar, and had read those verses of Ovid,

*Et lupus et vulpes instant morientibus —
Et quæcunque minor nobilitate fera est**

I did never like it, and therefore I marvel much at the custom of Sir John.

“ Sir John answers here at the bar, and saith if anything be determined against him, he did humbly submit himself thereto ; by which term determining, he meant I think as if we did give our censures by conspiracy.

“ For my own part, I have talked with no other, nor I think did any one of us speak with another before we came here together.

* Trist. 3, 5.

“ Peradventure, he thinks as some have thought, that all this business is but a conspiracy against the Earl of Somerset.

“ He saith he hath been, since the Prince’s death, but as a fish out of the water.

“ I know not what he means by a fish out of the water. I have heard that ‘ *Clericus in oppido, tanquam piscis in arido,*’ a clerk in the town is like a fish upon dry land. He is a justice of the peace, a commissioner of *oyer and terminer*, a man of fair hands, fifteen hundred per annum at the least. This money is enough to be a privy councillor ; and yet Sir John is like a fish out of the water.

“ I know he hath travelled many countries, speaks many languages, hath seen many customs, and knows much of foreign nations ; yet a little knowledge of the common law of this land, would have been better for him than all these ; it would have kept him from asking questions, and counselling in scandal of religion and justice, two of the main pillars of the kingdom, and that too in cold blood.

“ Evidence is above eloquence, the party himself acknowledged that he died justly, and those that saw him, say he died penitently.

“ To conclude, as it was sometimes said of Rome, *et quæ tanta fuit Romam tibi causa videndi.*

I might now very well say of the going of Sir John Hollis to Tyburn, with a little alteration of the words, ‘ *Et quæ tanta fuit Tyburn tibi causa videndi.*’

“ For the censure, I agree with that which had been proposed, and the acknowledgment of Mr. Lumsden should also be in the Court of Common Pleas and the Exchequer, because the justice of all courts may be wronged with slanderous petitions.

“ I move that information may be made against the other gentlemen, that were asking such questions as these were, and that they might receive their due punishment ; for if such be not punished, these gentlemen will think that they have wrong.

“ I would wish gentlemen to take heed how they fall into discourses of these businesses, when they be at their chambers ; for in the proceeding of these great businesses and affairs, if a man speak irreverently of the justice thereof, the bird that hath wings will reveal it.”*

Coke then sentenced the prisoners to various fines and imprisonments.

While these state trials were proceeding, the great Chancellor Egerton was fast declining.

* State Trials, vol. i, p. 236.

Bacon announced this melancholy truth in a letter to the King on the 12th of February, 1615,* in which he said, "Your worthy Chancellor, I fear, goeth his last day. God hath hitherto used to weed out such servants as grew not fit for your Majesty; but now he hath gathered to himself one of the choicer plants, a true sage or *salvia* out of the garden; but your Majesty's service must not be mortal."

Bacon then proceeded to apply for the place for himself; advised the King not to confer the office upon any of the judges, "Because the Chancellor's place, after it went to the law, was ever conferred upon some of the learned counsel, and never upon a judge; for Audely was raised from King's serjeant, my father from Attorney of the Wards, Bromley from Solicitor, Puckering from Queen's Serjeant, Egerton from Master of the Rolls, having newly left the Attorney's place."

Bacon, notwithstanding, was rather fearful that the King might think of either Sir Edward Coke or Sir Henry Hobart, the Chief Justice of the Common Pleas, to succeed to the high office; he therefore warned his Majesty, that if "you take my Lord Coke, this will follow, first your

* Bacon's Works, vol. v. p. 371.

Majesty shall put an overruling nature into an overruling place, which may breed an extreme ; next, you shall blunt his industries in matters of finances, which seemeth to aim at another place ; and lastly, popular men are no sure mounters for your Majesty's saddle.

“ If you take my Lord Hobart, you shall have a judge at the upper end of your council board, and another at the lower end, whereby your Majesty shall find your prerogative pent ; for though there should be emulation between them, yet as legists they will agree in magnifying that wherein they are best. He is no statesman, but an economist wholly for himself, so your Majesty, more than an outward show, will find little help from him in the business.”

And lastly, Bacon thought it well to raise an objection against the learned Dr. Abbot, Archbishop of Canterbury, receiving the appointment.

“ If,” he continued, “ you take my Lord of Canterbury, I will say no more, but the Chancellor's place requires a whole man, and to have both jurisdictions spiritual and temporal, in that height is fit but for a king.”

The exertions of Bacon were finally successful. The Lord Chancellor Ellesmere, although he rallied at that time, died in the following year, and Bacon was appointed to succeed him.

It was about this time that the dissensions arose between the Courts of King's Bench and Chancery, regarding the superior jurisdiction claimed over the former by the latter, even to the power of reversing its judgments—a power which Coke strenuously opposed, and which, after much strenuous discussion, was finally disposed of by an order from the King, July 14, 1616, in which he confirmed to the Court of Chancery all the powers that it had before claimed and exercised.*

While the dispute was carrying on—a dispute which Coke managed on the part of his court with great ability—Bacon wrote to the King, giving him an account of the contest,† and what he has so clearly narrated, it would be superfluous to give in other words.

“ It is necessary that I let your Majesty know the ground of the difference between the two courts, that your Majesty may the better understand the narration.

“ There was a statute made the 27th Edw. III, c. 1, which no doubt in the principal intention thereof was ordained against those that sued to Rome, wherein there are words, somewhat

* Appendix to Chancery Cases, vol. i, p. 26.

† Bacon's Works, vol. iv, p. 611.

general, against any that questioneth or impeacheth any judgment given in the King's courts, or in any other courts.

“ Upon these doubtful words ; (other courts) the controversy groweth.

“ For the sounder interpretation taketh them to be meant of those courts, which, though locally, they were not held at Rome, or where the Pope's chair was, but here within the realm, yet in their jurisdiction had their dependence upon the Court of Rome, as were the court of the legate here, and the court of the archbishop and bishop, which were there but subordinate judgment-seats to that high tribunal of Rome.

“ And for this construction the opposition of the words, if they be well observed, between the King's courts and other courts, maketh very much, for it importeth as if these other courts were not the King's courts.

“ Also the main scope of the statute, fortifieth the same, and lastly, the practice of many ages.

“ The other interpretation, which cleaveth to the letter, expoundeth the King's courts to be the courts of law only, and other courts to be courts of equity, as the Chancery, Exchequer Chamber, Dutchy, &c., though this also flieth,

indeed, from the letter, for that all these are the King's courts.

“ There is also another statute, which is but a simple prohibition, and not with the penalty of a premunire (as the other is), that after judgment given in the King's courts, the parties shall be in peace, except the judgment be in error or attain, which is, in legal form, a reversal.

“ And of this, also, I hold the sounder interpretation to be, to settle possessions against disturbances, and not to take away remedy in equity where those judgments are obtained *ex rigore juris*, and against good conscience.

“ But upon these two statutes there hath been a late conceit in some, that if a judgment pass at the common law against any, that he may not after sue for relief in Chancery, and if he doth, both he and his council and his solicitors, yea, and the judge in equity himself, are within the danger of those statutes.

“ Here your Majesty hath the true state of the question, which I was necessarily to open to you, first, because your Majesty calleth for this relation not as news, but as business—now to the historic part.

“ It is the course of the King's Bench, that they give in charge to a grand jury offences of

all natures, to be presented within Middlesex, where the said court is, and the manner is to enumerate them, as it were, in articles.

“ This was done by Justice Coke the Wednesday before the term ended, and that article (if any man, after a judgment given had drawn the said judgment to a new examination in any other court) was by him especially given in charge, which had not used to be given in charge before.

“ It is true, that it was not solemnly dwelt upon, but as it were thrown in among the rest.

“ The last day of the term, and that which all men condemn, the supposed last day of my Lord Chancellor's life, there were two indictments preferred of premunire, for sueing in Chancery after judgment in common law; the one by Richard Granville, the other by William Allen; the former against Courtney, the party in Chancery; Gibb, the Chancellor, and Dewerst, the clerk; the latter against Alderman Bowles and Humphry Smith, parties in Chancery; Sergeant More, the counsellor; Elias Wood, solicitor in the cause; and Sir John Tindal, Master in Chancery, and an Assessor to my Lord Chancellor.

“ For the cases themselves, it were too long to trouble your Majesty with them, but this I

will say, that if they were set on, that preferred them, they were the worst marksmen that ever were that set them on."

"For there could not have been chosen two such causes for the honour and advantage of the Chancery, for the justness of the decrees, and for the foulness and scandal both of fact and person, in those that impeach the decrees.

"The grand jury, consisting, as it seemeth, of very substantial and intelligent persons; would not find the bills notwithstanding they were clamoured by the parties and twice sent back by the court; and, in conclusion, resolutely, seventeen of nineteen found an ignoramus, wherein I think for that time, that ignoramus was wiser than those who knew too much."

The case, which was the immediate cause of bringing the courts into contact, was a trial in the King's Bench, in which the defendant prevailed upon the chief witness for the plaintiff, to absent himself on the trial, on condition of the defendant agreeing to indemnify him from the punishment of the court.

One of the defendant's agents readily undertook this, and, taking the witness to a tavern, and calling for a pot of sack, left the room as soon as the man had raised it to his mouth.

When the cause came on, and the witness

was called, the court was informed that he could not come, and the agent deposed "that he left him in such a situation, that if he continued in it, but for a quarter of an hour, he was a dead man."

The loss of this man's testimony was followed by that of the cause.*

To be relieved from this verdict, application was made to the Court of Chancery, and that raised the question of the respective jurisdiction of the two courts.

Coke bowed to the decision of the King in this long-disputed case with great reluctance, and evidently maintained his opinion to the last; for in his third institute, p. 125, he considers the King's Privy Seal order as being "obtained by the importunity of the then Lord Chancellor, who was vehemently afraid."

In his time, up to the period of the King's order in council, the Court of King's Bench decidedly opposed all interference with its judgments on the part of the Court of Chancery.

In the case of *Heath v. Ridley*,† they proceeded to judgment in spite of an injunction from the Court of Chancery; and in another case, that of *Courtney v. Glanvil*, they bailed

* *Wilson's Life of James*, p. 704.

† *Croke, Jac.* 335.

and afterwards discharged, a person who had been committed by the Chancery for disobedience, the Chancery Court having interfered after a judgment at law;* and, in a third case, that of the King v. Dr. Gouge,† Coke was equally decided in his opinion, Judge Dodderidge energetically supporting him.

Sir Edward's Coke's view of the case was sustained by numerous precedents. In the reign of Edward the Fourth, Chief Justice Hussey declared himself of the same opinion.‡ And it was one of the charges urged by Sir Thomas More, then Lord Chancellor, against Cardinal Wolsey, that he had entertained causes in Chancery already decided by law.§

Four similar cases occurred in the reign of Elizabeth, in the Chancellorships of Sir Nicholas Bacon, Sir Thomas Bromley, and Lord Ellesmere; in the last case, all the judges concurring in their decision in favour of the Court of King's Bench.||

Whatever, however, was the law previously to

* Croke, Jac. 343.

† Bulstrode, vol. iii, p. 115.

‡ 2^d Edw. IV, 37.

§ Parliamentary Hist. vol. iii, p. 48. It was the twentieth charge.

|| March's Reports, 183.

the decision of the great Lord Ellesmere, there is no doubt of the power now possessed by the Court of Chancery to reverse the proceedings of a court of common law, although this right was, long after the decision of King James, the subject of very contradictory decisions.

Thus, soon after Coke's death, the Court of King's Bench decided, that a court of equity could not relieve, after a judgment at law;* and in 1555, the same decision was given in the case of *Morel v. Douglas*.† And again, in 1558, the same question was mooted, but not decided.‡ In 1668, the same point was raised;§ also in *King v. Welby*,|| in the times of Chief Justice Keyling and Sir Matthew Hale; and finally, in 1695, Lord Chief Baron Atkyns published a work upon the exorbitant powers exercised by the Court of Chancery, which was the last attempt made to withstand the power of that court's interference, as well before judgment, as after: a power which they have since uninterruptedly exercised.

It was during the progress of his controversy with Chancellor Egerton, that Coke was directed

* *Hardres' Reports*, 23. † *Ibid.* 123.

‡ *Kebble's Reports*, vol. ii, p. 402, 661, 787. 1 *Modern*, 59.

§ *Coke's Institute*, 124.

|| *Sir T. Raymond's Rep.* 227.

by the King to consult with his brother judges on a question which had arisen, as to whether an English subject murdering an Englishman in a foreign country, could be punished for it by the law of England.

It was on this case that on the 25th of February, 1617, he addressed the following letter to the King, written in his usual elaborate style:—

“ Most gracious Sovereign :

“ I think it now my duty to inform your Majesty of the motives that induced the Lord Chancellor and the judges to resolve that a murder, or felony, committed by an Englishman upon another in a foreign country, shall be punished before the Constable and Marshall of England.

“ First, in the book case, in the 13th year of King Henry the Fourth, in whose reign the statute was made, it is expressly said, one liegeman was killed in Scotland by another liegeman, and the wife of him that was killed did sue an appeal of murder in the Constables Court of England.”

“ Stanford,* an author without exception, saith thus :

“ By the statute of Henry IV. cap. 14, if any

* Judge Stanford, born August 22, 1509, was of Gray's Inn. In 1554, Justice of the Common Pleas. Died, August 28, 1558. He is the most ancient writer on the Pleas of the Crown.

subject kill another subject in a foreign kingdom, the wife of him that is slain may have an appeal in England before the Constable and Marshall, which is a case *in terminis terminantibus*. And when the wife, if the party slain have any, shall have an appeal there ; if he hath no wife, his next heir shall have it.

“ If any fact be committed out of the kingdom, upon the high seas, the Lord Admiral shall determine. If in a foreign kingdom, the cognizance belongeth to the Constable, where the jurisdiction pertaineth to him.

“ And these authorities being seen by Bromley, Chancellor, and the two chief Justices, they clearly resolved the case, as before I have certified your Majesty.

“ I humbly desire I may be so happy as to kiss your Majesty’s hands, and to my exceeding comfort to see your sacred person ; and I shall ever rest your Majesty’s most faithful and loyal subject.

“ EDWARD COKE.”

CHAPTER VIII.

1616—1617.

The Case of Commendams—Bacon's letter to Sir Edward Coke—The letter of the Judges to the King—The Judges summoned before the King in council—The King's speech to them—Coke's reply—The King's rejoinder—Bacon's opinion—Coke's reply—The Chancellor puts a question to the Judges, which Coke alone refuses to answer—Again summoned before the council—The report of the council to the King—Coke again summoned before them—The sentence of the Privy Council upon him—Desired to revise his reports—Suspended from his office—Again appeared before the Privy Council—Letter of Buckingham to Bacon—The King himself enters into the examination of Coke's reports—Coke again summoned before the Privy Council—The Chancellor's reports to the King of the examination—The examination suspended—Letter of Coke to Buckingham.

THE question involving the clashing jurisdictions of the courts of law and equity had hardly been settled, when the great case of Commendams occurred, in which Coke displayed all his

wonted integrity, and uncompromising opposition to the orders of mere sovereign power.

This great question arose from an argument raised by Sergeant Chibborn, in the Court of Common Pleas, when speaking in a private cause against the policy of commendams in general.*

In his arguments he maintained that the translation of bishops was against the common law, and that, with regard to commendams, the King had no power to grant them, except in cases of necessity, for the keeping of hospitality, which necessity could never happen, since no man was obliged to keep hospitality beyond his means.

This erroneous, though bold line of argument, was reported to the King by Dr. Bilson, Bishop of Winchester, as being contrary to the King's prerogative, and, in consequence, the Attorney General, Bacon, informed the judges that it was his Majesty's pleasure they should not proceed to argue this case until they had first consulted his Majesty, and for this purpose he held it necessary that they should put off the day appointed for the argument.

“It is the King's express pleasure,” said Bacon on the twenty-fifth of April 1616, when

* In *Colt and Glover v. Bishop of Lichfield and Coventry*. Hobart's Rep. 193.

addressing Sir Edward Coke, and the rest of the judges, " that because his Majesty's time would not serve to have conference with your lordships and the judges, touching his cause of Commendams, at his last being in town, in regard of his Majesty's other more weighty occasions, and for that his Majesty holdeth it necessary upon the report, which my Lord of Winchester, who was present at the last argument by his Majesty's royal commandments, made to his Majesty, that his Majesty be first consulted with, ere there be any farther proceeding by argument by any of the judges, or otherwise ; therefore that the day appointed for the further proceeding by argument of the judges, in that case, be put off till his Majesty's farther pleasure be known upon consulting him, and to that end your lordship forthwith signify his commandment to the rest of the judges, whereof your lordship may not fail."*

But these reverend judges, upon consultation, unanimously agreed not to be diverted from their regular course by this royal mandate ; and, accordingly, they proceeded to argue and determine the cause, justifying what they had done in the following noble letter to the King :

* Bacon's Works, vol. 6. p. 94.

“ Most dreaded and gracious Sovereign,

“ It may please your most excellent Majesty to be advertised that this letter, here inclosed, was delivered unto me, your Chief Justice, on Thursday last in the afternoon, by a servant of your Majesty’s Attorney-General ; and letters of like effect were on the day following sent from him by his servants to us, your Majesty’s justices of every the courts at Westminster.

“ We are, and ever will be, with all faithful and true hearts, according to our bounden duties, to serve and obey your Majesty, and think ourselves most happy to spend our times and abilities to do your Majesty true and faithful service, in this present case mentioned in this letter.

“ What information hath been made out unto you, whereon your Attorney doth ground his letter, from the report of the Bishop of Winchester, we know not ; this we know, that the true substance of the cause summarily is this, that it consisteth principally upon the construction of two acts of parliament, the one of the twenty-fifth year of King Edward the Third, and the other of the twenty-fifth year of King Henry the Eighth, whereof your Majesty’s Judges, upon their oaths, and according to their best knowledge and learning, are bound to deli-

ver their true understanding faithfully and uprightly ; and the case being between two for private interest, and inheritance earnestly called on for justice and expedition.

“ We hold it, therefore, our duty to inform your Majesty, that our oath is in these express words : that, in case any letter came unto us, contrary to law, that we do nothing by such letters, but certify your Majesty thereof, and go forth to do the law, notwithstanding the same letters.

“ We have advisedly considered of the said letter of Mr. Attorney, and, with one consent, do hold the same to be contrary to law, and such as we could not yield to by our oaths, assuredly persuading ourselves that your Majesty being truly informed that it standeth not with your royal and just pleasure to give way to them.

“ And therefore knowing your Majesty’s zeal to justice to be most renowned, therefore we have, according to our oaths and duties at the very day prefixed, the last Term, proceeded and thereof certified your Majesty, and shall ever pray to the Almighty for your Majesty, in all honour, health, and happiness, long to reign over us.*”

To this firm and temperate address, signed by

* Act of Council, Bacon’s Works, vol. 5, p. 424.

Edward Coke, Henry Hobart, Laurence Tanfield, and the nine Puisne Judges, the King replied by a letter, in which he told them that the reason they assigned with regard to their oaths were very weak, and again desired them not to proceed in the cause until his return to London.

When, soon afterwards, the King came to town, the judges were summoned to his presence, before the council table at Whitehall, June 6, 1616, where his Majesty, like a true Stuart, entered at some length into the matters contained in the judges' letter, declared that he approved neither of its matter nor manner of expression; condemned them for their remissness in suffering counsellors at the bar to deal in impertinent discussions about his prerogative, and told them they ought to have checked such sallies, nor suffered such insolence upon the crown. With regard to their own business, he thought fit to acquaint them, that deferring their discussions and hearings upon necessary reasons, neither delayed nor denied justice: it was rather a pause of necessary prudence, "as it was always proper and adviseable to consult the King when the crown is concerned;" and farther, he told them that it was wide of the case to say, that it was a point of private contest between subject and subject; for the Bishop, who was defendant,

pleaded for a commendam only in virtue of the royal prerogative. Finally, the King asserted that neither of the parties required expedition, and told these learned and reverend judges, that their letter to him was "couched indecently, and failed in the form."

Upon this, they all kneeled, confessed themselves in error, and solicited pardon. But with regard to the facts of the case, Coke manfully stood his ground on behalf of his brethren, contending that his Majesty's command for staying the proceedings was a delay of justice, against the law, and contrary to their oaths; moreover, that as they intended to manage the proceedings, the King's prerogative would not have been concerned.

The King told them, in reply, that for judges of the law to pronounce whether his prerogative was concerned or not, was very preposterous management; and his Majesty then required Lord Ellesmere, the Chancellor, to declare whether he, that is, the King, or the judges best understood the law, and the oath of a judge.

Ellesmere had no anxiety to set his opinion above that of the common law judges; he therefore referred the matter to the King's Counsel.

The Attorney-General, the great Bacon, had no such diffidence to deter him in this case; he

declared boldly for the King's view of the question, and demanded of the judges "whether this refusal of theirs to make a stay, was not nearer to a breach of their oaths?" for they were sworn to counsel the King; therefore, not to give him counsel until the business was over, was in effect not to give it at all.

Coke knew that no counsel was justified in holding this language to any judge of the courts of Westminster; he knew that the privy council had no jurisdiction to stay any proceeding in the court of King's Bench, and he therefore told Bacon, that he had far exceeded his authority, for it is the duty of counsel to plead before the judges, and not against them.

Bacon replied with equal energy; he told the judges that the King's council were obliged by their oaths, and by their offices, to plead, not only against the greatest subjects, but against any body of subjects, were they courts, judges, or even the commons assembled in parliament, and moreover, he considered, that by making this challenge, the judges had highly outraged their character. Bacon then appealed to the King, with whom Coke declined to contend.

The Chancellor having decided that the King was right, the council then put the following questions to the judges:

“ In a case were the King believed his prerogative or interest concerned, and requires the judges to attend him for their advice, whether in such a case they ought not to stay proceedings till his Majesty had consulted them?” All the judges immediately said, “ Yes,” except Coke, who told the council, “ when the case happened, he should do that which should be fit for a judge to do.”*

There can be but one opinion of the single-handed courage of Coke in this transaction, or of the iniquity of this examination. It was equally disgraceful to Bacon, and to the pedant his master ; for Bacon knew better things, and should have scorned to lend himself to so disgraceful an attack upon the judges of the land.

Bacon knew that every judge, by his oath, promised to “ deny no man common right,” † their very commissions directing them to do justice according to the laws and customs of England. He knew, too, that several judges before his time had been fined for acting against the law, even when supported by a warrant from the King. The King’s prerogative, therefore, could not justify a judge for delaying justice, when

* Bacon’s Works, vol. 5, p. 433.

† 18 Edward III, s. 4.

the King's express warrant could not. The judges were illegally summoned before the King, sitting in his own cause ; for at worst, theirs was but an error in judgment, a failure for which they could not be punished,* even if they had declared the King's prerogative void, or an act of parliament against law. Coke had seven years previously, in Dr. Bonham's case, declared that they had the power,† and many years afterwards the great Lord Holt applauded him for his decision.‡ A judge is not, even in the most extreme case, accountable in matters of which he has jurisdiction, for any mistakes or errors of judgment.§

Unfortunately for the independence of the judges of those days, they held their places at the pleasure of the crown. They had to please not only the King, but the King's favourites ; and it was not until the passing of the act of the first year of the reign of George the Third, that they were rendered, by that King's noble recommendation, for ever independent of the frowns of the court. By its enactments, they now hold their places for life, and can only be removed

* Plowden, 13, A. 9. Coke 68. Carter 19.

† Reports, vol. 8. p. 118. ‡ 12 Modern Reports, p. 987.

§ 1 Salkeld, 397.

upon an address from both houses of parliament.

Coke was at the mercy of the court ; he had no act of parliament to appeal to against the demands of a favourite, or the injustice of the King. Villiers, afterwards Duke of Buckingham, the reigning favourite, was resolved upon his removal. He was therefore again summoned before the Privy Council on the 26th July, 1616. The following letter from the council to the King well explains the nature of the charges against him, and the answers he made.*

“ May it please your Majesty,

“ The Lord Chief Justice presenting himself at the Board, your Solicitor signifieth that he was by your commandment to charge him for certain acts and speeches wherein your Majesty was much unsatisfied, which were in number three : 1, an act done ; 2, speeches in high contempt uttered in the seat of justice ; 3, uncomely and undutiful carriage in the presence of your Majesty, the Privy Council, and the judges.

“ Concerning the first, which was the act, it was done when he was in a place of trust, and concealed a statute of twelve thousand pounds, taken of Sir Christopher Hatton, to the use of

* M.S. of the Rev. T. Baker, Biog. Britt.

Sir Edward Coke, when he was your Majesty's Attorney General, not to pay a debt of good value, due unto your Majesty, nor to accept of a discharge for the same: and, for the better strengthening of the statute, there was likewise a bond taken of six thousand pounds with sureties to the same effect. So that Sir Christopher Hatton lay charged under the penalty of eighteen thousand pounds, not to pay the debt, nor agree to any surrender, discharge, or release, and no ways to assent thereto; that this offence was aggravated by the denial and protestation made of late by the Lord Chief Justice, that he was not privy to the condition of the defeazance, whereas the statute was taken to himself by indenture, whereof Sir Christopher Hatton's part was found, but the other was not found.

“ That he was privy to the penning of it, inserted words with his own hands, and that Mr. Walter and Mr. Bridgeman, his own counsel, were witnesses thereunto.

“ The second, words spoken in the King's Bench, the last day of Hilary Term last, in a case of *Glanvil v. Allen*, whereof the solicitor made a narrative relation, and charged the Lord Chief Justice to have given too much heart and encouragement to that cause, and that he had too constantly directed the jury, turning them

thrice from the bar, that if they set their hand to a bill after judgment, he would foreclose them the court. And farther, in another cause the same day, said that the common law of England would be overthrown, and the light of the law would be obscured. And that all this was confirmed by good witnesses. The third and last point, was his indecent behaviour before your Majesty, your council, and your judges. And that consisted of two points : first the exception he took at your learned counsel in your presence, for speaking at your commandment ; the second, that your Majesty having opened yourself in the case of commendams, and satisfied the judges that your Majesty sending for them had no intent to delay justice, and the question being put to the rest of the judges, whether they did hold it a delay of justice, that your Majesty had sent a message in the case ; or if your Majesty should send hereafter a like case, wherein your Majesty's prerogative were concerned, the rest of the judges submitting themselves, he only dissented from all the rest.

“ This being the effect of your solicitor's charge, your Lord Chief Justice made answer, that he would, by their Lordship's favour, begin with the last ; and said for part of the challenge and taking exception at your Majesty's counsel

learned, speaking in the case by your Majesty's commandment, he acknowledged it for an error and submitted himself.

“ To the part that upon the question asked of the judges, touching stay of proceedings, he denied, when all the rest did yield ; his answer was that the question yielded many particulars which suddenly occurred to his mind, and caused him to make his answer, that when the time should be, he would do that which should become an honest and a just judge.

“ For the bond, he saith, that that assurance was in hammering a year and a half ; they were *Elephanti Libelli*, and now twelve years being past, it was no great marvel if his memory was short, especially since, about that time, he was employed, first in the great service of the Priests, Treason and Cobham, and the next year in the Powder Treason, and that if any things had slipped in the multitude of business, that these services blot out his errors ; secondly, *ab impossibili*, which was, that the debt remaining at the time was thirty-three thousand pounds, and that young Mr. Hatton's means were very mean, and not above 100 marks a year ; and as soon as it came to the possibility, when he first heard of Sir Robert Rich's offer, he then submitted it before such time as he remembered the statute or defeazance. Thirdly, *cui bono*, he said he had

never any profit by it ; but the presentation to a benefice, and all the rest was his wife's ; fourthly, that the crown was content with the establishment, and he did but take a bond to continue it, and throughout all this he did submit himself to your Majesty, and the board, saying, *actus non facit reum nisi mens sit rea*.

“ For his speech in the King's Bench, &c., he saith that whatsoever was done was by the common consent ; and for those speeches many of them were spoken, and he knew by whom they were spoken, but not by himself, and then offered four considerations : 1. That the court, unto which, nevertheless, he did except, was *ad informandum non ad convincendum*. 2. They were witnesses but on one side. 3. That the interrogatories might be drawn too short. 4. That it was concerning words spoken four months ago, which being spoken among many, may be diversely reported. And therefore he produced a paper, written by himself, containing as he saith the true passage of the day, (which paper we present unto your Majesty herewithal) being, as he saith, set down by himself the day after, *sedato animo*. And touching these words, that the common law would be overthrown, and the judges have but little to do at the assizes, because the light of the common law would be obscured, he

confesseth to the words, but saith they were not spoken the same day, but at another time in the case of Sir Anthony Mildmays, and added that he would not maintain a difference between the two courts, nor bring it into question. Yet if it were an error, he may say *erravimus cum patribus*, and therefore alleged the examples. First, the article against Cardinal Wolsey, 20 Henry VIII, wherein the same words were used, viz : that such proceedings in the chancery tended to the subversion of the common law ;* secondly, the book intituled the Doctor and Student ; thirdly, an opinion of the judges in Throgmorton's case, in Queen Elizabeth's time. And added also further, that for the time to come, no man should ever make any opposition, so that the judges having received your Majesty's commandment by the Attorney-General, that no bill of that nature should be hereafter received, he and his brethren have caused the same to be entered as an order in the same court, which shall be observed, which being the effect of his answer, we have thought to add withal that before us, as well in speech as in action, he behaved himself modestly and submissively."†

Such was the report of the council to the King

* Article 20.

† Biog. Britt.

with regard to the legal proceedings and errors in judgment of this great lawyer, whom they examined without authority, and whom the King afterwards condemned without justice.

Four days afterwards, viz: on the 30th of June, Sir Edward Coke was again summoned to the council chamber, where he was informed that his Majesty was by no means satisfied with his excuses, although out of regard to his former services, he was not disposed to deal with him heavily, and therefore the King had decreed, 1. That he be sequestered the council chamber until his Majesty's pleasure be farther known. 2. That he forbear to ride his summer circuit as justice of assize. 3. That during the vacation, while he had time to live privately, and dispose himself at home, he take into consideration and review his book of reports, wherein, as his Majesty is informed, be many extravagant and exorbitant opinions, set down and published for positive and good law.

And if in reviewing and reading thereof, he find anything fit to be altered and amended, the correction is left to his discretion. Amongst other things; the King was not well pleased with the title of the book wherein he entitled himself Lord Chief Justice of England, whereas he could challenge no more than Lord Chief Justice of

the King's Bench. And having corrected what in his discretion he found meet in these reports, his Majesty's pleasure was, that he should bring the same privately before himself, that he might consider thereof, as in his princely judgment should be found expedient.

Coke submitted himself, with all humility, to this scandalous sentence, and the Privy Councillors who disgraced themselves by condemning a work they did not understand, gave him some hope of recovering his Majesty's favour upon his improved behaviour! In conclusion, as he was about quitting the council, the Lord Treasurer, the Earl of Suffolk, told him he had yet another cause of complaint against him, viz : his suffering his coachman to ride bare headed before him ; this he desired might be forborne in future. To this kick at the fallen lion, Coke replied that his coachman did it for his own ease, and not by his order.

This revision of the reports of Sir Edward Coke for some time occupied the attention not only of their author, but of the King, his favourite Villiers, the Chancellor Egerton, the judges, and Bacon, then Attorney-General. They had however, no chance with Coke in such an investigation. He easily out-argued them all, for he revelled amidst precedents ; being com-

pletely at home amongst law cases and acts of parliament.

In the early part of October, in the same year, Bacon and Egerton reported to the King* that Sir Edward Coke had appeared before the council "in order that he should enter into a view and retraction of such novelties and errors, and offensive conceits, as were dispersed in his reports; that he had had good time to do it, and we doubted not but he had used good endeavour in it."

Upon this occasion, it appears that Coke delivered to the council a paper, containing the result of his voyage of discovery amongst his own reports, in search of blunders. This review gave little satisfaction to either Egerton or Bacon, for it did not contain any acknowledgments of errors "on those three heads which we principally respected, which were the rights and liberties of the church, your prerogative, and the jurisdiction of other your courts, my Lord, has scarcely fallen upon any, except it be the Prince's Case, which also yet seemeth to stand but upon the grammatical of French and Latin.

"My Lord did also give his promise, which your Lordship shall find at the end of his writ-

* Bacon's Works, vol. vi, p. 121.

ing, thus far in a kind of common-place, or theses, that it was sin for a man to go against his own conscience, though erroneous, unless his conscience be first informed and satisfied.’

The Lord Chancellor then intimated to Sir Edward Coke the King’s pleasure that he should still forbear his sitting at Westminster, but that he was not restrained from any private exercise of his place of Chief Justice.

This report produced a letter from the favourite, Villiers, to Bacon, dated at Theobalds, October 3, 1616, in which, speaking of the Reports, he said, “for three reasons his Majesty doth mislike them,” and adding his desire that Bacon again would confer with the Chancellor on this, to King James, very vexatious affair. The King was against any delay in turning Coke out of his Chief Justiceship. “He thinketh it,” continued Villiers, “too long and uncertain a delay to keep the bench so long void from a Chief Justice.”

This kind of expeditious proceeding did not accord with the equitable notions of either Eger-ton or Bacon. They therefore told the King on the 6th of October, 1616,* that if Coke was again called to further explain the errors found

* Bacon’s Works, vol. vi, p. 124.

in his Reports, they foresaw the consumption of "length of time, not so much for your learned council to be prepared, for that is almost done already, but because he himself, no doubt, will crave time of advice, to peruse his own books, and to see whether the collections be true, and that he be justly charged, and then to produce his proofs that those things which he shall be charged with were not conceits and singularities of his own, but the acts of court and other like things, tending to excusation or extenuation, wherein we do not see how the time of divers days, if not of weeks, can be denied him." And they further informed his Majesty, "that the absence of a Chief Justice, though it should be for a whole term, as it hath been often upon sickness, can be no hindrance to common justice; for the business of the King's Bench may be dispatched by the rest of the judges, his voice in the star chamber may be supplied by any other judge that my Lord Chancellor shall call, and the trials by *nisi prius* may be supplied by commission."

Upon this opinion, James resolved to still farther examine Coke before the Privy Council, and cause him to take into consideration those several points in his reports which most annoyed the court.

There is, in the Harleian manuscripts, a paper addressed to Sir Francis Bacon, which contains the King's sentiments and reasons for coming to this resolution, as well as a tacit confession, that hitherto, neither the King nor his Privy Council had made any satisfactory progress in the improvement of the disrelished reports. Their great author, in his replies, evidently scorned the ignorance of his critics.

In this paper, probably written about the 10th of October, 1616, the King commenced by laying down certain rules for the further progress of this affair, and to this end told his servants "that although the discharging and removing of his Majesty's officers and servants, as well as the choice and advancement of men to place, be no council chamber matters, but belong to his Majesty's princely will and secret judgment, yet his Majesty will do his council this honour, that in his resolutions of that kind his council shall know them first before others, and shall know them, accompanied by their causes, making, as it were, a private manifesto, or revealing of himself to them without parables.

"Then to have the report of the Lords, touching the business of the Lord Coke, and the last order of the Council read.

* No. 7006.

“ That being done, his Majesty further willeth to declare, that he might, upon the same three grounds, in the order mentioned of deceit, contempt, and slander of his government, very justly have proceeded then, not only to have put him from his place of Lord Chief Justice, but to have brought him in question in the Star Chamber, which would have been his utter overthrow; but then his Majesty was pleased for that time only to put him off from the council table, and from the public exercise of his place of Chief Justice, and to take farther time to deliberate.

“ That in his Majesty’s deliberation, besides the present occasion, he had in some things looked back to the Lord Coke’s former carriage, and in some things looked forward to make some farther trial of him.

“ That for things past, his Majesty had noted in him a perpetual turbulent carriage, first towards the liberties of the Church and estate ecclesiastical, towards his prerogative royal and the branches thereof, and likewise towards all the settled jurisdictions of all his other courts, the High Commission, the Star Chamber, the Chancery, the Provincial Councils, the Admiralty, the Duchy, the Court of Requests, the Commission of Inquiry, the new boroughs in

Ireland ; in all which he had raised troubles, and new questions, and lastly in that which might concern the safety of his royal person, by his exposition of the laws in cases of high treason.

“ That beside the actions themselves, his Majesty, in his princely wisdom, hath made two special observations of him, the one that he having in his nature not one part of those things which are popular in men, being neither civil nor affable, nor magnificent, he hath made himself popular, by design only, in pulling down government. The other, that whereas his Majesty might have expected a change in him, when he made him his own by taking him to be of his council ; it made no change at all, but to the worse ; he holding on all this former channel, and running separate courses from the rest of the Council, and rather busying himself in casting fears before his Council concerning what they should not do, than joining his advice what they should do.

“ That his Majesty, desirous yet to make a further trial of him, had given him the summer vacation to reform his reports, wherein there be many dangerous conceits of his own, uttered for law, to the prejudice of his crown, parliaments, and subjects, and to see whether by this he would in any part redeem his fault : but that his

Majesty hath failed of the redemption he desired, but hath met with another kind of redemption from him which he little expected; for as to the reports, after three months' time and consideration, he hath offered his Majesty only five animadversions, being rather a scorn than a satisfaction to his Majesty; whereof one was, that in the prince's case he hath found out the French statute, which was Fitz-Aisé, whereas the Latin was *Primogenitus*; and so the Prince is Duke of Cornwall in French, and not Duke of Cornwall in Latin; and another was, that he had sent Montagu to be Chief Justice, in Henry the Eighth's time, when it should have been in Edward the Sixth's, and such other stuff; not falling upon any of those things which he could not but know were offensive.

“ That hereupon his Majesty thought good to refresh his memory, and out of many cases, which his Majesty caused to be collated, to require his answer to five, being all such as were expatiations of his own, and no judgments; whereunto he returned such an answer as did neither justify himself or elude the matter; so, as his Majesty seeth plainly, *antiquum obtinet.*”

On the seventeenth of October the Lord Chancellor, with the Attorney-General Bacon, and others of the Council, summoned Sir Ed-

ward Coke before them, and delivered to him in writing the cases in his Reports, to which the King objected ; and on the twenty-first, four days afterwards, Coke delivered in his answers, which were on the following day transmitted to the King by the Chancellor, with the following letter, dated from York House, October 22, 1616, both copied from the originals by Stephens :—*

“ To the King’s Most Excellent Majesty,—

“ According to your Majesty’s directions signified unto me by Mr. Solicitor, I called the Lord Chief Justice before me on Thursday, the 17th inst, in the presence of Mr. Attorney, and others of your learned council. I did let him know your Majesty’s acceptance of the few animadversions which, upon review of his own labours, he had sent, though fewer than you expected, and his excuses fewer than you expected, as namely in the Prince’s case, the want of the original in French, as though if the original had been *primogenitus* in Latin, then he had not in that committed any error.

“ I told him, farther, that because his books were many, and the cases, as he saith therein,

* Bacon’s Works, vol. vi, p. 397.

five hundred, your Majesty, out of your gracious favour, was pleased that his memory should be refreshed ; and that he should be put in mind of some passages, dispersed in his books, which your Majesty, being made acquainted with, doth as yet distaste, until you hear his explanation and judgment concerning the same ; and that out of many, some few should be selected, and that at this time he should not be pressed with more, and these few not to be special and principal points of the cases, which were judged, but things delivered by discourse, and as it were by expatiation, which might have been spared and foreborn without prejudice to the judgment in the principal cases.

“ Of this sort Mr. Attorney and Mr. Solicitor made choice of five specially, which were read distinctly to the Lord Chief Justice ; he heard them with good attention and took notes thereof in writing ; and lest there might be any mistaking either in the declaring thereof to him, or in his misconceiving of the same, it was thought good to deliver unto him a true copy, upon consideration whereof, and upon advised deliberation, he did yesterday in the afternoon return unto me in the presence of all your learned Council a copy of the five points before mentioned, and his answer at large to the same,

which I make bold herewith to present to your Majesty, who can best discern and judge of this little which is done, and what may be expected of the multiplicity of other cases of the like sort, if they shall be brought to further examination.

“ All that I have done in this hath been by your Majesty’s commandment and direction, in presence of all your learned council, and by the special assistance and advice of your attorney and solicitor.

“ I know that obedience is better than sacrifice, for otherwise I would have been an humble suitor to your Majesty to have been spared, in all service, concerning the Lord Chief Justice. I thank God, I forget not the fifth petition, ‘ *Dimitte nobis debita nostra sicut,*’ etc. ; but withal I have learned this distinction ; there is, first, ‘ *Remisio vindictæ ;* 2. *Remisio pœnæ ;* 3. *Remisio judicii ;*’ the two first I am past, and have freely and clearly remitted. But the last, which is of judgment and discretion, I trust I may in christianity, and with good conscience, retain, and not to trust too far, &c.

“ I must beseech your Majesty’s favour to excuse me for all that I have before written, but specially for this last needless passage, wherein I fear your Majesty will not allow me to play the divine, without learning and out of season, and

so with my continual prayers to God to preserve your Majesty with long, healthful, and happy life, and all earthly and heavenly felicity, I rest your Majesty's humble and faithful subject and servant,

“ T. ELLESMERE, Canc.

Accompanying this letter was the paper of questions propounded to Coke by the Privy Council, and his answers, which were as follow:—

“ Questions demanded of the Lord Chief Justice of the King's Bench by his Majesty's commandment.

“ 1. In the case of the Isle of Ely, whether his Lordship thinks that the resolution there spoken of to be law, that a general taxation upon a town to pay so much towards the repair of the sea banks, is not warranted to be done by the commissioners of sewers; but that the same must be upon every particular person, according to the quantity of his land, and by number of acres and perches, and according to the portion and according to the profit which every person hath there. Lib. 10.

“ 2. In Darcy's case, whether his Lordship's judgment be as he reporteth it to be resolved; that the dispensation or license of Queen Eliza-

beth to Darcy to have the sole importation of cards, notwithstanding the statute of 3 Edward IV, is against law. Lib. 11.

“ 3. In Godfrey’s case, what he means by this passage, Some courts cannot imprison, fine and amerce, as ecclesiastical courts, before the ordinary, archdeacon, &c. or other commissioners, and such like, which proceed according to the canon or civil law. Lib. 11.

“ 4. In Dr. Bonham’s case, what he means by this passage, that in many cases the common law shall control acts of Parliament, and sometimes judge them to be merely void; for when an act of Parliament is against common right and reason, the law shall control it and adjudge it void. Lib. 8.

“ 5. In Bagge’s case, to explain himself where he saith, that to the Court of King’s Bench belongs authority not only to correct errors in judicial proceedings, but other errors and misdemeanors extra judicial, tending to the breach of the peace, oppression of subjects, or to the raising of faction, controversies, debate, or to any manner of misgovernment, so no wrong or injury can be done, but that this shall be reformed or punished by due course of law. Lib. 11.”

To all these questions, Sir Edward Coke learn-

edly and elaborately replied, and that so successfully, that no attempt was made by Bacon to rejoin, nor did any of the other law officers venture to hazard a reply. They were angry, and silent.

The very attempt, however, to decry the legal knowledge of Coke, shows the spirit with which they were actuated, and the extremities to which they were reduced for an accusation; since, whatever inclination they might have to degrade him, it is quite clear, to every modern lawyer, that, to attack Coke on his law, was, of all attempts, the least likely to be attended with success; and Bacon, whatever were his other claims to pre-eminence, had no power here to contend successfully with Coke. We are quite justified, therefore, in the conclusion, that if a stronger ground of complaint could have been discovered, Bacon would not have readily made his onset in a legal argument.

Coke's replies may be seen at length in the report of the Chancellor Ellesmere to the King: but they are much too long to be inserted in this work: they were, however, unsatisfactory to the court, quite complete.*

Sir Edward Coke having thus answered the

* Bacon's Works, vol. vi, p. 397.

five objected cases of the judges, the matter appears to have rested for nearly a twelve-month, after which it would seem, from the following letter of Coke to Buckingham, and the letter in consequence to the judges, that some steps were taken to prosecute the examination. There is no date to either of these letters, but, as Stephens conjectured, they were probably written in either October or November, 1617 :—

“ To the Right Honourable his singular good Lord, the Earl of Buckingham, of his Majesty’s Privy Council.

“ May it please your Lordship,

“ Above a year past, in my late Lord Chancellor’s time, information was given to his Majesty, that I having published eleven works or books of reports, containing above six hundred cases, one with another, had written many things against his Majesty’s prerogative ; and I being by his gracious favour called thereunto, all the exceptions that could be taken to so many cases in so many books, fell to five, and the most of them, too, were in passages of general words, all which I offered to explain in such sort, as no shadow should remain against his Majesty’s prerogative, as in truth there did not ; which, whether it were related to his

Majesty, I know not, but thereupon the matter hath slept all this time, and now the matter, after this ever blessed marriage, is renewed, and two judges are called by my Lord Keeper to the former that were named,

“ My humble suit to your Lordship is, that if his Majesty shall not be satisfied with my former offer, viz. by advice of the judges to explain and publish, as is aforesaid, those five points, so as no shadow may remain against his prerogative, that then all the judges of England may be called thereunto.

“ Secondly, that they may certify also what cases I have published for his Majesty’s prerogative and benefit, for the good of the church, the quieting of men’s inheritances, and good of the commonwealth, for which purpose I have drawn a minute of a letter to the judges, which I assure myself your Lordship will judge reasonably ; and so reposing myself on your Lordship’s protection, I shall ever remain, &c.

“ EDWARD COKE.”

The following is a copy of the above referred to minute.

“ To all the Judges of England, and the Barons of the Exchequer.

“ Whereas in the time of the late Lord Chan-

cellor, intimation was given unto us, that divers cases were published in Sir Edward Coke's Reports, tending to the prejudice of our prerogative royal; whereupon we, caring for nothing more, as by our kingly office we are bounden, than the preservation of our prerogative royal, referred the same, and thereupon, as we are informed, the said Edward Coke being called thereunto, the objections were reduced to five only, and most of them consisting in general terms, all which Sir Edward Coke offered, as we are informed, to explain and publish, so as no shadow might remain against our prerogative.

“ And whereas of late two other judges are called to the others formerly named. Now our pleasure and intention being to be informed of the whole truth, and that right be done to all, do think it fit that all the judges of England and barons of the Exchequer, who have the principal care of our prerogative and benefit, do assemble together concerning the discussions of that which as aforesaid was formerly referred, and also what cases Sir Edward Coke hath published to the maintenance of our prerogative and benefit, for the safety and increase of the revenues of the church, and for the quieting of mens' inheritances, and the general good of the commonwealth; in all which we require

your advice, and careful considerations, and that before you make any certificate to us, you confer with the said Sir Edward, so that all things may be the better cleared.”

Notwithstanding this appeal of Coke to have the prosecution of the examination expedited, nothing was done. The court had attained its object—he was suspended from his office, and the King was not solicitous to have the suspension removed, and a judge of Coke’s stubborn integrity again in the Court of King’s Bench. The judges were not pressed for their report; and they did not voluntarily proceed in so ungracious a task.

CHAPTER IX.

1616.

The real causes of Coke's suspension from the Court of King's Bench—The case of the chief clerkship of the Pleas—Resolution to discharge him—Bacon's letter to the King enclosing a form for the purpose—Warrant for his successor—Bacon advises the King as to Montague—Further notices of the review of Coke's reports—Copy of Coke's supersedeas—Coke's behaviour on the occasion—The opinion of his legal contemporaries—The letters of Mr. Chamberlain—The Queen befriends him—Sir Henry Montague appointed his successor—Bacon's letter to Buckingham—Speech of the Chancellor to Sir Henry Montague when he was sworn to his place—Incomes of the judges in the time of Coke—Notice of Robert Cecil first Earl of Salisbury—Of Villiers Duke of Buckingham.

THUS ended the judicial career of the great Edward Coke, the glory of the English common law; for his suspension was never removed,

nor his repentance sufficient for the court. To King James, and to his son, Charles the First, his liberal principles were equally unsatisfactory.

The reasons assigned for his suspension were perfectly puerile, not one of them being sufficiently important to disqualify even a petty juryman. They did not involve a single charge affecting his integrity as a judge. The real cause of his removal must be sought for in other reasons, still more disgraceful to the court.

Sir John Roper, the first lord Teynham, had agreed to resign the office of chief clerk of the Pleas in the Court of King's Bench, a place worth four thousand pounds per annum, to two trustees for the benefit of the royal favourite, the infamous Carr Earl of Somerset. In this arrangement Coke, as chief justice, had given his requisite consent. Somerset however, was disgraced, before this plan could be carried into effect, and Villiers Duke of Buckingham had succeeded him, as the royal favourite. In favour of this nobleman, Sir Francis Bacon, the attorney-general, proposed the same arrangement as for Somerset, and, upon mentioning it to Coke, the chief justice replied, "I am too old and cannot struggle." This reply the

court naturally enough understood to imply his assent to the transfer; and Bacon, who evidently had his doubts of Coke's acquiescence, could not refrain his joy, at some words to the same effect, that were accidentally dropt by Coke. He wrote immediately to Villiers, on the twenty-second of January 1615, the following letter:—

“ Sending to the King upon occasion, I could not fail to salute you by my letter, which that it may be more than two lines, I add this for news, that as I was sitting by my lord chief justice, upon the commission for indicting of the great person, one of the judges asked him, whether Roper were dead; he said, for that for his part, he knew not; another of the judges answered, it should concern you, my Lord, to know it; wherefore, he turned his speech to me and said, ‘ No, Mr. Attorney, I will not wrestle now in my latter times.’ ‘ My Lord,’ said I, ‘ you speak like a wise man.’ ‘ Well,’ said he, ‘ they have had no luck with it that have had it.’—‘ I said again those days be passed.’ Here you have the dialogue to make you merry—but in sadness I was glad to perceive he meant not to contest.”

To such miserable conclusions, from slight accidental expressions of Coke, was Bacon reduced, in order to make a case for his client.

When, however, Lord Teynham did actually resign the clerkship, Sir Edward Coke denied the promise, and proposed that the revenues of the place should be applied to the increase of the small salaries then paid to the judges.* There is no doubt the court regarded this as the greatest of all Coke's crimes ; for it was immediately determined to remove him, and to appoint a more subservient successor.† This step being resolved upon, the attorney-general received directions for preparing the form of discharge for Coke, and the appointment of a successor. Consequently, on the thirteenth of November 1616, Bacon thus addressed the King :

“ I send your Majesty a form of discharge for my Lord Coke, from his place of chief justice of your bench.

“ I send also a warrant to the Lord Chancellor, for making a writ for a new chief justice, leaving a blank for the name, to be supplied by your Majesty's presence, for I never received your Majesty's express pleasure in it.

“ If your Majesty resolve on Montague

* Bacon's Works, vol 4, p. 657.

† Roger Coke's detection, p. 90—he calls, however, Lord Teynham by mistake, Lord Thanet.

(then recorder of London) as I conceive and wish, it is very material as these times are, that your Majesty have some care that the recorder succeeding be a temperate, and discreet man, and assured to your Majesty's service.

“ If your Majesty, without too much harshness, can continue the place within your own servants, it is best ; if not, the man upon whom the choice is like to fall, which is Coventry,* I hold doubtful for your service ; not but that he is a well learned and an honest man, but that he hath, as it were, been bred up by my Lord Coke, and seasoned in his ways.” Bacon had had too much trouble with Coke, not to have a lively anxiety to avoid all transactions with any men actuated by his independent principles.

It would appear, by one of Bacon's letters, written only eight days afterwards, November 21, 1616, that a commission was actually prepared, empowering the judges to review Sir Edward Coke's reports ; but I am not aware that this commission, though certainly issued, was ever acted upon. “ I had prepared it before I had received your Majesty's pleasure,” said Bacon, when addressing the King, “ but I was

* Thomas Coventry, Esq. afterwards Lord Keeper.

glad to see it was in your mind as well as in my hands.

“ In the nomination which your Majesty made of the judges to whom it should be directed, your Majesty could not name the Lord Chief Justice that now is, (Montague) because he was not then declared ; but you could not leave him out now without discountenance.”

About a twelvemonth subsequently, Oct. 11th, 1617, Bacon thus wrote to Buckingham :*

“ The accounts of the summer circuits, as well as that of the Lent circuit, shall be ready against his Majesty’s coming. They [meaning the commissioned judges] will also be ready with some account of their labours concerning Sir Edward Coke’s reports, wherein I told them his Majesty’s meaning was not to disgrace the person, but to rectify the work, having in his contemplation rather posterity than the present.”

This is the last notice I can find of the proceedings of this very idle court of review. The grave judges, who were appointed as commissioners, must have been disgusted with their task ; no doubt they avail themselves of every plea that would postpone so disagreeable an investigation. The objections to Coke’s reports,

* Bacon’s Works, vol. vi, p. 174.

raised by Bacon and the other law officers of the crown, were trumpery in the extreme ; and Coke's brother lawyers, who knew the depth of his researches, and the industry with which he explored every theme he undertook, could have no other feelings than those of dislike to such an employment.

Coke had long before this received his dismissal from the court of King's Bench. The supersedeas suspending him from his office was dated on the 16th of November, 1616, and it thus tersely expressed the royal pleasure :

“ For certain causes now moving us, we will that you shall be no longer our chief justice to hold the pleas before us, and we command you, that you no longer interfere in that office, and by virtue of this presence, we at once remove and exonerate you from this office.”*

This warrant, there is no doubt, had been for some time expected by Sir Edward Coke. He knew the power of removal possessed by the King, was fully aware of his displeasure, and that he had taken no steps to avert his indignation. He had, therefore, in preparing himself for the worst, nobly resolved to lose his seat on the bench rather than part with his integrity.

* Harleian MSS.

His enemies endeavoured to show that he was confounded with the loss of his place : for there is in the Birch Manuscripts a letter, dated November 19, 1616, from Mr. John Castle, in which he says —*

“ A thunderbolt has fallen upon my Lord Coke in the King’s Bench, which has overthrown him from the roots. The supersedeas was carried to him, the last week, by Sir George Coppin, who at the presenting of it saw that magnanimity, and supposed greatness of spirit, to fall into a very narrow room, for he received it with dejection and tears.”

It is entirely upon this letter, that the talented author of the “*Curiosities of Literature*” founds his remarks. “*When,*” says Mr. D’Israeli,* “*Coke was once himself in disgrace, his high spirit sank, without a particle of magnanimity to dignify the fall. His big words, and tyrannical courses, when he could no longer exult, ‘that he was upon his wings again,’ sunk with him as he presented himself, on his knees, to the council table. His disgrace was a thunderbolt which overthrew the haughty lawyer to the roots. When the supersedeas was carried to him by*

* No. 4176—64.

† *Curiosities of Literature*, 2nd series, vol. 1, p. 320.

Sir George Coppin, that gentleman was surprised, on presenting it, to see that lofty spirit sink into a very narrow room, for Coke received it with dejection and tears." The writer from whom I have copied these words, adds, "O tremor et suspiria non cadunt in fortem et constantem." The same writer encloses a punning distich :

*Jus condire cocus potuit ; sed condere jura,
Non potuit, potuit condere jura cocus.*

Six years afterwards," continues Mr. D'Israeli, "Coke was sent to the Tower, and then they punned against him in English. An unpublished letter of the day has this curious anecdote. The room in which he lodged in the Tower had formerly been a kitchen ; on his entrance, the Lord Chief Justice read upon the door, 'This room wants a Cook.' They twitched the lion in the toils which held him. Shenstone had some reason in thanking heaven that his name was not susceptible of a pun."

This time, however, Coke was upon his wings, for when Lord Arundel was sent by the King to the prisoner, to inform him that he would be allowed "eight of the best learned in the law to advise him for his cause," our great lawyer thanked the King, "but he knew himself to be

accounted to have as much skill in the law as any man in England, and therefore needed no such help, nor feared to be judged by the law."

Coke might well be moved to tears at finding disgrace undeservedly brought upon him in his old age, and with no other intent than to obtain a successor who would pander to the wishes of the royal favourite, promote the despotism of the crown, and not oppose its inroads upon the liberty of the people.

The grief of Coke, if it did shew itself, could not be for himself. The tears of one who did his duty as conscientiously as Coke did, need not be very copious, when at last he was unjustly deprived of his office—an office of whose uncertain tenure he was well assured, since he lived in days when the deprivation of a judge was by no means a rare occurrence.

Thus in 1627, Sir Randolph Carew, Chief Justice of the King's Bench, was discharged from his place "for some cause of displeasure conceived against him; but for what," says Judge Croke, "was not generally known."* His real crime was objecting to the illegal and arbitrary imposition of ship-money. In 1635, Sir Robert Heath, Chief Justice of the common

* Croke Car 52, Rushworth, vol. i, 420.

pleas, shared the same fate, and again returned to the bar, where, by special command of his Majesty, he practised as a junior sergeant.

The common feeling of the professional contemporaries of Coke upon his disgrace, was probably expressed by Sir George Croke, who, in noticing his removal from the court of King's Bench, describes him as "a prudent, grave, and learned man in the common laws of this realm, and of a pious and virtuous life."*

After all the endeavours of Coke's enemies to shew that he was confounded and dispirited by the loss of his place, the letters of other contemporary authorities prove that this was certainly an unfounded assertion. Thus Mr. Chamberlain, in a letter to Sir Dudley Carleton, dated October 26, 1616, observes :

"Lord Coke hath been called twice or thrice this term before the Lord Chancellor, and the King's learned council, to give a reason for divers things delivered in his reports.

"The objections, at first, were eight and twenty, which either were so weak in themselves, or so well answered, that they are now reduced to five, wherein they are not sufficiently satisfied, but have referred his answers over to the King.

* Croke, Car. 375.

“ It is not the least part of his humiliations to be convented in this point before such judges as Sergeant Crew, Sergeant Montague, and Sergeant Finch, the Attorney-General, (Bacon) and the Solicitor, (Yelverton) whereof the greater part, except the solicitor, are held no great men in law ; and withal to find such coarse usage as not once to be offered to sit down, and so unrespective and uncivil carriage from the Lord Chancellor’s men, that not one of them did move a hat, or make any other sign of regard to him ; whereof the Queen taking notice, his Majesty has since sent word that he would have him well used.”*

The Queen appears, at this time, to have favoured Sir Edward Coke very materially, probably through the influence of his lady.

On the 9th of November, 1616, Mr. Chamberlain told Sir Dudley Carleton, “ the Lord Coke hangs still in suspense, yet the Queen is said to stand firm for him, and to have been very earnest in his behalf, as likewise the Prince.”† Her noble exertions, we have seen,

* Nichol’s Progresses of James, vol. iii. 194. Birch MSS. 4173.

† Nichol’s Progresses of James, vol. iii, p. 226.

prevailed not, and Sir Edward Coke being suspended from his office, Mr. Chamberlain told his friends on the fourteenth of the same month, “ the Lord Coke is now quite off the hooks, and order given to send him a supersedeas from executing his place.

“ The common speech is that four P’s have | overthrown and put him down ; that is, Pride, Prohibitions, Premunire, and Prerogative.”*

In retailing this popular gossip, Chamberlain had evidently no ill feeling towards the late Chief Justice ; for, on the following 23rd of November, when addressing his correspondent, he thus remarks upon his displacement :

“ If Sir Edward Coke could bear his misfortunes constantly, it were no disgrace to him, for | he goes away with a general applause and good opinion. And the King himself, when he told his resolution at the council table to remove him, yet gave this character, that he thought him no ways corrupt, but a good justice—with so many other good words, as if he meant to hang him with a silken halter.

“ Hitherto he bears himself well, but especially towards his lady, without any complaint of her

* Ibid, vol. iii, p. 226. Birch MSS. 4173.

demeanour towards him ; though her own friends are grieved at it, and her father sent to him to know all the truth, and to show him how much he disallowed her courses, having divided herself from him, and disfurnished his house in Holborn, and at Stoke, of whatsoever was in them, and carried all the moveables and plate she could come by, God knows where, and retiring herself into obscure places, both in town and country.

“ He gave a good answer likewise to the new Chief Justice, who sending to him to buy his collar of S.S. he said he would not part with it, but leave it unto his posterity, that they might one day know that they had a Chief Justice to their ancestor.

“ He is now retired to his daughter Sadlers, in Hertfordshire,* and from thence, it is thought, into Norfolk.

“ He hath dealt bountifully with his servants ; and such as had places under him ; he hath willed them to set down truly what they gained, and he will make it good to them, if they be willing to tarry and continue about him.”†

* Ann Coke, married to Ralph, son and heir of Sir Thomas Sadler.

† Nichol's Progresses of James, vol. iii, p. 228. Birch MS.

According to a succeeding letter of Mr. Garrards, Coke was still at Mr. Sadlers on the 7th of December following, and had been with the King, at Newmarket, twice.

There were certainly many minor causes for the King's anger towards Coke, some of which have been lost to us, for I find occasional allusions to unrecorded disputes. Thus, Lord Bacon tells us, in his *Apothegms*, No 8, that Sir Edward Coke being vehement against the two provincial councils of Wales and the North, said to the King, "There was nothing there but a kind of confusion and hotch-pot of justice ; one while they were a star chamber, another while a King's Bench, another a Common Pleas, another a commission of Oyer and Terminer." His Majesty answered : "Why, Sir Edward, they be like houses which I visit on a progress, where I have not, nor can have, such distinct rooms of state as I have here at Whitehall, or Hampton Court."*

Coke was suspended from his office on the 30th of July, 1616, and Sir Henry Montague succeeded him on the 15th of the following November. But the court was made wise by experience. Before Montague was appointed, they

* Bacon's Works, vol. ii, 402.

obliged him to sign the desired agreement with regard to Lord Teynham's place; and he was hardly sworn into his office, before the deputies of Villiers were regularly admitted, and then Bacon, in writing to the royal favourite, thus describes his own good management.*

“ I did cast within myself, that if your Lordship's deputies had come in by Sir Edward Coke, who was tied (that is under an agreement with Somerset) it would have been subject to some clamour from Somerset, and some question what was forfeited—by Somerset's attainder being but a felony to the King, but now they coming in, from a new Chief Justice, all is without question or scruple.” This letter is dated November 29, 1616, only fourteen days after Montague's appointment.

It is evident that Coke, by sacrificing his principles, might have retained his place. Lady Elizabeth Hatton told Bishop Hackett that Coke was offered his place again on the King's Bench, if he would agree to bind himself with a golden chain; but, adds the Bishop, “ he stood upon a rule made by his own wisdom, that a judge must not pay a bribe, or take a bribe.”†

* Bacon's Works, vol. v, 457.

† Life of Lord Keeper Williams, vol. ii, p. 120.

When, on the 18th of November, 1616, the Lord Chancellor Ellesmere addressed Sir Henry Montague, Coke's successor, upon his being sworn in chief justice, he took occasion to say all that he indirectly could against his predecessor ;—managing the charge with very considerable ingenuity, as well as the greatest gravity. He told him that his was a rare case ; “ For you are called to a place vacant not by death or cession, but by a motion and deposing of him that held the place before you.

“ It is dangerous, in a monarchy, for a man, holding a high and eminent place, to be ambitiously popular ;—take heed of it.

“ In hearing of causes, you are to hear with patience, for patience is a great part of a judge ; better hear with patience, prolixity, and impertinent discourse of lawyers and advocates, than rashly, for default of the lawyer, to ruin the client's cause : in the one, you lose but a little time, by the other, the client loseth his right, which can hardly be repaired.

“ Remember your worthy grandfather, Sir Edward Montague ; when he sat chief justice in the Common Pleas, you shall not find that he said vauntingly that he would make *Latitats Latitare* ; when he did sit Chief Justice in this place, he contained himself within the word of

the writ to be the chief Justice, as the King called him, “ ad placita coram nobis tenenda,” but did not arrogate or aspire to the high title of ‘ Capitalis Justicia Angliæ,’ or ‘ Capitalis Justiciarius Angliæ,’ an office and title which Hugh de Burgh, and some few others, held in the times of the Baron’s wars; and whilst the fury thereof was not well ceased. He devised not any new construction of laws, against commissioners and judges of sewers, nor to draw them into the danger of Premunire, and, whilst they were in this court disputing of tricks, and moot points concerning taxes, and making new gutters or walls, to suffer a great part of the realm to be surrounded and overflowed, for the winds nor the sea could not be stayed with such new constructions and moot points. He never strained the statute of the 27th Edward III, c. 1, to reach to the Chancery, and to bring that court and the ministers thereof, and the subjects that sought justice there, to be in danger of premunire, an absurd and an inapt new construction of that old statute. You know whose word it is ; and how vain it hath appeared, upon full examination thereof, you do know very well.

“ He never made *teste Edwardo* Montague, to jostle with *teste me ipso*, but knew that the King’s

writ *teste me ipso* was his warrant to sit in this place.

“ He doubted not but if the King, by his writ under his great seal, commanded the judges that they should not proceed *Rege inconsulto*, then they were dutifully to obey, and to consult with the King, not in this court, but in another, that is, the court of chancery.

“ He challenged not powers from this court to correct all misdemeanours, as well extra-judicial as judicial, nor to have power to judge statutes and acts of parliament void, if they considered them to be against common right and reason, but left the parliament and the King to judge what was common right and reason. I speak not of impossibilities or direct repugnances. Remember also the removing and putting down your late predecessor, and by whom, which I often remember unto you, that it is the great King of Great Britain, whose great wisdom, and royal virtue, and religious care for the weal of his subjects, and for the due administration of justice can never be forgotten.”*

Thus ended the chief justiceship of Sir Edward Coke ; his crimes, as enlarged upon by the

* Moor's Reports, 826.

Chancellor, were of a nature much too important in the eyes of King James, to admit of forgiveness ; since he was independent of the frowns of royalty, and would not sell the justice of his court, even to obtain the King's approbation.

The silence of Coke's enemies with regard to his conduct as a judge, betrays the truth of the case—that calumny could urge nothing against him. That he made mistakes in the administration of the law is certain, but they were of minor importance. Thus, as before noticed, he claimed more for his court in the dispute with the court of chancery, than was legally its due ; but such errors were never before or since deemed justifiable reasons for removing a judge from his office. He descended, therefore, from the Bench with the approbation of all good men ; with a conscience void of offence ; and that he had no self-reproaches to disturb him, is evident from the tenor of his parting address in his last institute, which was found among his papers at his decease in manuscript. It was probably one of his last written papers. In this, he eloquently and earnestly implores all justices, and judges of the land to “ fear not to do right to all, and to deliver their opinions justly according to law.”

Such were the last expressed feelings of Sir Edward Coke in his professional capacity ; such

the motives by which his legal decrees were governed ; they were such as no good man can fail to applaud ; but, unfortunately for him, they were not the principles of the Court of James the First.

The income derived by the judges in the time of Sir Edward Coke, arose principally from the fees of their office. The salaries were small. In the account of “ fees and salaries payable out of his Majesty’s Exchequer,” in the reign of King James, I find the salaries of the judges thus stated :

“ To Sir Edward Coke, knight, lord chief justice of England, for his fee at £224 19s. 9d. by the year, and £33 6s. 8d. by the year for his circuits—£258 6s. 5d.

“ To Sir John Doddrige, knight, one of the justices of that bench, for his fee at £154 19s. 8d. by the year, and £33 6s. 8d. by the year for his circuits. £188 6 8

To Sir John Croke, knight, for
the like 188 6 8

To Sir Robert Houghton,
knight. 188 6 8

Besides their yearly allowance for their diets on the circuits.

The salary of the chief judge of the common pleas was considerably inferior, but the Puisne

judges were paid as well as those of the king's bench.

Thus Sir Henry Hobart, chief justice, received £194 19s. 9d.

Warburton, Winch, and Nichols, the Puisne judges, each received £188 6s. 8d.

The barons and chief baron of the court of exchequer, were not paid so much as the other judges. Thus Sir Lawrence Tanfield received for his fee &c. as lord chief baron, £188 6s. 8d.

The Puisne barons, Snigg, Altham and Bromley, each received £133. 6s. 8d.*

These salaries, however inadequate to the importance of the office, were large in proportion to what the earlier lawyers received; for, according to Dugdale, chief justice Markham, in the reign of Edward I had a salary of only one hundred and seventy marks, and even in the reign of Henry VIII the salary was only increased to thirty pounds per annum. Though the salaries of the judges were small, they were not very hardly dealt with in regard to long sittings. Sir John Fortescue, who was chief justice to Henry VI. tells us in his *De Laudibus Legibus Angliæ*, cap. 51: "The justices

* Plumian Library.

of England sit not in the King's courts above three hours in a day, that is to say from viii of the clock in the forenoon until xi. complete ; for in the afternoon these courts are not held or kept."

In Lord keeper Guilford's time, the chief justiceship of the court of common pleas was worth about four thousand pounds per annum ;* the increase arising from fees : and the altered value of money being taken into consideration, that was probably about the amount received by Sir Edward Coke, for his chief justiceship of the king's bench.

It was then usual to allow the judges a sum of money for their diet and travelling expenses when on circuit. This, however, did not amount to much : it is thus stated, in the same abstract of the revenue to which I have just referred, that to Sir Peter Warburton, knight, one of the justices of assize in the county of Norfolk, was paid yearly for his fee £12. 6s. 8d.—and the same amount to Sir James Altham.

During the ten years that Sir Edward Coke presided over the courts of common pleas and king's bench, Robert Cecil, the first Earl of Salisbury, was prime minister of England. To

* Life, by North, vol. 1, p. 188.

him, Coke owed his chief-justiceship, and many other great and important favours. His patronage was alike powerful and unwavering, and, after Coke's marriage with his niece, was of course not less ardent than before.

This minister was bred as it were for celebrity, —having for his father the great Lord Burleigh, and for his mother, Burleigh's second wife, Mildred Cooke, the most talented and learned woman of her age. Cecil therefore had all that example and precept could furnish on the part of his parents. Yet nature on her part was sparing of her gifts, at least as regarded personal advantages, for he was deplorably crooked, and had a weak and sickly constitution. But by his mental powers he was admirably fitted to be prime minister to such a monarch as James I. Bred in the school of Burleigh, he was cool, cautious, and insinuating; he regarded war as an unqualified horror, and reserved to himself the arts of negotiation, and of secret dealings, as the field of his glory. He was watchful, calculating, and an adept at dissimulation; he could argue with the most learned, perplex the most forward and the most eloquent; he steadily kept his attention on the manufactures and trade of England; and, on some occasions, he seemed willing rather to sacrifice the glory of his

country than that the reign of peace should be broken.

James naturally loved such a minister, raised him to the peerage, granted him honours and estates in abundance, and attended him in his last hours with the most friendly kindness. They had been friends long before James ascended the throne of England ; had even held a secret correspondence while Cecil was Elizabeth's minister ; and to him James mainly attributed his peaceful accession to the English crown. Political considerations, therefore, induced James to continue and protect Cecil as his first minister.

Cecil was born in 1550, the same year as Coke ; but his constitution was never equal to that of his friend : he died in 1612 ; Coke surviving him two and twenty years.

When Coke was deprived of his office, there is no record of any assistance rendered by Cecil, to prevent such a flagrant injustice. He was not the man to interfere for another, when it might have endangered his own place. He was sorry for his friend, but silent probably lest Buckingham, should make *him* the next martyr to his interests.

His conduct in this case was cowardly, and disgraceful ; he knew a worthier course than this.

His proceedings, also, with regard to Raleigh, in having disgracefully suffered him to remain so long in prison * have been justly censured. Yet at Raleigh's trial, as one of the commissioners, he acted openly and nobly ;—acknowledging to the court, that Raleigh had been not only his friend, but the friend of his father Burleigh, and that although the prisoner was not a privy councillor, yet he had often been called to consultations. And when the too passionate address of Coke had prejudiced the court against Raleigh, Cecil manfully spoke out :—addressing the prisoner he said :—“ Excepting your faults (I call them no worse), by God, I am your friend !—the heat and passion in you, and the Attorney's zeal in the King's service, make me speak this.” As Coke became more ferocious, Cecil became more earnest for the prisoner, and he at length, indignantly exclaimed, “ Be not so impatient, good Mr. Attorney, but give him leave to speak.” And it was this which made Coke sit down in court, and for some time refuse to proceed.

It is more than probable, that the hearts of all the commissioners were with Raleigh.

* At his death, Raleigh, had been nine years in the Tower.

Cecil could not but feel the iniquity of producing as evidence, the confession of Lord Cobham, a living witness who had since retracted his charge. Yet the whole court appeared confused and deceived, by the ignorance and cowardice of the judges, Popham, Anderson, Gawdie, and Warburton, who decided that Raleigh's request for the production of Cobham need not be granted. Warburton's reasons were weak, and against all rules of evidence. "I marvel Sir Walter that you, being of such experience and wit, should stand on this point, for so many horse stealers may escape if they may not be condemned without witnesses. My Lord Cobham hath perhaps been laboured withal, and to save you his old friend, it may be that he will deny all that he hath said."*

Of Cecil's speeches in parliament, we have few reports, and such as have come down to us, are not very eloquent ; but they were business-like, and full of good sense. The affairs which he had to conduct were by no means so difficult and intricate as those which fell to the lot of his far more able successor. Some of his plans for raising the public revenue were absurd and

* State Trials, vol 1, p. 212.

paltry : thus the scheme for procuring money by creating the order of baronets, was of Cecil's propounding.

That he prostrated his dignity before Somerset and Buckingham is very certain ; but then he only followed the example of some of the greatest men of the age ; and it must be remembered, that he lived in days when such lamentable scenes were neither remarkable nor held to be uncommonly disgraceful.

Thus compromising in his conduct, Cecil was content to share in the odium of many measures, of which he was not the author. His was not the age of bold and open systems of government, but of trifling measures and of paltry expedients.

He left behind him a son and successor, William, second Earl of Salisbury ;—who, after the Commons had voted the House of Lords useless, was elected of their number for Lynn, and was one of the three degenerate lords who took their seats in 1649, as members of the lower house.*

* Lord Howard of Eskricke for Carlisle, and the Earl of Pembroke for the county of Berks, were the only others of the gallant nobles of England, who thus disgraced their order. The commons were evidently flattered by their presence, and

To Villiers, Duke of Buckingham, Sir Edward Coke owed the loss of his place, as Charles I. owed to the same statesman the civil troubles of his reign.

The character of this royal favourite of two kings has not been sketched by a single favouring hand. He was an instance of that sudden elevation, to which in those days the public were too well accustomed. He was proud, haughty, and overbearing; had some talents, and great zeal. The very fact of his being a royal favourite, insured his unpopularity; for of all who were thus elevated, Essex, perhaps, was the only one who retained the favour of the people, without losing the smile of the court. But Essex was composed of different materials. He was warm-hearted, open, generous, and brave; stood by his friends with energy, and left them not in the hour of their adversity—was affable to his inferiors, and even ventured to quarrel with his mistress Queen, whenever he thought her wrong.

Buckingham had none of these good qualities;—he was the handsome, jovial, boon companion, whom James selected for his good looks, and

voted them members of all the committees on which they had before sat as peers. Parl. Hist. vol. 19, p. 107.

promoted for his subserviency. Charles retained him for the same good qualities : he was willing to assist his master to govern without a parliament, and was zealous and faithful ; moreover he had, fortunately for England, talents by no means equal to the post he attempted to fill. His schemes, therefore, for raising a revenue, which was the chief difficulty that the King had to encounter, were foolish and contemptible. Wiser heads might have employed the prerogative of the King in a much more profitable manner ; for if that prerogative gave the King the right to grant monopolies in trade and manufactures, it gave the crown a complete power over the entire foreign and home trade of the kingdom. If the King could grant exclusive privilege to, and exact duties from, one person, he of course could do so from many. Loans, and a national debt, were then, it is true, unknown ; the forced advances made by the subject, under that name, could not be deemed such, since they were never intended to be repaid. The mode of raising a revenue by borrowing of the subject, was a refinement of an age much farther advanced in the art of government, than that in which Buckingham was Prime Minister of England.

Buckingham had not, when he found the public odium attached to his name, the courage

to resign his post, and to advise the King to choose other more popular advisers. Twice he tried the experiment of assembling a parliament, and twice the Commons thus assembled impeached him; and to save him from their vengeance, as often was the parliament dismissed. The hand of the assassin Felton saved him probably from the scaffold; for had he lived to see the days of the long parliament, there is little doubt but that he would have shared the same fate as Strafford and Laud, who with the same political principles, had much greater talents, and more singleness of purpose, than their equally ill-fated predecessor.

It is very probable that Villiers had the same leaning towards popery, which distinguished the house of Stuart. His conduct towards the French protestants at the siege of Rochelle, was at once suspicious and impolitic.

His death appears to have been the act of a mere political enthusiast, in which he had no companion, and no farther object than the ridding the world of a man he regarded as the curse of his country.

Felton was no doubt a maniac: his actions betrayed that he was one of those wild visionaries, who consider themselves born to be avengers of their country's wrongs. He had no

personal animosity against his victim ; nothing to expect but the gallows, as a reward for his exploit ; he made no attempt to escape, and at once confessed his crime.

We have seen, in our own time, a prime minister of England fall before the hand of the murderer—another mono-maniac, who conducted himself much as Felton did ; acknowledged the crime ; quietly awaited the capture after the murder ; and defended himself on the plea that he had been injured by the neglect of some of the members of the government of England, and that he had no other means of drawing the attention of the government to his case.

Felton and Bellingham I believe to have been insane, and yet both died justly on the scaffold ;—for if the plea of insanity were allowed only in very extreme cases of confirmed mania, it would perhaps be productive of much good : we might then hear of fewer cases like the above. A madman generally knows when he has done wrong ; and, unless raving, he can always be restrained by the fear of punishment.

The history of Buckingham is in a great degree interwoven with that of Sir Edward Coke. He sometimes stood his friend, but was much oftener the advocate of his rival Bacon. By his brother's marriage with Frances Coke, he became interested in Coke's welfare, and he never

afterwards appears to have deserted him. He owed Coke some recompense for depriving him of his place ; for it was certainly owing to Coke's stubbornness in the case of the sinecures for which the King's former favourite had the reversion, that made Buckingham resolute to deprive him of his chief justiceship. To please his friend, James I. would have degraded every judge in Westminster Hall.

Buckingham was long the object of the angry jealousy of the Commons. They attributed to him the stubbornness with which the King treated all attacks made upon his privileges, and the repeated readiness with which he dissolved the parliament, whenever Buckingham was in danger. James appeared on all occasions as careful of Buckingham's honour, as of his own. Thus on the 14th of March 1625, the Chancellor of the Exchequer brought down a message from the King to the house, in these words :

“ That his Majesty hath taken notice of a seditious speech uttered in the house, by Mr. Clement Coke ;* the words were to this effect, “ That it were better to die by an enemy, than suffer at home.” Yet his Majesty in his wisdom has forborne to take any course therein, or to send to the house about it,

* Son of Edward Coke.

not doubting but the house would in due time correct such an insolence. But his Majesty has found, that his patience hath wrought to an ill effect, and hath emboldened one since, to do a strange act, in a strange way and unusual ; that is Dr. Turner, who on Saturday last, without any ground of knowledge in himself, or proof tendered to the house, made an inquiry of sundry articles against the Duke of Buckingham as he pretended ; but indeed against the honour and government of the King and his late father.

“ This his Majesty saith is such an example, that he can by no means suffer, though it were to make inquiry into the meanest of his subjects, much less unto one so near unto himself, and doth wonder at the foolish impudence of any man, that can think he should be drawn out of any end, to offer such a sacrifice, much unworthy the greatness of a king, and master of such a servant : and therefore his Majesty can no longer use his wonted patience, but desireth the justice of the house against the delinquents, not doubting but such course will be taken, that he shall not be constrained to use his regal authority, to right himself against these two persons.”*

* Parl. Hist. vol 6, p. 433.

The indignation of Charles, for the insult offered to his friend Buckingham, was certainly well excited by the way in which these queries were propounded to the house, by the doctor. The King and Buckingham were evidently united in the disgrace. The following is a specimen :

“ Whether the unreasonable, exorbitant, and immense gifts of money and lands, on the Duke and his relations, be not the cause of impairing the King’s revenue, and impoverishing the crown ?

“ Whether the multiplicity of offices, conferred upon the Duke, and others depending upon him, whereof they are not capable, be not the cause of the evil government of the kingdom ?

“ Whether recusants in general, by a kind of connivancy, be not borne out and increased, by reason the Duke’s mother and father-in-law are known papists ?

“ Whether the sale of offices, honours, and places of judicature, with ecclesiastical livings and promotions, a scandal and hurt to the kingdom, be not through the Duke ?”

Such were the galling questions put to the house by Dr. Turner, and such was the indignant message it drew forth from the King. The

Commons immediately proceeded to debate upon this message, adjourned the question, and again resumed, after some days, the discussion,—in which Littleton, Wentworth, Selden, and Noy argued in support of Dr. Turner. No one of any consideration answered them : the Duke had evidently few friends there. The question was soon neglected and forgotten. The house granted the King a supply of money, and in the same breath impeached the Duke. Charles consequently summoned them before him, and very warmly warned them to beware how they meddled with subjects which were not within their province.

“ Remember, ” said the angry King, “ that parliaments, are altogether in my power, for their calling, sitting, and dissolution ; therefore as I find the fruits of them good or evil, they are to continue, or not to be. “ Mr. Coke told you, it was better to be eaten up by a foreign enemy, than to be destroyed at home : indeed, I think, it more honour for a King to be invaded, and almost destroyed by a foreign enemy, than to be despised by his own subjects.”*

* Parl. History, vol. 6, p. 451.

Such were the efforts of the King to protect Buckingham from the anger of the Commons ; efforts which were required almost to the dying hour of his favourite. He fell in August 1628 ; leaving to Laud and Wentworth, the task of ruling England, by expedients, which succeeded for twelve years, and then brought both themselves and their master to an untimely end.

Had Buckingham remained a private gentleman, he would probably have fulfilled its duties with credit and advantage. When raised out of his natural sphere with unusual rapidity, he acted with faithfulness to his master ; but nature never intended him for a statesman. He blundered on, in all the confidence of ignorance ; imagined that his retention of power was an event of importance to the King. He fancied that he had a genius for everything ; directed naval operations ; commanded military expeditions ; was the demi-god of the courtiers, who puffed him up with vanity ; was humane, and warm in his attachments ; promoted and enriched his relations ; was of devoted loyalty ; and finally died as he was about to proceed abroad in the service of his King.

Villiers was only thirty six years of age when he was murdered in the house at

Portsmouth, a portion of which still subsists.* In Felton's hat was found a paper which he had sewn within the lining, bearing evident marks of being the effusion of a brain over excited by political enthusiasm. The original is in the possession of Mr. Upcott, late of the London Institution, and it differs considerably from that given by Clarendon, and others, I subjoin it on the authority of Mr. Brayley.†

“ That man is cowardly, base, and deserveth not the name of a gentleman o^r souldier, that is not willinge to sacrifice his life for the honour of his God, his Kinge, and his countrie.

“ Let no man commend me for doeing of it, but rather discommend themselves as the cause of it; for if God had not taken away o^r harts for o^r sinnes, he woulde not have gone so longe unpunished.

“ IO. FELTON.”

Felton appears to have set about the murder

* It is, according to Mr. Brayley, the house, No. 10, at the upper end of the High Street.

† Graphic Illustrator, 241.

with the cool cunning which characterizes men in his frame of mind ; for having, according to Sir Henry Wotton, purchased a common two-penny butcher's knife, in a cutler's shop on Tower Hill, he sewed the sheathe to the lining of his pocket, " that he might, at any one moment, draw forth the blade with one hand — for he had maimed the other."

He arrived at Portsmouth, and found Buckingham surrounded by all the bustle of preparation, hurrying on the expedition for the relief of Rochelle.

" At Portsmouth," says Wotton " on Saturday, 23rd of August, he passed without any suspicion, in such a time of so many pretenders to employment, into an inner chamber, where the Duke was at breakfast (the last of his repasts in this world) accompanied by men of quality and action. And there, a little before the Duke's rising from the table, he went and stood, expecting till he should pass through a kind of lobby, between that room and the next, where divers were attending him. Towards which passage as I conceive, somewhat darker than the chamber which he left, while the Duke came with Sir Thomas Fryer close at his arm, in the very moment as

the said knight withdrew himself from the Duke, this assassin gave him with a back blow a deep wound into his left side, leaving the knife in his body, which the Duke himself pulling out, on a sudden effusion of spirits, he sunk under the table in the next room and immediately expired.”*

Felton, in his examination before the privy councillors, showed great firmness; and, when threatened with the rack by the Earl of Dorset, expressed his willingness to suffer anything the King might think fit to inflict upon him: “Yet, this,” added he, “must I tell you, by the way, that if I be put upon the rack, I will accuse you my Lord Dorset, and none but yourself.”†

This firmness made the council pause. Charles thought that the rack might extort a confession, implicating some suspected confederates; but, upon consulting the twelve judges, they unanimously declared that, by the law of England, the torture was not allowable in any case.

* The Ellis correspondence, vol. 3, p. 267. First series.

† Reliquæ Wotton. 112 Edeln. 1651, Bayley's Illustrator 242.

Buckingham's monument is in the east end of Portsmouth church. According to the inscription, it was erected, three years after his decease, by his sister Susan, Countess of Denbigh.

END OF VOL. I.

LONDON:

SCHULZE AND CO., 13, POLAND STREET.

JIL,

