ILLUSTRATIONS OF ENGLISH HISTORY.

BY REV. J. R. PRETYMAN, M.A.

FALL OF THE FEUDAL SYSTEM.

(*Continued from page* 186.)

I have stated in the last paper some of the causes of this change, and some of the steps by which it was accomplished. A few more remarks seem due to this subject. The reign of Henry VII. has been mentioned as the era when feudalism ceased to be an important element in the public polity. In connection with this statement, I have mentioned the Act of Parliament passed by that King, facilitating the alienation of feudal tenure and property. I may now mention another of his Acts, which tended much to diminish the power and consequence of the feudal nobles, and to discourage the system of feudalism : his Act for limiting the number of the retainers which might be kept by each feudal chief. A well-known and characteristic anecdote of the application of this Act by the author of it, may here be mentioned. In receiving the King on a visit, De Vere, Earl of Oxford, displayed an excessive number of his dependants, dressed in the livery of his house, with a view of doing the greater honour to his royal guest. When, after passing a few days with the Earl, the King was taking his departure, he observed to his host, "My Lord, I thank you for your good cheer, but my attorney must speak to you about the number of your retainers, for I cannot have my laws broken to my face." Accordingly, the Attorney-General was ordered to prosecute the Earl, who in the end was sentenced to pay £10,000, an enormous fine for those days. The proceeding was well worthy of the cold temper and calculating policy of the King. His policy in general was in every way to depress the nobility and to raise up the middle class ; and in this policy he was followed by Henry VIII. and Elizabeth. Indeed, at this era of European history, the feudal system in other countries also where it had prevailed, was fast falling to the ground, and the same policy of hastening its destruction

and of erecting a despotism on its ruins was being carried out by the Sovereigns of those countries. Some remnants of the feudal forms remained, however, in this country, for nearly two centuries longer; but the spirit of feudalism had ceased to operate, and its forms had now no other use but to enable the Crown to exercise a certain domination over the nobility, and that of a kind which, now that the purpose of feudalism were extinct, was felt to be vexatious and oppressive. The Crown had still retained some portion of its right over certain of the nobility in matters of wardship, reliefs, and marriage; and the exercise of these rights, so far as they could be exercised, by Charles I. for the purpose of raising money without Parliamentary aid, was one of the many ways in which he sowed the seeds of that disaffection which resulted in the Rebellion with all its disastrous consequences. The oppressiveness of these lingering feudal rights of the Crown led, after the Restoration, to the abolition of them in the passing of the Act of the thirteenth year of Charles II., for the Abolition of the Court of Wardship and Marriage. Notwithstanding, however, this final extinction of the feudal rights of the Crown—unless we consider the custom of Bishops doing homage to the Sovereign, before they receive the "livery of seizin" (such is the feudal term) of their temporalities, a remnant of feudal usage—yet some of the incidents of feudalism remain in antiquated forms at the present day. The rights still possessed by Lords of Manors are relics of feudal practice. In particular, the copyhold estates held under them, are surviving representations of tenure in villain-socage. In these estates we find still a resemblance of ancient reliefs in the "heriots," which in some manors are paid to the Lord before a new copyholder is admitted to a tenure or estate. "Heriot" is the old Saxon word equivalent to a "relief." The amount and nature of "heriot" varies with the different manors wherein the custom of heriot still exists. Sometimes it is a fixed payment of money according to the "custom of the manor." In some cases the Lord has the right to take the best chattel or piece of personal property to be found upon the estate of a deceased copyholder before a new possessor is admitted to the enjoyment of it. Fines, also, on the alienation of these estates, and on the

admission of a new holder, are payable to the Lord. Many of the mere forms and phrases of feudalism are observed in the admission of new copyholders, and in the manner of holding the annual Courts of Lords and Manors, which preserve their ancient name of "Courts-Baron" and "Courts-Leet," and rendering "suit and service" to the Lord of the Manor. There is also a feudal right remaining in many of the market towns, where a toll or tax is paid to the Lord of the Manor on the exposure of articles for sale in the market. The amount of this toll is regulated by custom. It is a relic of the old right of "tallage" (a word with which the word "toll" is cognate), which the Lords of Manors exercised over the towns in their demesnes, often in a very arbitrary manner, and which, in feudal days, was a fertile source of oppression on the one side, and of complaint on the other. All these incidents connected with existing lordships of manors are curious; and the reference here made to them may serve towards bringing down the history of feudalism to this day, and towards reflecting some light upon the past history of that institution.

It is remarkable that when, by the Act of the thirteenth year of Charles II., the Crown was deprived of all its remaining feudal powers, the surviving rights of Lords of Manors should have been spared. The reason for this unequal arrangement is to be sought in the wish of Charles' Government to conciliate all classes of his subjects: the nobility, by giving up a vexatious remnant of power over them, and the Lords of Manors by leaving *their* rights untouched. Indeed, throughout the whole history of feudalism is seen a disposition on the part of holders under the Crown to obtain a relaxation of their obligations to the Kings, and at the same time to retain their own rights over those persons who held under them.

CONSTITUTIONS OF CLARENDON, A.D. 1164.

These Constitutions or Statutes take their designation from a place at which they were enacted, a village in Wiltshire, where the kings of those days had one of their numerous residences, and where Henry II. held on this

occasion a great Council or Parliament. The subject of this piece of legislation may be briefly stated to have been "the Relations of Church and State"—a subject on which great divisions and disputes have occurred on many occasions in modern history: and as the Constitutions of Clarendon are of so much importance from their nature and consequences, I propose to dwell upon them at a greater length than is usual in these papers. I shall first transcribe a translation of these Constitutions, which are written in the barbarous law Latin of that period; I shall then give a short summary of them, and make some observations tending to explain their wording and their significance.

Now, the Constitutions of Clarendon, as I take them from Selden's work on the old laws of England, called "Janus Anglorum," a work which any advanced student of constitutional history would be wise in perusing, are as follows:—

CONSTITUTIONS OF CLARENDON.

I. If any dispute concerning any advowson or presentation of churches shall arise between laymen, or between ecclesiastics and laymen, or between ecclesiastics, let it be tried and determined in the Court of our Lord the King.

II. Churches belonging to the fee of our Lord the King cannot be given away in perpetuity without the consent and grant of the King.

III. Ecclesiastics arraigned and accused of any matter, being summoned by the King's Justiciary, shall come into his Court to answer there concerning that which it shall appear unto the King's Court is cognizable there; and shall answer in the Ecclesiastical Court concerning that which it shall appear is cognizable there; so, that the King's Justiciary shall send to the Court of Holy Church to see in what manner the cause shall be tried there. And if an Ecclesiastic shall be convicted or confess his crime, the Church ought not any longer to give him protection.

IV. It is unlawful for Archbishops, Bishops, and any dignified clergyman of the realm, to go out of the realm without the King's licence; and if they shall go, they

shall, if it so please the King, give security that they will not, either in going, staying, or returning, procure any evil or damage to the King or the kingdom.

V. Persons excommunicated ought not to give any security for remaining,* nor take any oath, but only find security and pledge to stand to the judgment of the Church in order to absolution.

VI. Laymen ought not to be accused unless by certain and legal accusers and witnesses, in presence of the Bishop, so that the Archdeacon may not lose his right, or anything which should thereby accrue to him; and if the offending persons be such as that none will or dare accuse them, the Sheriff being thereto required by the Bishop, shall cause twelve lawful men of the vicinage or town, to make oath before the Bishop to declare the truth of the matter according to their conscience.

VII. No tenant-in-chief of the King, nor any of the officers of his demesne, shall be excommunicated, nor shall the lands of any of them be put under an interdict, unless application shall first have been made to our Lord the King, if he be in the kingdom, or if he be out of the kingdom, to his Justiciary, that he may do right concerning such person; and in such manner, as that what shall belong to the King's Court, shall be there determined, and what shall belong to the Ecclesiastical Court, shall be sent thither, that it may be there determined.

VIII. Concerning appeals, if any shall arise, they ought to proceed from the Archdeacon to the Bishop, and from the Bishop to the Archbishop; and if the Archbishop should fail in doing justice, the case shall in the last place be brought to our Lord the King, that by his precept the dispute may be determined in the Archbishop's Court, so that it ought not to proceed any further without the consent of our Lord the King.

IX. If there shall arise any dispute between an ecclesiastic and a layman, or between a layman and an ecclesiastic, about any tenement which the ecclesiastic pretends to be held in frank almoigne, and the layman pretends to be a lay fee, it shall be determined before the King's Chief Justiciary by the trial of twelve lawful men, whether the tenement belongs to frank almoigne, or is a lay fee; and if it be found to be frank almoigne, then

* "Ad remanens." The meaning is obscure.

it shall be pleaded in the Ecclesiastical Court; but if a lay fee, then in the King's Court, unless both parties shall claim to hold of the same Bishop or Baron. And if both shall claim to hold the said fee under the same Bishop or Baron, the plea shall be in his court, provided that by reason of such trial the party who was first seized shall not lose his seizin till it shall finally have been determined by the law.

X. Whosoever is of any city, or castle, or borough, or demesne-manor of our Lord the King, if he shall be cited by the Archdeacon or Bishop for any offence upon which he ought to make answer to them, and shall refuse to make a satisfactory return to such citation, it is allowable to put him under an interdict, but he ought not to be excommunicated before the King's chief officer of the town be applied to, that he may by due course of law, compel him to answer accordingly; and if the King's officer shall fail them, such officer shall be at the mercy of our Lord the King; and then the Bishop may compel the person accused by ecclesiastical justice.

XI. Archbishops, Bishops, and all dignified clergymen, who hold of the King in chief, have their possessions from the King as a barony, and answer thereupon to the King's Justices and officers, and follow and perform all rights and customs due to the King, and, like all other Barons, ought to be present at the trials of the King's Court with the Barons till the judgment proceeds to loss of members or death.

XII. When an Archbishopric, or Bishopric, or Abbey, or Priory of the King's domain shall be vacant, it ought to be in the hands of the King, and he shall receive the rents and issues thereof, as of his demesne; and when that church is to be supplied, our lord the King ought to send for the principal clergy of that church, and the election ought to be made in the King's chapel, with the assent of our Lord the King, and the advice of such of the prelates of the kingdom as he shall call for that purpose; and the person elect shall there do homage and fealty to our Lord the King as his liege lord, of life, limb, and worldly honour (saving his order), before he be consecrated.

XIII. If any nobleman of the realm shall for himself, or those who belong to him, forcibly withhold right from any Archbishop, Bishop, or Archdeacon, the King ought

to do justice upon them; and if any shall forcibly resist the King in any of his rights, the Archbishops, Bishops, and Archdeacons ought to do justice upon him, that he may make satisfaction to our Lord the King.

XIV. The chattels of those who are under forfeiture to the King ought not to be detained in any church or churchyard, against the King's Justiciary, because they belong to the King, whether they are found in the churches or without.

XV. Pleas of debt, whether they be due by faith solemnly pledged, or without faith so pledged, belong to the King's judicature.

XVI. The sons of villains ought not to be ordained without the consent of the Lords in whose lands they were known to have been born.

Such are the famous Constitutions of Clarendon, which made so great a stir in the world of that day, and which, indeed, contain in a mediæval form some principles which have been under discussion from the time when the Roman Empire became Christian—the principles involved in the relations between civil and ecclesiastical authority.

I proceed, however, now to give some explanation of the terms, and to make some remarks upon the nature and occasion of these several enactments.

With reference to the first of these Constitutions, I shall premise that the advowson of an ecclesiastical benefice, or, as we commonly term it, a living, was considered to imply as now, the perpetual right of presenting a clergyman to that living.

Advowson is the English word formed from the Latin "advocatio;" for the patron of a living was in Latin termed, "Advocatus ecclesiæ." The patron was so called because, besides enjoying the privilege of presentation, it was his duty to defend, advocate, the rights of the church to which he presented.

In those days the right of presenting to livings was a constant subject of dispute between Bishops and laymen.

The first quarrel that arose between Becket and the King, originated in a claim asserted by Becket to put a nominee of his own into the living of Eynesford, in Kent, while a certain William de Eynesford, who was Lord of the Manor and a tenant in capite of the King, claimed the

right of presentation. The King, on appeal made to him by his tenant, took part with him in the quarrel.

According to an ancient ecclesiastical theory, well known in those days, and evidently held by Becket himself, the right of appointment to all benefices in their respective dioceses, really rested with the Bishops, though they might in particular instances waive their claim.

Further, it should be noticed, for the full understanding of this constitution, that the Ecclesiastical Courts claimed to adjudicate in cases of disputed presentation.

All of these Constitutions, were, as you know, directed severally against different privileges claimed by the ecclesiastical power, and this article, we observe, ordains that all disputes concerning patronage, should be determined in the King's Courts in contradistinction to the Ecclesiastical Courts.

2. The term, the King's Fee, means a manor held of the King by military service.

Here it is prohibited that the benefices comprised in such manors be handed over to religious houses, which, being perpetual corporations, would have them in perpetuity.

To dispose thus of benefices was by no means an uncommon practice. In a future letter I shall advert to it, and to the consequences which have resulted.

3. This Constitution involves, as you are probably aware, one of the principal questions at issue between the King and his party on the one hand, and Becket and his party on the other. Becket and those who held with him, claimed that in most cases, clergymen accused of offences against the King's laws, should be tried in the Ecclesiastical Courts alone.

The distinction of the ecclesiastical from the temporal courts had its origin in a regulation of William the Conqueror's, by which the Bishop, who had hitherto sat with the Alderman in the shire-mote or hundred-mote, and had with him presided in trials both of civil and ecclesiastical causes, was withdrawn from these courts and allowed to exercise a separate jurisdiction of his own in ecclesiastical matters. By degrees, the courts of the Bishops and their officers assumed the rights of exclusive jurisdiction over the clergy, so that the latter should not

be amenable to the civil tribunals for offences against the laws of the realm.

Against this assumption the present Article was framed. The plea employed by the King and his Barons in favour of this regulation was, that the punishment inflicted by the Ecclesiastical Courts for offences against the King's laws, was insufficient. Becket and his party urged the right of custom for the immunity in question, and contended that as a clerk offending against the laws of the kingdom would be punished by the Ecclesiastical Courts, it would be unjust that he should receive another punishment by the sentence of the temporal courts.

They were, however, willing to concede that a clerk, guilty of a second offence, should be amenable to the temporal courts.

To appreciate fully the interest of this controversy, it should be borne in mind that under the term "clergy," was comprehended a far larger and more miscellaneous class than in these days. There were then four orders of "clerks," besides Bishops, Priests, and Deacons; orders comprehending multitudes of men in the lower ranks of society, who still followed secular occupations.

Hence the cause of the "clergy" in those days was in great measure the cause of the lower classes in the kingdom—a fact of which the significance is to be borne in mind in considering this and the last of these Articles. Reverting, however, to the terms of the present article, I will endeavour to explain the purport of the following clause, which from a perhaps intentional vagueness, is not very clear, "So that the King's Justice send unto the court of Holy Church to see after what manner the business there shall be handled."

From what had passed in an Assembly at Westminster, held in the previous year, and at which the King made similar propositions to Becket and the other Bishops, we may understand these words to mean, that a Clerk who had been convicted in the King's Court, should be sent to the Spiritual Court to be degraded before he suffered his sentence, and that an officer of the King's Court should accompany him into the Spiritual Court, with the view of preventing his escape from the infliction of the punishment to which he had been previously sentenced. For, if he were delivered by the King's Court into the

hands of the officers of the Spiritual Court, he might be permitted to escape, especially if the spiritual court should after trial acquit him of the charge under which he had been convicted by the King's Court.

4. This Article, forbidding any of the higher and beneficed clergy to depart from the kingdom without the King's leave, was, it will be observed subsequently, repealed in one of the provisions of Magna Charta, by which liberty to leave the kingdom was granted to all the subjects of the King. The object of the present article was to preclude any of the persons in question, who might think himself aggrieved by the King or his officers, from resorting in person to the Pope, from whose authority, then generally acknowledged, redress might be expected.

A recollection of the last fact will throw a clear light on the remaining words of the article.

It is probable that Henry II. and his advisers anticipated what we know actually happened, that Becket would (like his predecessor, Anselm, when engaged in a contest with Henry I.) flee to the Pope to obtain his aid in the dispute with the King.

5. The meaning of this is that excommunicated persons were not to be required by the Ecclesiastical Court to give securities that they should remain in the same place in which they were residing when sentence was passed upon them, and which would be within the extent of the jurisdiction of that particular Court.

It appears that, in order to escape the consequences of their sentence, it had sometimes been the practice of excommunicated persons to transfer their abode from the district over which the jurisdiction of the Court extended.

To prevent this method of avoiding the effect of their censures, these courts had required from persons who had been excommunicated, the security of an oath, which, as we see, the present article forbids.

6. The point of this Article is, that the accusers and witnesses, by whom a charge shall be proved against a layman in the Bishop's Court, shall be legal and reputable persons. It appears from Ecclesiastical History that these Courts were not always duly discriminating as to the character of those who appeared as witnesses against accused persons. The requirement that they

should be legal persons, such as the law of the land would recognize, was a clear interference with the ecclesiastical authority as regards its methods of exercising jurisdiction.

In the requirement contained in the last part of this Article, that the Sheriff shall, in the case specified, "cause twelve lawful men," etc., we have probably a specimen of the "accusatory juries," "jurata delatoria" of that time, which are considered to be the originals of our modern grand juries. The introduction of this kind of jury into the Ecclesiastical Courts would be an innovation on the regular method of those Courts, in which the Bishop or his deputy was the sole judge of both fact and law. In this Article we observe both that a succour is apparently given to the enforcement of ecclesiastical jurisdiction by the power it conferred upon the Bishop to call in the Sheriffs, when any powerful personage is accused, and that a protection is thrown over the accused by the introduction of quasi-jury trial.

The clause, "so that the Archdeacon may not lose his right, nor anything he ought to have therefrom," appears to refer to the pecuniary profits which the Archdeacon derived from these suits, which, as it would seem, the change in the mode of trial might otherwise have affected.

7. The gist of this Article is, that no one of the King's tenants in capite, or officers, should be excommunicated, until the Civil Court should have first inquired into the case, and have determined that it came within the competence of the ecclesiastical tribunal.

It is to be observed that the benefits of this provision are not extended to the King's subjects generally, but only to the Barons and other principal men.

8. In ecclesiastical cases where the King was a party, or was otherwise interested, an appeal to Rome was a powerful resource which the adverse party might employ. The following clause in this article requires explanation :— "if the Archbishop shall fail to do justice, the cause shall at last be brought to our Lord the King, that by his precept the cause may be determined in the Archbishop's Court." The practical result of this provision was, that after coming in appeal to the King's Court, the case would be sent back to the Archbishop's Court, with an

order that it should there be determined according to the decision of the King's Court. In effect this article aimed at the object which Henry VIII. afterwards accomplished—the making the King supreme in all ecclesiastical causes.

9. It appears clearly from this article, that if a suit arose between a cleric and a layman concerning a tenement, and if further, the cleric alleged that it was held under the church, while the layman, on the contrary, alleged that it was a lay tenement, the Ecclesiastical Court claimed to determine the question of the nature of the tenure. We observe that in this article it is ordained that if in a dispute relating to a tenement the preliminary question was raised as to the nature of the tenure, the King's Chief Justiciary shall, with the aid of a jury of twelve men, determine this particular question of the tenure.

This point having been thereby determined, the Article prescribes the course to be pursued for settling the dispute concerning the tenement itself.

The last clause "provided that, by reason of such trial," etc., means that the determination of the question concerning the nature of the tenure should not affect the claims of the present tenant, but that these should be adjudicated upon in the Court to whose cognizance it had been by the previous suit determined that they belonged.

10. This article extends to persons belonging to the King's domain a similar protection from the arbitrary excommunication of the Spiritual Court, as had by Article the seventh been given to the tenants in chief of the crown and its officers.

Persons belonging to the King's domain are not to be excommunicated until the King's chief officer has notice of the intention, so that he may order the accused to answer in the Ecclesiastical Court. Now as this provision leaves the King's Chief Justice to decide whether the accused ought to answer in the Ecclesiastical Court, it is tantamount to a provision that no such person as is here described shall be excommunicated without the previous approbation of the King's Court.

Between, however, the tenants in capite and officers of the King on the one hand, and the persons here described on the other hand, this distinction is made in

favour of the former, that they only may not be put under an interdict without the sanction of the King or his Justice.

Further, in the present case provision is made, which is not made in the former case, for the exercise of spiritual jurisdiction upon the accused party in the event of the King's Justice failing to do his duty in the matter. It is evident from this and other points how large a share the Barons at Clarendon had in the framing of these Constitutions, and how studiously their interest is consulted in them.

11. This article is directed to enforce the attendance of the Archbishops and Bishops, and other high ecclesiastics, who as Barons would sit in the Great Council, at trials, with the exception here stated. It may be observed that William the Conqueror had converted all the higher ecclesiastical offices into Baronies, so as to make them dependent on the Crown, and liable, like other Baronies, to certain services towards the King. On the ground of their baronial tenure, these personages are here required to aid in the judicial functions of the Great Council, and thus to perform a duty against which, as claiming by virtue of their spiritual office a certain independence of the Crown, they would be reluctant.

The aim of this Article is the removal of all such distinction between the spiritual and temporal magnates, as would leave the former less dependent than the latter upon the Crown.

12. In the provision of this Article that during the vacancy of a see or abbey, the profits should go to the King as belonging to his domain, we may observe that the same principle of the baronial tenure of these appointments is asserted as in the last article; for, during the minority of a vassal, which would bear some analogy to the vacancy of a see, the profits of a fief would go to the King's use.

Further, we may observe, that a too manifest motive is hereby supplied for a practice, which William Rufus often followed, of keeping the higher church appointments vacant for more than a due length of time. With regard to the election of these functionaries, I would mention that the chapters of cathedrals or of abbeys, claimed, though they seldom were able freely to exercise, the right of electing to a vacancy.

The King constantly sought to gain those appointments for his own nominees by persuading or intimidating the electors, while these would have an additional motive to elect the King's nominee in the consideration that it rested with the King to grant to the person elected, or to withhold from him, the temporalities of the see or abbey, which constituted its baronial character.

In the present article requiring the election to be made in the King's chapel, and therefore under the personal influence of the King, and by his assent and that of his councillors, a manifest and effectual security was taken for the election of the King's nominee.

I have in a former paper explained the nature of feudal homage and fealty. The words, "in his life and limbs," etc., are a part of the oath of fealty.

13. Observe that in this article it is provided that in the case specified, that is to say, an encroachment committed by some temporal magnate upon the rights or property of an Archbishop, Bishop, or Archdeacon, the King, not the ecclesiastical power, is to do justice; a provision in exact accordance with the drift of all these articles.

The second particular of this Article appears to be another blow to the magnates of the spirituality, in requiring them, retrenched as their assumptions are throughout these articles, still to be instruments for punishing by spiritual censures those who might infringe upon the rights of the King.

14. This article is very plain. You are probably aware that persons fleeing from justice could take sanctuary in certain ecclesiastical precincts, and, while they remained there, escape punishment.

It appears that a practice had arisen for convicted persons, with the apparent sanction or connivance of the clergy, to place their chattels which had been forfeited to the King, in the sacred enclosure of church or churchyard, in which case it would be accounted a kind of sacrilege to remove them. The article, however, denies the right of thus withdrawing from the King's possession the goods which had been forfeited to him in the course of law.

15. With regard to this article, it should be premised that the Ecclesiastical Courts adjudicated in various matters of a mixed and secular kind, such as wills, marriages, and the guardianship of widows and orphans. It

appears that they also claimed cognizance of matters of debt, when the debtor had sworn to pay within a time, and had thus contracted an obligation of conscience and good faith, the breach of which obligation would be a spiritual offence. In the present article this claim is repudiated.

16. This, the last, is by no means the least important of the Constitutions of Clarendon, as throwing a clear light on the views of the Barons in the whole transaction, and as affecting in no mean degree the interests of the humbler classes of society; and thus as explaining the cause both of the hearty concurrence of the Barons in the King's policy on this occasion, and of the support and sympathy which Becket received from the multitude.

In my remarks in the third article, I pointed out how large a class of the community was interested in the question of clerical privileges. This last article was directed to the limitation of that class, and to maintain the full domination of the feudal aristocracy over its serfs and dependants. Men of secular callings indiscriminately could receive the minor orders at the hands of the Bishops, and were thus initiated into all the privileges and immunities of the clerical vocation. They were hereby set free from their obligations of feudal subordinates, and became members of a large and powerful corporation, able to defend its rights and franchises when they were attacked in the person of the meanest of its members.

Further, when once admitted to the clerical order, the son of a serf or villain could aspire to the highest preferments of the Church, and thus to positions of dignity and territorial authority and power, which would quite place him on a level with the proudest of the lay Barons.

In the closing, therefore, of this avenue to freedom, and often to greatness also, which was open to all of humble birth, it is evident how adversely the interests of the lower classes were affected; and the consideration will fully illustrate the fact that the strength of Becket's party lay in the attachment, not only of the great body of the clergy, but of the mass of the population also.

In reviewing the Constitutions of Clarendon, we cannot fail to be struck with the comprehensiveness and bold-

ness of the scheme of ecclesiastical legislation which they involve.

Touching upon almost every point at which the rival pretensions of the ecclesiastical and secular powers would come into contact, those enactments were opposed in spirit to prejudices and sentiments which widely prevailed in that age. Only the royal and baronial powers combined, and wielded by so vigorous a hand as that of the second Henry, could have inaugurated changes so opposed at the same time to the interests of the clergy and to the feelings of the great body of the people. The King, indeed, and his party professed that these enactments merely embodied the customs or "usages" of his royal predecessors, the Conqueror and his sons; but this statement was at variance with fact, as the Constitutions were in one particular contradictory of the arrangement which had been made between Henry I. and Anselm, and were generally opposed to the well-known liberties of the Anglo-Saxon church, which Henry II. and his predecessors had sworn to maintain.

Although some of the Articles of these Constitutions pertained to temporary occasions and feudal customs, yet the whole body of them involves principles of general and lasting importance.

Before ending this paper, I will give a short summary of these Constitutions, with the view of aiding the recollection of their contents.

1. Any dispute about the patronage or presentation of ecclesiastical benefices between clergy and laity, or among the clergy or the laity, to be settled in the King's Courts.

2. Benefices not to be alienated to religious corporations without the King's consent.

3. The clergy rendered amenable to the King's Courts for all offences against the laws of the realm. The Clerical Courts not to protect clerks convicted by the King's Courts.

4. Clergy not to go out of the kingdom without the King's consent, nor when abroad to do anything against the King's interest.

5. Excommunicated persons not to be sworn by the Ecclesiastical Courts to remain within the limits of their jurisdiction.

6. A kind of trial by jury to be used in the Ecclesiastical Court, when laymen are accused; and if poweful

laymen are called into the Ecclesiastical Courts, and none dare come forward to accuse them, the Sheriff on the Bishop's requisition is to summon a jury to try them in the Bishop's Court.

7. Tenants in capite of the Crown, and officers of the King, not to be excommunicated without the King's sanction previously obtained.

8. No appeals to Rome without the King's consent, and the King's Court to be the last appeal.

9. Questions whether a tenement be a lay fee or a church fee to be decided in the King's Court.

10. Persons belonging to a city, castle, or borough of the King's demesne, not to be excommunicated till the King's Chief Justice of the district has approved of the proceeding.

11. Higher ecclesiastics, as holding of the King in barony are to perform the services of barony, and in particular assist at trials in the King's Court, except in cases where life or limb would be forfeited by the sentence.

12. The King to enjoy the revenues of vacant bishoprics and abbeys. Election to be made to them in his presence and with his consent, and fealty and homage to be sworn to the King by the persons elected before consecration.

13. Violations of the rights or property of the Church, committed by nobles or peers, to be remedied in the King's Court, not in the Spiritual Courts. Any infringement of the King's rights to be punished in the Ecclesiastical Courts.

14. Churches or churchyards not to afford shelter to the forfeited goods of offenders.

15. All pleas of debts, whether incurred or not under oath of payment within a certain time, to be brought before the King's Court (not the Ecclesiastical).

16. The sons of villains or yeomen not to be ordained without the assent of their particular lords.

The subsequent fate of these celebrated Constitutions deserves notice. By the death of Becket and the general indignation which followed that outrage, the King found himself deterred from putting them fully into force. He solemnly revoked them at Avranches, in Normandy. On receiving absolution from the Pope in 1172, Henry pro-

mised to abolish all customs and laws hostile to the clergy, which had been made since the beginning of his reign, including, of course, the Constitutions of Clarendon. They remained accordingly little better than a dead letter, and in 1172 at a Council at Northampton, the repeal, or rather modification of them, was effected. On this occasion it was agreed (1) that the clergy should not be tried in temporal courts; (2) that no bishopric or abbey should remain more than a year in the King's hands, except it were otherwise impossible.

These Constitutions are further regarded as having been virtually given up by the King on the occasion of the appointment of Becket's successor, Richard Prior, of Dover, who on his election swore fealty to the King, "saving his order." All this took place in a chapel in the Palace of Westminster, with the consent of the King's justiciary. The King, indeed, who was then absent, refused his consent to this transaction; but the Pope confirmed the new Archbishop, and the King gave way. He thus appears to have virtually abandoned the Constitutions.

However, they more or less prevailed in after times, especially in the appointment of Bishops, which at least from the end of the thirteenth century was principally in the hands of the King, and almost entirely so after the passing of the last Acts of Premunire and Provisors in 1372, during the reign of Richard II.

MAGNA CHARTA, AND FORMER CHARTERS.

The term Charter was usually given in those days to a public document, and in particular to a document containing concessions of liberties and privileges from a feudal chief to his dependants. Hence, the great public document now to be considered by us obtained the name of Magna Charta, which is to be considered the first effectual guarantee given by the Crown respecting the rights and liberties of the people of the country.

It was not the first instrument of the kind that had been drawn up in favour of the subject; but the former charters had been of little effect. The inefficiency of them rendered Magna Charta necessary.

Before entering into a consideration of the Great Charter, I will briefly advert to the former guarantees of the same or of a similar kind that had already been granted. You will recollect the remarks which I made upon the oaths taken at his coronation by the Conqueror, and by which he was pledged to maintain the ancient constitution; oaths identical with those which had been taken by the Anglo-Saxon sovereigns, and which, had they been kept by the Conqueror and his successors (for it is to be presumed that each of them at his coronation swore to the same effect) would have efficiently secured the rights of the subject.

But, besides these coronation oaths, several charters were granted by different kings in turns, which, if they had been observed, would have satisfied the just demands of all classes of the Anglo-Norman nation. I have adverted to the compilation of Anglo-Saxon laws, which was made by the order of the Conqueror in 1070, and which, having been ratified by him in a Great Council, may be considered as the first charter granted by the Norman kings.

Again, Henry I., soon after his coronation, granted a charter promising a redress of abuses, and expressly restoring the laws of Edward the Confessor with those emendations which William I. had made in them by the advice of his Barons. Among the abuses he mentions are "unreasonable reliefs, wardships, and other feudal burthens," charges which you will recollect were enumerated in a foregoing paper on the feudal system. The engagements of this charter were ill kept; but it is of importance historically, as having been made by the barons of 1215 the model of the charter which they determined to obtain from John. Their demands in brief were that those rights and liberties should be conceded to the church and kingdom which were set down in the charter of Henry I., and in the laws of Edward the Confessor. It has been observed by Lord Lyttleton, in his admirable history of Henry II., which is well worthy of the student's perusal, especially so far as it treats of the early constitution, that the charter of Henry I. was in some respects more advantageous to liberty than Magna Charta itself.

Two charters were granted by Stephen, one to the barons, the other to the clergy. They confirm the charter

of Henry I., and grant in fuller terms the laws of Edward the Confessor.

Henry II. in a charter repeats the confirmation of his grandfather Henry I.'s charter.

Notwithstanding these solemn guarantees of the rights and liberties of all classes of the kingdom, the exactions and oppressions, of which complaint was made, were continued at intervals, and in a greater or less degree, until, under the reign of John, they rose to a height that could not be endured, and Magna Charta was the consequence.

Two points may here be noticed in reference to the resistance which was made to King John, and to the concessions which were obtained from him on the present occasion. One of these points is the enormous power of the Crown, which could exercise oppression not only upon the depressed Anglo-Saxon population, but also upon the proud and powerful Anglo-Norman nobles. It is thought with much probability that the possession of large continental territories enabled the kings of England the more easily to set at defiance the just wishes of their subjects in this country; and it was when those possessions were in chief measure lost, and at the same time when the throne was occupied by a king of a comparatively weak character, as hateful and contemptible as it was weak, that an effectual opposition could be raised by the oppressed nation.

The next point which I would notice is the degree of union which appears to have taken place between the two races of the conquerors and the conquered, inasmuch as we find both of them joined in their demands upon the King. This indicates that the process of fusion between the two races had already made considerable advance. The power of the Crown oppressing the two races alike, had at least the good effects of promoting their ultimate union.

Such were the circumstances under which Magna Charta was demanded and obtained. The date of the signing of it was June 15, 1215, the place, Runnymede, a meadow in the Thames, near Windsor, at which it is recorded that conferences between the Anglo-Saxon kings and their nobles had often been held before. The persons by whose advice the Charter professes to have been granted, are the Archbishops of Canterbury and

Dublin, and seven other Bishops, the Pope's Legate (the celebrated Pandulph), Emeric, Master of the Temple, the Earls of Pembroke, Salisbury, Warrenne, and Arundel, Herbert de Burgh, Alan de Galloway, Seneschal of Poitou, and "others of our liegemen." Of all these, the prime movers in the measure were Stephen Langton, the Archbishop of Canterbury, Robert Fitzwalter, who commanded the Baron's army, William, Earl of Pembroke, and William Longspear, Earl of Salisbury, a son of the Fair Rosamond and Henry II., names ever-memorable in the history of our free constitution.

The charter itself has been divided into sixty-three heads, according to the various subjects which it embraces. It will be unnecessary to give here the whole document, which is a long one, and which, in some points, is obscure, and to us not very important. It will be sufficient to give some general account of its contents.

These may be arranged under three heads. 1. The rights of the clergy; 2. The rights of the Barons or fief-holders; 3. The rights of the people at large.

I. With regard to the clergy, the charter makes a general recognition of their privileges and rights in the words, "Ecclesia Anglicana sit libera et habeat jura sua et facultates illæsas. Libertatem electionum quæ maxima et magis necessaria videtur ecclesiæ Anglicanæ, concessimus, et hâc chartâ nostrâ præsenti confirmavimus." The liberty of election to which the charter refers was that of the election of Bishops, in which the kings were apt to interfere, as in the memorable case of the contest between John, the chapter of Canterbury, and the Pope, on the occasion of the appointment of Stephen Langton, who became one of the chief originators of Magna Charta. Liberty of election in these cases had been conceded in a former charter of John's, granted exclusively to the clergy, to which allusion is here made.

II. The charter enumerates and confirms the rights of the Barons. It redresses various feudal grievances as to reliefs and wardships. It provides that no escuage or any extraordinary aid shall be imposed without the consent of the Great Council, and it determines the occasions and modes of the convocation of that assembly.

III. The rights of the Commons, that is, the freemen, are attended to in the following provisions:—"Nullus

liber homo capiatur vel imprisonatur aut dissasiatur aut utlagetur aut aliquo mudo destruatur nec super eum ibimus nec super eum mittemus nisi per judicium parium suorum vel per legem terræ."

Such is the most memorable of all the clauses of Magna Charta touching the rights of the Commons. A few more shall be given on this head, though not in the original Latin. "Justice shall not be sold, refused, or delayed to anyone." The franchises of London and other towns are secured. The Court of Common Pleas to be fixed at Westminster, instead of following as hitherto the King's person, to the great inconvenience of suitors. Amelioration of Forest-law tyranny is granted. The arbitrary tallage, or taxing of towns is restricted and limited, and thus a considerable step was made towards securing the rights of the subject with regard to his *property*. The provision next to be mentioned for the administration of justice is curious, as suggesting the principle of representation which has now been so largely applied in our constitution. "We, or in our absence from the kingdom, our justiciary, shall send four times a year into each county two judges, who, with four knights chosen by each county, shall hold the assizes at the time and place appointed in the said county." The regular practice of sending the judges on circuit throughout England had been instituted by Henry II. in the statutes called "Assizes of Northampton," A.D. 1176, when England was divided into six circuits, which have remained with little alteration to the present day.

The last provision which I shall mention is worthy of notice, as including some provision for the welfare of the humbler class, or villains. "No freeman, merchant, or *villain* shall be unreasonably fined for a small offence; the first shall not be deprived of his tenement, the second of his merchandise, the third of his implements of husbandry."

Such are the most remarkable provisions of Magna Charta, which has proved a broad and solid foundation of the fabric of our constitution, and an effectual security for the privileges of the subject; and which formed a standard to which an appeal in all ages could be made, whenever that constitution and those privileges were placed in jeopardy. Although previous concessions had been made

by the Crown, this alone has proved effectual in its operation. One special instance of its effectiveness shall be mentioned before I conclude this paper. The ancient writ of Habeas Corpus has been always regarded as one of the chief securities of the subject against illegal imprisonment. This writ, which is issued by one of the King's Courts, requires that an imprisoned person shall be brought before that Court, in order that it may be ascertained whether he has been imprisoned for a legal reason; so that if it be proved that his imprisonment is illegal, he may be immediately discharged by order of the Court. And it has always been the right of the subject imprisoned to sue out such writ from one of the King's Courts. Now this important security against oppression is generally and with evident reason ascribed to the operation of the clause in Magna Charta, wherein provision is made that none shall be imprisoned except through the legal judgment of his peers, and by the law of the land. Some such method as that of this writ ascertaining the cause of a man's imprisonment, would be obviously necessary to make the provision itself operative. It may be added that Magna Charta was confirmed by many of the succeeding Kings of England, and by some kings more than once, for these fresh confirmations were considered to be additional securities for its observance.

GROWING IMPORTANCE OF THE TOWNS IN PLANTAGENET DAYS.

The attention and the memory will be aided in the study of any particular period in our history, or in any national history, by having a constant regard to some important tendency or progress which may be found to run through that period. In the annals of the Plantagenet Kings, the growing importance of the Commons is an instance of the kind of tendency or progress of which I speak. I remember the significant statement of one who had studied this period with advantage. In going through it he complained of the little interest which he

felt in it, and of the difficulty which he found in remembering it. "Read it," said an experienced friend, "with an eye to the rise of the Commons." He followed the advice, and from that time, as he told me, this portion of our history was invested with a new and real interest, so that he was able to pursue the study of it with satisfaction. With this hint, I will proceed to the consideration of an important part of the subject—the growing importance of the towns in Plantagenet days.

It has been truly observed that during the oppressive reigns of the Norman and early Plantagenet Kings, the germs of our national liberties lay in the privileges of the corporate towns—that is, the cities and boroughs. These corporate towns had existed in considerable numbers in Anglo-Saxon times, and had large powers of self-government, electing by the common voice of all their free inhabitants, being householders, their own magistrates (of whom the borough-reeve, or port-reeve, as he is sometimes called, the eolderman, and the head-borough were the principal) and managing their own affairs. Indeed, so nearly were the towns independent, that England in those days has been compared rather to a federation under a common head than to a modern kingdom.

After the Norman Conquest these towns were greatly shorn of their wonted privileges and importance, and, in many cases lost them almost, if not quite. They were each incorporated into the demesne of some feudal superior, king or other, were liable to be taxed (tallaged) by him almost at discretion, and were bound to find a certain number of their body to serve in the wars with him. But their inhabitants carefully cherished the remembrance of their ancient liberties, and constantly clamoured for their recovery in the form of words usually employed by the oppressed Anglo-Saxon Commons in demanding back their rights—viz., a demand for the restoration of "laws of Edward the Confessor." Nor were they slow to avail themselves of various opportunities when presented to them for recovering their free institutions, opportunities which their power of combination, their growing wealth, and their superior intelligence over the rest of the Commons enabled them to turn to account.

The disputes arising from an unsettled method of

succeeding to the Crown, and from the discontent of the Barons with the feudal exactions of the Sovereign, enabled the inhabitants of the corporate towns to obtain from *both* parties of their Norman oppressors—the King and his party, and the party of the opposing Barons—successive concessions of ancient rights. Thus the kings in their oaths and charters promised the restoration of their rights, and, though the promises were insufficiently kept, they were a continual acknowledgment of those rights, which conduced to their ultimate recovery; while the Barons on more than one occasion, of which Magna Charta was one, taking the towns into alliance with themselves against the Crown, assisted them in obtaining the recognition, and at least the partial enjoyment, of their privileges. Further, they often obtained from the necessities, or the cupidity, of their feudal superiors, whether the Kings or the Barons, concessions of right of which they had been deprived through the effects of the Norman Conquest. Their increasing wealth enabled them frequently to purchase from their oppressors the enjoyment of the ancient municipal franchises. And when their feudal superiors wanted money for domestic or foreign wars, including in the latter the Crusades, they were in the habit of conceding privileges in return for money raised by the inhabitants of their towns.

Having thus regained a considerable degree of independence and power of self-government, the towns became an important element in the political constitution. Of their importance in this respect, we have a proof in the facts that the Barons were aided by the Mayor of London in compelling John to sign Magna Charta, and that a special provision for the security of municipal rights and privileges was by his influence introduced into the charter. The political influence of the towns was on a succeeding occasion at once recognized and immensely increased by the act of Simon de Montfort and his partizans during the war against Henry III., in issuing writs in the name of that King, then a prisoner after the battle of Lewes (1265), by which representatives from all the cities and towns were summoned for the first time to Parliament; and we thus trace the origin of our House of Commons. The representatives of the borough towns are first found sitting as

a separate house in the time of Edward I., at the celebrated Parliament of Acton Burnel (1283). Within forty-four years after this date they were joined by the Knights of the Shires, military tenants of the Crown elected by the Shires, and with them formed one House, the House of Commons.

ORIGIN OF THE HOUSE OF COMMONS.

In the paper on the rise of the towns, I have slightly touched upon the close connection between their progress in political importance, and the origin of the Commons House of Parliament. I propose now to enter further into the latter subject, and to trace in this and the two next papers the origin of that House, and the successive steps by which it acquired its ultimate importance. It is not very clear who composed the Witenagemote or assembly of the Witan, or wise men, the old Anglo-Saxon Parliament. The higher ecclesiastical dignitaries, the Eoldermen and King's Thanes of course entered into its composition. Whether there was any representation of the Commons, or, as they were called, the "ceorls," is much disputed; but as it appears that some of the Magistrates of borough towns sat in the Witenagemote, and as it is known that these Magistrates were usually elected by the common voice of the free inhabitant householders of those towns, it would seem that a virtual representation of the Commons was thus included in the Witenagemote.

Under the Norman sway it seems that the Great Council or Parliament was entirely composed of persons who held directly of the Crown, "tenants in capite" as they were called. All the Bishops, certain of the Abbots and Priors, the Earls, and a number of the Barons, and Knights holding immediately under the Crown, were summoned individually by Royal writ to attend this assembly. It is not probable that all the Knights holding directly under the Crown were summoned, if we consider how great a number they must have formed, and the expense which would be involved in their attendance at the Great Council which was held sometimes thrice a year. It appears, however, that after a time, the Knights were

not summoned individually by Royal writ, but that a writ was issued to the Sheriff of each Shire, directing him to cause the freeholders of the Shire (that is, the Knights holding under the Crown, and some of the tenants under the tenants in capite) to elect two of the Knights residing in the Shire to appear in Parliament.

The principle of legislation by representation is one of which there are few or no traces in the ancient forms of Government; and it is of so much importance and is so largely applied in our own form of Government, that it will be interesting and instructive to attempt to trace out its origin in this country. Some semblance of the representation of counties appears so far back as the Conqueror's reign. He, when he resolved to ratify the Anglo-Saxon laws, ordered "twelve noble and sage men" to be chosen in each county, to ascertain and determine what those laws were. The most ancient writ in existence summoning the representatives of Knights of Counties is dated 1213 in the time of King John. In this writ it is ordered that four discreet Knights of each County should be sent by the Sheriff to Oxford without arms, "to treat with the King concerning the affairs of the country." This surely is a regular summons to Parliament. So, for the due administration of justice, it was one of the demands of the Barons at Runnymede, that "two Judges should hold their circuits four times a year, to hold their assizes *together with four Knights of the Shire chosen by the Shire.*"

In Magna Charta also, there is a provision according to which twelve Knights were to be elected in the Court of each Shire to enquire into "the evil customs of Sheriffs of forests and foresters, of warrens and warreners," in other words, into the grievances attending the forest laws. The same method of representation was in one or two recorded instances followed about this time in regard to the collection of taxes. In the year 1220, writs were issued to the Sheriff making him collector of the taxes of his county, in conjunction with two Knights to be chosen in the County Court. Again, in 1223, Henry III. ordered every Sheriff to enquire by means of "twelve lawful and discreet Knights what were the rights and liberties of the Crown in his Shire on the day in which the war began between King John and the Barons."

The same King appointed *four Knights in each Shire*

to enquire into the excesses, transgressions, and injuries committed by Judges, Sheriffs, Bailiffs, and other persons, and to make a report to him in Council on a certain day.

A more decided approach was made to our present system of representation in 1254, when the King (Henry III.) issued writs ordering two lawful and discreet Knights to be chosen by the men of every county "to assemble at Westminster and determine with the Knights of other counties what aid they should give their Sovereign in his present necessity," the war in Gascony. Here then we clearly have Knights representatives of Shires, summoned to vote money, which was the great business of Parliament in those days.

In 1262, Simon de Montfort, Earl of Leicester, summoned a kind of Parliament at St. Albans, to which each county was ordered to send three Knights, "to treat of the common concerns of the kingdom."

Such are some of the principal precedents for the memorable summoning of Parliament by Simon de Montfort in 1265, from which the origin of our House of Commons is more distinctly to be traced.

It may here be observed that, when on these former occasions Knights were summoned as representatives, they were paid the same wages by their constituents as the Knights of Shires afterwards received when they regularly attended as Members of Parliament; whence it would appear that after 1265, they were considered to be acting in the same capacity as that in which they had acted on former occasions of their election and assembling under Royal writ. We have in a former paper seen the effect of Simon de Montfort's Act in 1265, when the deputies of cities and boroughs were summoned.

After the citizens and burgesses had thus been summoned by Simon de Montfort's instrumentality, they did not regularly attend Parliament for some years, and came only when they were required to vote money. It was not until the latter part of the reign of Edward I. that they attended as a necessary and constituent part of Parliament. It has not been found possible to decide exactly the question as to when the Knights of Shires sat in one house together with the more plebeian representatives of the cities and boroughs. The Knights had originally sat as a sort of lesser nobility together with the

Barons, till they were incorporated with the citizens and burgesses in Parliament. This fusion of Knights of Shires with the representatives of the towns is thought to appear in the records of some of the Parliaments of Edward II., but it evidently occurs in the first year of Edward III. It was doubtless (as has been observed by some writers) this admixture of the Knights of Shires with the citizens and burgesses (who being men of trade, were regarded in those days as belonging to a very inferior class of society) that rendered the Commons in Parliament so courageous and spirited a body as they quickly began to show themselves. What at the same time rendered the House of Commons a full representation of the middle class, and preserved it true to its democratic origin and instincts, was the circumstance that, through a remarkable oversight of the aristocratic authors of that House, the representatives of cities and boroughs were made to greatly outnumber the Knights of the Shires; for, while each Shire returned generally but two Knights, each borough in every Shire was directed to return two burgesses also. There were, in fact, about 200 citizens and burgesses to 74 Knights of Shires.

Had the founders of our House of Commons anticipated the important part which that body would play in the Government of England, it is not likely that they would have given to the cities and boroughs this preponderance in the representation. The effect of this oversight, however, was not discovered till the citizens and burgesses had become too important and too powerful a class of the community to be curtailed of an advantage which had once fallen into their hands; and though frequent attempts were afterwards made to omit several of the boroughs in the summons to Parliament with the view of diminishing the preponderance of the burgess element, those attempts were generally observed and checked by the House of Commons. I propose in my next paper to trace the steps by which the House of Commons, thus established and thus composed, rose to the great importance which it afterwards attained in the legislation and government of England.

By keeping in view this steady forward movement of the House of Commons, while we are reading the history of the Plantagenet Kings, a significance and interest will

be given to a narrative of facts, which might otherwise often appear somewhat tedious and uninstructive.

RISE OF THE POWER OF THE HOUSE OF COMMONS.

The House of Commons in the first instance, was summoned merely as an assembly for voting supplies to the Crown. While the Barons felt themselves aggrieved by the feudal exactions of the Crown, the towns, the most important of which were in the *King's immediate demesnes*, had still greater reasons for complaint in the frequent and arbitrary impositions of "tallage," which the King inflicted on them. These exactions and impositions on either party, were carried to an intolerable height by the needy rapacity of Henry III., who, through the improvident prodigality with which he lavished his means, was constantly in want of money, especially for the futile wars waged by him for the recovery and maintenance of his possessions in the South of France. Having thus a common interest, the Barons and the towns were disposed to make common cause against the Crown; and the Barons called in the aid of the towns in resisting the encroachments of the Crown. The Barons, designing to strengthen their alliance with the towns, summoned the representatives of the cities and boroughs to Parliament, where they should determine the amount of contributions which should be paid by their constituents to the Crown, and settle the several proportions of that amount which should be levied from each of the towns respectively.

The question of grievances would be much mixed up with that of contribution, for a constant cause of grievance in those times of disorder and of undetermined prerogative, was given by the King and his officers, in raising money by illegal methods. Hence, when they had begun to meet, the Commons were much employed in discussing grievances and making representations of them to the Sovereign. Having now a hold upon the King's purse—a hold which they constantly were strengthening —they were enabled more or less to obtain redress of the grievances of which they complained.

These grievances were stated in the form of petitions, which, if they received the King's assent, were regarded as having the force of law.

As the power of the Commons increased, and as the

Barons occasionally called them in to concur in measures against the Crown, the petitions of the Commons began to embrace other matters besides those of mere financial import.

At length, they asserted with success, a claim that their concurrence should be necessary in every legislative measure. This was the position which, by degrees, they reached, and upon which they had firmly established themselves by the end of Henry VI.'s reign—that is, in about two hundred years from their rise.

I propose now to give a series of facts illustrating this gradual elevation of the Commons to a co-ordinate and independent share in Parliamentary legislation. In the reign of Edward I., they, with the aid of the Barons, obtained the celebrated and important statute, "De Tallagio non Concedendo," by which the constitutional maxim was settled for all subsequent ages, that the subject shall only be taxed by his own consent.*

Having at first simply made a representation of their grievances when they gave a supply, they, in the second year of Edward II., annexed the redress of a grievance as the condition of granting a supply. They granted the twenty-fifth penny of their goods, upon this condition, that the King should take advice, and grant redress upon certain articles, wherein they are aggrieved. The assent of the Commons to the dethronement of Edward II., was pretended, and their authority in the matter was recognized, by the prevailing faction of the Lords. In Edward III.'s reign, the Commons were for the first time distinctly consulted by the King in matters of State and policy.

Further, they induced that King to pass an Act declaring the illegality of all future ordinances such as that which he had lately been making with the concurrence of the Lords, and without the assent of the Commons, by which the landowners were required to furnish men and horses, and the towns to furnish money, for the purposes of war. At the end of this reign, they impeached the King's Ministers, one of whom, Lord Latimer, was sacrificed to their resentment.

In Richard II.'s time, the Commons required the

* 1309. See Hallam, vol. ii. page 192.

removal and impeachment of an obnoxious and most powerful minister, the Earl of Suffolk, who was accordingly removed and impeached.

In this reign, three points which had been disputed under Edward III., were more nearly settled in their own favour by the Commons: (1.) The necessity of their consent to the making of laws; (2) the necessity of their consent to the levying of money; (3) their right to the inspection of the administration of the kingdom. Although they suffered some checks to their pretensions in the course of this weak but wilful monarch's reign, yet it is evident that upon the whole, they gained much ground in it. In the deposition of that King, the Commons played a more authoritative and decorous part than they had taken in the tumultuous dethronement of Edward II.

In the reign of Henry IV., a marked elevation is to be observed in the tone which the Commons took in addressing the Crown; and that King, in order to cover the defects of his title and strengthen himself upon the throne, was ready to gratify their demands. They began in his reign to insist upon being consulted about other matters than taxation and supply: they asserted their right to freedom from arrest, and to liberty of speech. The following answer of the King illustrates this point. It occurred in the first year of his reign. He says, "That the Commons as they had acknowledged, were only petitioners and demandants, and that the King and the Lords alone had always been, and would be, of right judges of Parliament, but that it was the King's will to have the advice and assent of the Commons in the enactment of statutes, and in the making of grants, subsidies, and such things for the common profit of the realm." They required (and this was a great step) promises to be given them of the redress of grievances, *before* they would grant supply; insisted on inspecting the accounts of the manner in which the money granted by them for particular purposes, had been expended; and obtained the expulsion from the kingdom of certain foreign courtiers, although the King averred in his reply, that he knew of no charge against them.

During the reign of Henry V., the Commons obtained from the king a confirmation of their claims, that no statute should be valid unless it had been enacted with

their consent. This king went so far in his concessions to them as to submit to their inspection and approval the treaty which he had made with the Emperor Sigismund, his ally in the war against France.

In the eighth year of the reign of Henry VI., the Commons gained this great and final point—that Acts of Parliament should be made as they now are: that is, that bills should come before their House drawn up in the form in which they were intended to be passed; and that any amendments which should be made by the Lords in bills which had passed the Commons, should be first submitted for their approval before those bills were presented to the King. Previously the practice in making laws was that the Commons should present a petition, and that when it had passed the Lords (sometimes, if the matter of it did not affect the Lords, it did not come before their House), the petition, together with the answer which the King gave to it, was laid before the judges, who, after the session, constructed a statute out of the petition and the answer. This practice had sometimes led to the interpolation of fresh matter, or the omission or modification of points contained in the petition or answer. But, by the method now introduced, the authority of the Commons, as joint legislators, was fully recognized, and the attainment of their objects in matters of legislation was the better secured.

The King could accept or reject the bill, but no alteration could be made in its enactments without the consent of both Lords and Commons. It may be well to give a few instances *per contra*, showing the subordinate position which up to this period the Commons, notwithstanding the growth of their importance and the respect with which they were treated upon occasions by the King and by the Lords, still occupied in the State. At first, in such legislative functions as they exercised, they were merely petitioners, sometimes to the King and sometimes to the Lords.

Throughout the reign of Edward I. the assent of the Commons is not once expressed in any enacting clause of an Act of Parliament; nor in the reigns ensuing till the 9th of Edward III.; nor in any of the enacting clauses of the 16th of Richard II.; nay, even in Henry VI.'s reign down to the eighth year of it, their assent is not

expressed. Again, in the reign of Edward III. laws were declared to be made by the King at the *request* of the Commons, and by the *assent* of the Lords. But even after this there was no invariable regularity in the mode of making laws, and occasions occurred in which the King and the Lords made laws, as they had done before Edward III.'s time, without the intervention of the Commons.

It appears that, provided an Act affected not the immediate interests of the Commons, they suffered it to be passed, or could not prevent it from being passed, without their consent; but in matters affecting their immediate interests, they protested, and usually with success, against anything being passed without their concurrence.

However, the shoots of constitutional liberty, in the powers and privileges of the Commons, which had already been put forth, but had been occasionally checked, flourished vigorously during the reigns of the three kings of the house of Lancaster,* and have perpetuated themselves through the subsequent ages of English history.

CAUSES OF RISE OF THE POWER OF THE HOUSE OF COMMONS.

When the House of Commons had been regularly constituted as a part of the national polity, it was, and remained for a considerable period, a very subordinate part of it. (By the way, in Acts of Parliament, and other public documents, no mention is ever made, even to this day, of Houses of Lords and Commons, or Houses of Parliament. The regular phraseology is, to take as a specimen the way in which an Act always begins, as thus: "Whereas" such and such is the case, "be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the *Lords spiritual and temporal, and Commons in this present Parliament assembled,* and by the authority of the same," etc. No notice, we see, is taken of the different *Houses*, it is "the Lords, etc., in Parliament assembled." Often, too, Parliament is spoken of in constitutional language as one body or assembly.) Returning, however, to the point, the Commons for a long time played a very insignificant

* Hallam, vol. ii., page 215.

part in legislation, and in this respect were little more than humble appendages to the powerful assembly of the Barons. All they did at first was to vote money, and particularly to assess the tallages to be paid by the towns, and, after they had been joined in the House with the knights, the *aids and subsidies* (as the other taxes were called) to be paid by freeholders of counties. But having the power of the *purse*, using it skilfully, and turning to good account the necessities and exigencies of the kings, especially when they wanted money for foreign wars, the Commons gradually became an important element in the State. They used, as I have already mentioned, to proceed by *petition* to the King in matters affecting their own interests and rights, and the King would grant them if he approved of them, and often when he was anxious to conciliate their good will. Then, finding sometimes that when they had voted money, they were dismissed from attendance or had their petitions neglected, they followed the prudent plan of first discussing "grievances" and petitioning that they should be redressed, before they would vote him supplies. Sometimes it came openly to a regular bargain—so much privilege or power to the Commons for so much money granted to the King. Thus our liberties were obtained more by *buying* them than by fighting for them. The *power of the purse*, then, was the first and principal means by which the Commons became important in the State. There *was a second principal* way in which this result was brought about.

In rebellion against the King (as in the case of Edward II. and Richard II.) the faction opposed to the King was desirous of strengthening itself by the support of the Commons, and by calling in their aid and asking their approval of the policy pursued, they, of course, greatly increased the importance and authority of the Commons.

Also, in the Wars of the Roses, it was a grand point for either side of the contending Barons to have the Commons with them.

The *third* cause of the ultimate rise of the Commons was the very great impoverishment and destruction of the feudal nobility in the Wars of the Roses, which thus left a clear stage for the Commons. The Tudor kings finding the nobility thus depressed, made it their great

policy to keep them down, and even to diminish their remaining greatness; and though these sovereigns took to themselves a great part of the power which the Lords had lost, they gave some of it to the Commons, whom they studiously raised as a means of keeping down the Lords.

These sovereigns paid far more deference to the House of Commons than to the House of Lords, which they evidently held in very little account, and turned into a mere instrument of their will. It was virtually by the aid of the *Commons* that the Tudor King Henry VIII., passed the great measures of the Reformation. And, as the Commons had the power of the purse, the Tudor sovereigns, whose independent revenue was not large, felt themselves the more obliged to treat them with respect. By the time that the vigorous hand of the Tudors was removed, the Commons had become so powerful that they were able shortly to contest the King's authority, and even to overthrow the other two powers in the State, and become, for a time, the rulers of England. Hence, the four great causes of the rise of the Commons were :—

First. *The power of the purse*

Second. *Their interposition in political contentions.*

Third. *The great diminution and impoverishment of the feudal nobility in the Wars of the Roses, by death in the field or on the scaffold, and by the attainder of their estates as either party gained the day.*

Fourth. *The policy of the Tudor sovereigns.*

We might also add the very great increase of wealth, and consequently of importance, which the middle classes, represented by the Commons in Parliament, obtained from the time of Edward I. downwards by their activity in foreign trade, and by their thrift and industry. During that time England became one of the chief commercial countries of Europe, the kings, especially Edward III., very much encouraging trade, and numerous Acts being passed for its furtherance.

We may also notice, as one more cause of the rise of the Commons, the long minority of Henry VI., during which time, as the royal power was very much in abeyance, the authority of the Commons in the legislation and in the general control of public affairs would the more prevail.

Even when so weak a king was old enough to govern, they would be kept in comparatively little check by the crown. Hence we find that it is in his *single reign* that *they made their most signal advance* in authority and consideration.

STATUTE DE TALLAGIO NON CONCEDENDO.

This will be the proper place for giving some account of the passing of that important enactment in defence of the property of the subject, which goes by the above-cited name.

To supply his necessities in making war with France for the recovery of Guienne, Edward I. had oppressed his subjects with various and heavy taxes, imposing of his own authority aids upon the freeholders, tallages on the towns, and duties, called tolls, on the merchants, especially for wool and hides, the great articles of export from this sheep-growing, and not then manufacturing, or, to any great extent, mining country. Further, the King ordered the Sheriffs to collect by assessment on the landholders of their respective counties for the maintenance of his army in Guienne a quantity of cattle and wheat. He had already extorted a large sum of money from the clergy. We thus may see that there was no class in the country (excepting the villains) that escaped the exactions of this monarch; a fact which sufficiently accounts for the successful resistance which, on this occasion, was offered, even to a monarch so able, resolute, and powerful as was Edward I. The patience of the nation was at last exhausted, and two powerful feudal magnates, Humphrey Bohun, Earl of Hereford, the Constable, and Roger Bigod, Earl of Norfolk, the Marshal, the chiefs, in fact of the feudal array, headed the general discontent.

The King was about to sail on his warlike expedition, and summoned the two Earls to take their part in it. They both refused, and it was on this occasion that the memorable and angry colloquy took place between the King and the Earl of Norfolk. "By the everlasting God, sir Earl, you shall go or hang." "By the everlasting God, sir King, I will neither go nor hang." The

King, however, set sail for Flanders; but in his absence the two Earls, with other Barons, proceeded to the Exchequer, and in their own names and in that of the Baronage of England, forbade the Treasurer and the Judges to levy the last eighth which had been ordered. The King felt himself obliged to submit to this act of opposition, and a Parliament was called in his name, wherein was passed the celebrated statute, "De Tallagio non Concedendo," to which he gave his consent by deputy. On his return to England, the wily monarch struggled hard to avoid ratifying it in person, but, as the aspect of affairs had now become threatening to his crown, he was compelled to give the required sanction.

In reference to the passing of this statute, the historian Lingard says with truth, "This was the most important victory which had hitherto been gained over the Crown; by investing the Parliament with the sole right of raising supplies, it armed them with the power of checking the extravagance and controlling the despotism of the King."

The following is the chief substance of the statute :—

No tallage or aid shall be henceforth levied by us or our heirs without the goodwill and common consent of the Archbishops, Bishops, and other prelates, the Earls, Barons, Knights, Burgesses, and other *freemen* in our realm. No officer of us or our heirs shall take corn, wool, hides, or other goods of any person whatsoever, without the goodwill and assent of the owners of such goods. Nothing henceforth shall be taken on the sacks of wool, under the name or pretence of the evil toll; for the duty on exported wool which the King had raised had come to be generally called the "evil toll," or "maltolte." These concessions, by which the Crown relinquished the claim of levying taxes without the consent of the nation, had indeed been already made in Magna Charta. But on the confirmation of the charters by Henry III. in his minority, the clauses containing these concessions had been left out by agreement for further consideration when the King should be of full age.

The reason why at this first confirmation of the charters, the clause limiting the King's power of taxation, was left out, is thought to have been as follows: That the Barons, in aiding to wrest this power from the Crown,

had found that they had been placing themselves in a difficulty with regard to their own exaction of tallage from towns in their demesnes. Thus Henry III., and, after him, Edward I., being naturally unwilling to submit their power to limitation, had contrived to keep in abeyance these clauses relating to taxation till the time of which I am speaking. Now, however, we see that Edward I. fully and fairly conceded them.

It may be mentioned here, that there is a question (not of much importance) among historians, whether these articles above mentioned, were simply added to Magna Charta, which on this occasion was solemnly confirmed by Edward I., or whether they then formed a separate Statute. It is enough for us to know that they are entered on the Statute Book as a separate statute, the "Statutum de Tallagio non Concedendo." It is generally considered that, as Magna Charta was the great guarantee of *personal freedom*, this Statute is the great safeguard of the property of the subject, as distinctly enunciating what is termed the great constitutional principle of self-taxation.

THE CHAMPIONS OF ENGLISH LIBERTY.

My dear ———

You asked me a short time ago to answer you an historical question:—

"Who were the men to whose actions we are chiefly indebted for the liberties of England?"

There *were* undoubtedly certain prominent men at different times, who aided powerfully in achieving our constitutional liberties; but for the most part, these liberties were obtained and secured gradually, and by the Commons in Parliament taking advantage of the necessities of the kings, to grant supplies conditionally on the concession of some privilege. Hallam says on this point, "It is common to assert that the liberties of England were bought with the blood of our forefathers. This is a very magnanimous boast, and in some degree it is con-

sonant enough with truth. But it is far more generally accurate to say they were purchased with money." A great proportion of our best laws, including the confirmation * of Magna Charta itself by Henry III., were, in the most literal sense, obtained by a pecuniary bargain with the Crown.

In many Parliaments of Edward III. and Richard II., this sale of redress is chaffered for as distinctly and with as little apparent sense of disgrace, as the most legitimate business between two merchants would be transacted. But, though the liberties of this country were chiefly obtained piecemeal, and by the Commons acting as a body, rather than at any distinct era, or by any particular individual, there was, as I said, a few leading spirits at different times, who made themselves conspicuous in asserting public rights. These I will proceed to mention.

The first who may be said to have distinguished themselves in the cause of English liberty were the two great men who had a principal part in framing Magna Charta—viz., Stephen Langton, Archbishop of Canterbury and William, Earl of Pembroke. "These two men," says Hallam, may be considered as entitled beyond the rest to the glory of this monument, "the keystone of English liberty."

We must next mention the celebrated *Simon de Montfort*, Earl of Leicester, who led the Barons in their war against Henry III., defeated and took him prisoner at the battle of Lewes, and when he held the king a captive, issued writs (1265) in his name to the sheriffs of all the counties, directing them to return two knights for their county, and two citizens and burgesses for every city and borough within it. By this measure the representation of the Commons in Parliament was achieved, and the foundation of our free constitution was laid. The history of that war will show you that other measures also were taken to regulate the royal power and secure the due liberties of the subject. For all these measures we are chiefly indebted to Simon de Montfort, though there was

* This confirmation appears on the Statute Book, while Magna Charta as granted by John, is not found there. It is called "Confirmatio Chartarum," as it comprises another Charta also, "Charta de Foresta," mitigating the severity of the Forest Laws, which were a signal piece of Norman tyranny.

another baron who took a prominent part on the same side—Richard de Clare, Earl of Gloucester. Simon de Montfort and his party were, indeed, afterwards defeated by the Royalist army at the battle of Evesham; yet the effects of their exertions for English liberty were, to a great extent, secured. The King did not dare to revoke any part of the Great Charter; and not long after the battle of Evesham, he adopted in a Parliament, held at Marlborough, some of the most valuable provisions of Simon de Montfort, "and enacted other good laws." Edward I. himself continued the policy which Simon de Montfort had initiated.

The two next men in our history most worthy of note as champions of our liberties, were the Earl of Hereford, the Constable, and the Earl of Norfolk, the Marshal, in the reign of Edward I.

The King having in 1297, to the great discontent of the nation, committed some exactions on various classes of the realm for the maintenance of his war for the recovery of Guienne, these two Earls took part with the oppressed, and refused to accompany the King on his expeditions to France and Flanders.

It was on this occasion that the curt, but memorable, colloquy took place between the King and the Earl of Norfolk, which has been mentioned in the last paper. The other nobles, to a great extent, took part with these two Earls, and the King was left almost alone.

After he had departed for Flanders, the two Earls, with other leading nobles, prohibited the collection of certain taxes which the King had laid on without consent of Parliament, compelled him, though absent, to confirm the charters afresh by deputy; and, on the King's return to England, obliged him, in spite of all the resistance which he could offer, to confirm the charter again in person.

"It required," says Hallam, "an intrepid patriotism to contend with and finally control such a sovereign as Edward I., one of the most powerful, warlike, and skilful of our kings; and England has never produced any patriots to whom she owes more gratitude than Humphrey Bohun, Earl of Hereford, and Roger Bigod, Earl of Norfolk."

I do not think that for many ages after this time any very distinguished assertor of English liberty is to be

found in our history, though a few minor instanccs of men defending this cause may occur.

Thus the Black Prince himself, in the last year of his life, actually headed the opposition of the Commons against the mis-government of his father, Edward III., then apparently in his dotage, and obtained redress of the grievances complained of. And in the reign of Henry VIII. we find the good and great Sir Thomas More, as Speaker of the House of Commons, withstanding Wolsey's imperious and exorbitant demands for a supply. For the next conspicuous champion of right and liberty, we must come down to a much later period of our history, the reign of Charles I. When that misguided king was attempting to govern without Parliament, and to raise his revenue without their consent, John Hampden (of Hampden in Bucks) was the only man to stand forth in opposition to the illegal levying of a tax called "ship money."

And though the judges, creatures of the court, condemned him for non-payment of the tax, his example tended much to encourage a spirit of resistance throughout the country, and thus greatly conduced to the restrictions subsequently placed on royal power.

There were some sincere and sound-minded patriots among the members of the Long Parliament (which met in 1641), though there were also many extreme and rancorous opponents of the King, whose violence ultimately proved most injurious to the cause of liberty and led to the temporary establishment of a military rule. Among the more moderate patriots, Hyde and the noble-minded Lord Falkland were the most worthy of note.

The next men deserving mention in this respect were some of those who brought over William III., and effected the Revolution of 1688, the era of modern constitutional liberty. The man of most mark amongst them was the prudent and sagacious Lord Somers, to whose instrumentality we are chiefly indebted for the Bill of Rights (1689), which may be considered as our second Magna Charta, I would advise you to read the Act of Parliament called by this name, observing that its provisions are severally directed against the recurrence of aggressions similar to those which James II. had committed against our constitutional rights. I might have mentioned as eminent, though temperate, opponents of illegal power, and consequently

as assertors of our just rights, the seven bishops in the reign of James II. who refused to give orders that an illegal declaration of the King's should be read in the churches of their dioceses, and who, by the firmness of their conduct on that occasion, gave a very great impulse throughout the nation to the spirit of resistance provoked by James II.'s arbitrary proceedings. Their services in thwarting the King's unconstitutional policy were most opportune, and have merited high commendation and esteem.

The Archbishop of Canterbury (Sancroft) was at their head, and Ken, who was Bishop of Bath and Wells, the most eminent of their number.

I think this enough for a full answer to your question.

J. R. PRETYMAN.