CHAP.

in England. What Edward had really done was to break the Welsh resistance. His policy of justice (for the "massacre of the bards" is a mere fable) accomplished its end, and in spite of two later rebellions Wales ceased to be any serious danger to England for a hundred years.

Section II.—The English Parliament, 1283—1295

[Authorities.—The short treatise on the Constitution of Parliament called "Modus tenendi Parliamenta" may be taken as a fair account of its actual state and powers in the fourteenth century. It has been reprinted by Dr. Stubbs, in the invaluable collection of Documents which serves as the base of the present section. Sir Francis Palgrave has illustrated the remedial side of our parliamentary institutions with much vigour and picturesqueness in his "History of the English Commonwealth," but his conclusions are often hasty and prejudiced. On all constitutional points from the reign of Edward the First we can now rely on the judgment and research of Mr. Hallam ("Middle Ages").]

[The second volume of Dr. Stubbs's "Constitutional History" which deals with this period was published after this History was written and the list of authorities prepared.—ED.]

The New England

The conquest of Wales marked the adoption of a new attitude and policy on the part of the crown. From the earliest moment of his reign Edward the First definitely abandoned all dreams of recovering the foreign dominions which his grandfather had lost. He concentrated himself on the consolidation and good government of England itself. We can only fairly judge his annexation of Wales, or his attempt to annex Scotland, if we regard them as parts of the same scheme of national administration to which we owe his final establishment of our judicature, our legislation, our Parliament. The King's English policy, like his English name, was the sign of a new epoch. The long period of national formation had come practically to an end. With the reign of Edward begins modern England, the constitutional England in which we live. It is not that any chasm separates our history before it from our history after it, as the chasm of the Revolution divides the history of France, for we have traced the rudiments of our constitution to the first moment of the English settlement in Britain. But it is with these as with our language. The tongue of Ælfred

SEC. II

THE ENGLISH

PARLIA-MENT

1283

323

SEC. II

THE ENGLISH PARLIA-

1283

1295

is the very tongue we speak, but in spite of its identity with modern English it has to be learned like the tongue of a stranger. On the other hand, the English of Chaucer is almost as intelligible as our own. In the first the historian and philologer can study the origin and development of our national speech, in the last a schoolboy can enjoy the story of Troilus and Cressida, or listen to the gay chat of the Canterbury Pilgrims. In precisely the same way



GREAT SEAL OF EDWARD I.

a knowledge of our earliest laws is indispensable for the right understanding of later legislation, its origin and its developement, while the principles of our Parliamentary system must necessarily be studied in the Meetings of Wise Men before the Conquest or the Great Council of barons after it. But the Parliaments which Edward gathered at the close of his reign are not merely illustrative of the history of later Parliaments, they are absolutely identical with those which still sit at St. Stephen's; and a statute of Edward, if unrepealed, can be pleaded in our courts as formally as

Y 2

IV

CHAP.

a statute of Victoria. In a word, the long struggle of the constitution for actual existence has come to an end. The contests which follow are not contests which tell, like those which preceded them, on the actual fabric of our political institutions; they are simply stages in the rough discipline by which England has learned, and is still learning, how best to use and how wisely to develope the latent powers of its national life, how to adjust the balance of its social and political forces, and to adapt its constitutional forms to the varying conditions of the time. From the reign of Edward, in fact, we are face to face with modern England. King, Lords, Commons, the Courts of Justice, the forms of public administration, our local divisions and provincial jurisdictions, the relations of Church and State, in great measure the framework of society itself, have all taken the shape which they still essentially retain.

Judicial Reforms

Much of this great change is doubtless attributable to the general temper of the age, whose special task and object seemed to be that of reducing to distinct form the great principles which had sprung into a new and vigorous life during the century that preceded it. As the opening of the thirteenth century had been an age of founders, creators, discoverers, so its close was an age of lawyers ; the most illustrious men of the time were no longer such as Bacon, or Earl Simon, or Francis of Assisi, but men such as St. Lewis of France or Alfonso the Wise, organizers, administrators, framers of laws and institutions. It was to this class that Edward himself belonged. He had little of creative genius or political originality in his character, but he possessed in a high degree the faculty of organization, and his passionate love of law broke out even in the legal chicanery to which he sometimes stooped. In the judicial reforms to which so much of his attention was directed, he showed himself, if not an "English Justinian," at any rate a clear-sighted man of business, developing, reforming, bringing into a lasting shape the institutions of his predecessors. One of his first cares was to complete the judicial reforms begun by Henry II. The most important court of civil jurisdiction, the Sheriff's or County Court, remained unchanged, both in the extent of its jurisdiction, and the character of the Sheriff as a royal officer. But the superior courts into which the King's Court had since the Great Charter divided itself, those of the King's Bench, Exchequer, and Common Pleas,

324

SEC. II

THE ENGLISH PARLIA-

MENT

1283

1295

The three Common Law Courts

now received a distinct staff of judges for each court. Of far greater importance than this change, which was in effect but the completion of a process of severance that had long been going on, was the establishment of an equitable jurisdiction side by side with that of the common law. In his reform of 1178 Henry the Second had broken up the older King's Court, which had till then served as the final Court of Appeal, by the severance of the purely legal judges who had been gradually added to it from the general body of his councillors. The judges thus severed from the Council retained the name and the ordinary jurisdiction of "the King's Court," while all cases in which they failed to do justice were reserved for the special cognizance of the royal Council itself. To this final jurisdiction of the King in Council Edward gave a wide developement. His assembly of the ministers, the higher permanent officials, and the law officers of the Crown, for the first time reserved to itself in its judicial capacity the correction of all breaches of the law which the lower courts had failed to repress, whether from weakness, partiality, or corruption, and especially of those lawless outbreaks of the more powerful baronage which



IV

CHANCELLOR'S SEAL BAG. Carved on Tomb of Walter de Merton, Rochester Cathedral. Journal of Archaeological Association.

defied the common authority of judges. Though regarded the with jealousy by Parliament, the jurisdiction of the Council seems to have been steadily put in force through the two centuries which followed; in the reign of Henry the Seventh it took legal and statutory form in the shape of the Court of Star Chamber, and its powers are still exercised in our own day by the Judicial Committee of the Privy Council. But The Court the same duty of the Crown to do justice where its courts fell short of giving due redress for wrong

Chancery

expressed itself in the jurisdiction of the Chancellor. This great officer of State, who had perhaps originally acted only as President of the Council when discharging its judicial functions, acquired at

325

SEC. II

THE ENGLISH

PARLIA-MENT

1283

1295

The King in Council

CHAP.

a very early date an independent judicial position of the same nature. It is by remembering the origin of the Court of Chancery that we understand the nature of the powers it gradually acquired. All grievances of the subject, especially those which sprang from the misconduct of government officials or of powerful oppressors, fell within its cognizance, as they fell within that of the Royal Council, and to these were added disputes respecting the wardship of infants, dower, rent-charges, or tithes. Its equitable jurisdiction sprang from the defective nature and the technical and unbending rules of the common law. As the Council had given redress in cases where law became injustice, so the Court of Chancery interfered without regard to the rules of procedure adopted by the common law courts, on the petition of a party for whose grievance the common law provided no adequate remedy. An analogous extension of his powers enabled the Chancellor to afford relief in cases of fraud, accident, or abuse of trust, and this side of his jurisdiction was largely extended at a later time through the results of legislation on the tenure of land by ecclesiastical bodies. The separate powers of the Chancellor, whatever was the original date at which they were first exercised, seem to have been thoroughly established under Edward the First.

Edward's Legislation

1279

In legislation, as in his judicial reforms, Edward renewed and consolidated the principles which had been already brought into practical working by Henry the Second. Significant acts announced his determination to carry out Henry's policy of limiting the independent jurisdiction of the Church. He was resolute to force it to become thoroughly national by bearing its due part of the common national burthens, and to break its growing dependence upon Rome. The defiant resistance of the ecclesiastical body was answered in an emphatic way. By falling into the "dead hand" or "mortmain" of the Church land ceased to render its feudal services; and the Statute "of Mortmain" now forbade the alienation of land to religious bodies in such wise that it should cease to render its due service to the King. The restriction was probably no beneficial one to the country at large, for Churchmen were the best landlords, and it was soon evaded by the ingenuity of the clerical lawyers; but it marked the growing jealousy of any attempt to set aside what was national from serving the general

326

SEC. H

THE ENGLISH PARLIA-

MENT

1283

need and profit of the nation. Its immediate effect was to stir the clergy to a bitter resentment. But Edward remained firm, and when the bishops proposed to restrict the royal courts from dealing with cases of patronage or causes which touched the chattels of Churchmen he met their proposals by an instant prohibition. His care for the trading classes was seen in the Statute of Merchants,



IV

SEAL OF STATUTE MERCHANT, GLOUCESTER. 1307-1327. Collection of the Society of Antiquaries.

which provided for the registration of the debts of traders, and for their recovery by distraint of the debtor's goods and the imprisonment of his person. The Statute of Winchester, the greatest of Edward's measures for the enforcement of public order, revived and reorganized the old institutions of national police and national defence. It regulated the action of the hundred, the duty of watch and ward, and the gathering of the fyrd or militia of the realm as

Henry the Second had moulded it into form in his Assize of Arms. Every man was bound to hold himself in readiness, duly armed, for the King's service in case of invasion or revolt, or to pursue felons when hue and cry was raised after them. Every district was made responsible for crimes committed within its bounds; the gates of each town were required to be closed at nightfall, and all strangers to give an account of themselves to its magistrates. As a security for travellers against sudden attacks from robbers, all brushwood was to be destroyed for a space of two hundred feet on either side the public highway, a provision which illustrates at once the social and physical condition of the country at the time. To enforce the observance of this act knights were appointed in every Justices of shire under the name of Conservators of the Peace, a name which, as the convenience of these local magistrates was more sensibly felt and their powers more largely extended, was changed for that which they still retain of "Justices of the Peace." The great measure which is commonly known as the Statute "Quia

the Peace 1285

327

SEC. II THE

ENGLISH PARLIA-

1283

1295

1283

SEC. 11 Emptores " is one of those legislative efforts which mark the pro-THE gress of a wide social revolution in the country at large. The number of the greater barons was dimin-1283 ishing every day, while the number of the country gentry and of the more sub-1290 - stantial yeomanry was increasing with the

stantial yeomanry was increasing with the increase of the national wealth. This increase showed itself in the growing desire to become proprietors of land. Tenants of the greater barons received under-tenants on condition of their rendering them similar services to those which they themselves rendered to their lords; and the baronage, while duly receiving the services in compensation for which they had originally granted their lands in fee, saw with jealousy the feudal



CHAP.

SEAL OF WILLIAM MORAUNT, REPRESENTING A KENTISH MANOR-HOUSE, A.D. 1272. Archaeological Journal.

profits of these new under-tenants, the profits of wardship or of reliefs and the like, in a word the whole increase in the value of



Built 1283–1292. Archæological Journal.

the estate consequent on its subdivision and higher cultivation, passing into other hands than their own. The purpose of the statute was to check this process by providing that in any case of

alienation the sub-tenant should henceforth hold, not of the tenant, but directly of the superior lord. But its result was to promote instead of hindering the transfer and subdivision of land. The tenant who was before compelled to retain in any case so much of the estate as enabled him to discharge his feudal services to the over-lord of whom he held it, was now enabled by a process analogous to the modern sale of "tenant-right," to transfer both land and services to new holders. However small the estates thus created might be, the bulk were held directly of the Crown ; and this class of lesser gentry and freeholders grew steadily from this time in numbers and importance.

It is to the same social revolution as well as to the large statesmanship of Edward the First that we owe our Parliament. Neither the Meeting of the Wise Men before the Conquest, nor the Great Council of the Barons after it, had been in any way representative bodies. The first theoretically included all free holders of land, but it shrank at an early time into a gathering of earls, higher nobles, and bishops, with the officers and thegns of the royal household. Little change was made in the composition of this assembly by the Conquest, for the Great Council of the Norman kings was held to include all tenants who held directly of the Crown, the bishops and greater abbots (whose character as independent spiritual members tended more and more to merge in their position as barons), and the great officers of the Court. But though its composition remained the same, the character of the assembly was essentially altered. From a free gathering of "Wise Men" it sank to a Royal Court of feudal vassals. Its functions seem to have become almost nominal, and its powers to have been restricted to the sanctioning, without debate or possibility of refusal, all grants demanded from it by the Crown. Its "counsel and consent," however, remained necessary for the legal validity of every great fiscal or political measure, and its very existence was an effectual protest against the imperial theories advanced by the lawyers of Henry the Second, theories which declared all legislative power to reside wholly in the sovereign. It was in fact under Henry that these assemblies became more regular, and their functions more important. The reforms which marked his reign were issued in the Great Council, and even financial matters were

The Great Council of the Realm

329

SEC. II

THE ENGLISH PARLIA-

MENT 1283

TO

1295

IV

330

SEC. II

THE ENGLISH

PARLIA-

1283

1295

CHAP.

suffered to be debated there. But it was not till the grant of the Great Charter that its powers over taxation were formally recognized, and the principle established that no burthen beyond the customary feudal aids might be imposed "save by the Common Council of the Realm." The same great document first expressly regulated its form. In theory, as we have seen, the assembly consisted of all who held land directly of the Crown. But the same causes which restricted attendance at the Witenagemot to the greater nobles told on the actual composition of the Council of Barons. While the attendance of the ordinary tenants in chief, the Knights or "Lesser Barons," was .burthensome from its expense to themselves, their numbers and their dependence on the higher nobles made their assembly dangerous to the Crown. As early, therefore, as the time of Henry the First we find a distinction recognized between the "Greater Barons," of whom the Council was usually composed, and the "Lesser Barons" who formed the bulk of the tenants of the Crown. But though the attendance of the latter had become rare, their right of attendance remained intact. While enacting that the prelates and greater barons should be summoned by special writs to each gathering of the Council, a remarkable provision of the Great Charter orders a general summons to be issued through the Sheriff to all direct tenants of the Crown. The provision was probably intended to rouse the lesser baronage to the exercise of rights which had practically passed into desuetude, but as the clause is omitted in later issues of the Charter we may doubt whether the principle it embodied ever received more than a very limited application. There are traces of the attendance of a few of the lesser knighthood, gentry perhaps of the neighbourhood where the assembly was held, in some of its meetings under Henry the Third, but till a late period in the reign of his successor the Great Council practically remained a gathering of the greater barons, the prelates, and the officers of the Crown. The change which the Great Charter had failed to accomplish was now, however, brought about by the social circumstances of the time. One of the most remarkable of these was the steady decrease in the number of the greater nobles. The bulk of the earldoms had already lapsed to the Crown through the extinction of the families of their

IV

possessors ; of the greater baronies, many had practically ceased to exist by their division among co-heiresses, many through the constant struggle of the poorer barons to rid themselves of their rank by a disclaimer, so as to escape the burthen of higher taxation and attendance in Parliament which it involved. How far this diminution had gone we may see from the fact that hardly more than a hundred barons sat in the earlier Councils of Edward's reign. But while the number of those who actually possessed the privilege of assisting in Parliament was rapidly diminishing, the numbers and wealth of the "lesser baronage," whose right of attendance had become a mere constitutional tradition, was as rapidly increasing. The long peace and prosperity of the realm, the extension of its commerce, and the increased export of wool, were swelling the ranks and incomes of the country gentry as well as of the freeholders and substantial yeomanry. We have already noticed the growing passion for the possession of land which makes this reign so critical a moment in the history of the English freeholder; but the same tendency had to some extent existed in the preceding century, and it was a consciousness of the growing importance of this class of rural proprietors which induced the barons at the time of the Charter to make their fruitless attempt to induce them to take part in the deliberations of the Great Council. But while the barons desired their presence as an aid against the Crown, the Crown itself desired it as a means of rendering taxation more efficient. So long as the Great Council remained a mere assembly of magnates it was necessary for the King's ministers to treat separately with the other orders of the state as to the amount and assessment of their contributions. The grant made in the Great Council was binding only on the barons and prelates who made it ; but before the aids of the boroughs, the Church, or the shires could reach the royal treasury, a separate negotiation had to be conducted by the officers of the Exchequer with the reeves of each town, the sheriff and shire-court of each county, and the archdeacons of each diocese. Bargains of this sort would be the more tedious and disappointing as the necessities of the Crown increased in the later years of Edward, and it became a matter of fiscal expediency to obtain the sanction of any proposed taxation through the presence of these classes in the Great Council itself.

331

SEC. II

THE ENGLISH

PARLIA-MENT

1283 TO

SEC. 11 THE ENGLISH PARLIA-MENT 1283 TO 1295 Knights

of the Shire The effort, however, to revive the old personal attendance of the lesser baronage, which had broken down half a century before, could hardly be renewed at a time when the increase of their numbers made it more impracticable than ever; but a means of

escape from this difficulty was fortunately suggested by the very nature of the court through which alone a summons could be addressed to the landed knighthood. Amidst the many judicial reforms of Henry or Edward the Shire Court remained unchanged. The haunted mound or the immemorial oak round which the assembly gathered (for the court was often held in the open air) were the relics of a time before the free kingdom had sunk into a shire, and its folk-moot into a County Court. But save that the King's reeve had taken the place of the King, and that the Norman legislation had displaced the Bishop and set four Coroners by the Sheriff's side, the gathering of the freeholders remained much as of old. The local knighthood, the yeomanry, the husbandmen of the county, were all represented in the crowd that gathered round the Sheriff, as, guarded by his liveried followers, he published the King's writs, announced his demand of aids, received the presentment of criminals and the inquest of the local jurors, assessed the taxation of each district, or listened solemnly to appeals for justice, civil and criminal, from all who held themselves



CHAP.

BRASS OF SIR JOHN D'ABERNON, 1277. Macklin, "Monumental Brasses."

oppressed in the lesser courts of the hundred or the soke. It was in the County Court alone that the Sheriff could legally summon the lesser baronage to attend the Great Council, and it was in the actual constitution of this assembly that the Crown found a solution of the difficulty which we have already stated.

11

For the principle of representation by which it was finally solved was coeval with the Shire Court itself. In all cases of civil or criminal justice the twelve sworn assessors of the Sheriff, as members of a class, though not formally deputed for that purpose, practically represented the judicial opinion of the county at large. From every hundred came groups of twelve sworn deputies, the "jurors," through whom the presentments of the district were made to the royal officer, and with whom the assessment of its share in the general taxation was arranged. The husbandmen on the outskirts of the crowd, clad in the brown smock frock which still



MAN WITH BOW AND ARROWS. WOMAN WITH DISTAFF. Early Fourteenth Century. MS, Rey. 2 B. vii.

lingers in the garb of our carters and ploughmen, were broken up into little knots of five, a reeve and four assistants, who formed the representatives of the rural townships. If, in fact, we regard the Shire Courts as lineally the descendants of our earliest English folk-moots, we may justly claim the principle of parliamentary representation as among the oldest of our institutions. But it was only slowly and tentatively that this principle was applied to the reconstitution of the Great Council. As early as the close of John's reign there are indications of the approaching change in the summons of "four discreet knights" from every county. Fresh need of local support was felt by both parties in the conflict of the 333

SEC. II

THE ENGLISH PARLIA-

MENT 1283

succeeding reign, and Henry and his barons alike summoned knights from each shire "to meet on the common business of the realm." It was no doubt with the same purpose that the writs of



BOB-APPLE. Early Fourteenth Century. MS. Roy. 2 B. vii.

Earl Simon ordered the choice of knights in each shire for his famous parliament of 1265. Something like a continuous attendance may be dated from the accession of Edward, but it was long before the knights were regarded as more than local deputies for the assessment of taxation, or admitted to a share in the general business of the Great Council. The statute "Quia Emptores," for instance, was passed in it before the knights who had been summoned could attend. Their participation in the deliberative power of Parliament,

CHAP.

as well as their regular and continuous attendance, dates only from the Parliament of 1295. But a far greater constitutional, change in their position had already taken place through the



CLUB-BALL. Early Fourteenth Century. MS. Roy. 10 E. iv.

extension of electoral rights to the freeholders at large. The one class entitled to a seat in the Great Council was, as we have seen, that of the lesser baronage; and of the lesser baronage

SEC. II

THE ENGLISH

PARLIA-MENT

1283

alone the knights were in theory the representatives. But the necessity of holding their election in the County Court rendered any restriction of the electoral body physically impossible. The court was composed of the whole body of freeholders, and no sheriff could distinguish the "aye, aye" of the yeoman from the "aye, aye" of the lesser baron. From the first moment therefore of their attendance we find the knights regarded not as mere representatives of the baronage, but as knights of the shire, and by this silent revolution the whole body of the rural freeholders were admitted to a share in the government of the realm.

The financial difficulties of the Crown led to a far more radical revolution in the admission into the Great Council of representatives from the boroughs. The presence of knights from each shire Boroughs

Representation of

335

SEC. II

THE ENGLISH PARLIA-

> 1283 TO

1295



TOLL-HOUSE, GREAT YARMOUTH. Thirteenth Century. Journal of Archaological Association.

was, as we have seen, the recognition of an older right, but no right of attendance or share in the national "counsel and consent" could be pleaded for the burgesses of the towns. On the other hand, the rapid developement of their wealth made them every day more important as elements in the national taxation. The towns had long since freed themselves from all payment of the dues or fines exacted by the King, as the original lord of the soil on which

IV

HISTORY OF THE ENGLISH PEOPLE CHAP. IV

they had in most cases grown up, by what was called the purchase of the "farm of the borough"; in other words, by the commutation of these uncertain dues for a fixed sum paid annually to the Crown, and apportioned by their own magistrates among the general body of the burghers. All that the King legally retained was the right enjoyed by every great proprietor of levying a corresponding taxation on his tenants in demesne under the name of "a free aid," whenever a grant was made for the national necessities by the barons of the Great Council. But the temptation of appropriating the growing wealth of the mercantile class proved stronger than legal restrictions, and we find both Henry the



TOWN WALL AND TOWER, LYNN. Thirteenth Century. Taylor, "History of King's Lynn."

Third and his son assuming a right of imposing taxes at pleasure and without any authority from the Council even over London itself. The burgesses could refuse indeed the invitation to contribute to the "free aid" demanded by the royal officers but the suspension of their markets or trading privileges brought them in the end to submission. Each of these "free aids," however, had to be extorted after a long wrangle between the borough and the officers of the Exchequer; and if the towns were driven to comply with what they considered an extortion, they could generally force the Crown by evasions and delays to a compromise and abatement of its original demands. The same financial reasons, therefore,

336

SEC. II

THE ENGLISH

PARLIA-MENT

> 1283 TO



existed for desiring the presence of their representatives in the Great Council as existed in the case of the shires ; but it was the genius of Earl Simon which first broke through the older constitutional tradition, and dared to summon two burgesses from each town to the Parliament of 1265. Time had, indeed, to pass before the large and statesmanlike conception of the great patriot could meet with full acceptance. Through the earlier part of



OLD BRISTOL BRIDGE. Thirteenth Century. Seyer, "Memorials of Bristol."

Edward's reign we find a few instances of the presence of representatives from the towns, but their scanty numbers and the irregularity of their attendance show that they were summoned rather to afford financial information to the Great Council than as representatives in it of an Estate of the Realm. But every year pleaded stronger and stronger for their inclusion, and in the Parliament of 1295 that of 1265 found itself at last reproduced. "It was from me that he learnt it," Earl Simon had cried, as he recognized the military skill of Edward's onset at Evesham ; "It

IMPERIAL

338

SEC. II

THE ENGLISH PARLIA-

MENT 1283

TO



was from me that he learnt it," his spirit might have exclaimed, as he saw the King gathering at last two burgesses "from

every city, borough, and leading town" within his realm to sit side by side with the knights, nobles, and barons of the Great Council. To the Crown the change was from the first an advantageous one. The grants of subsidies by the burgesses in Parliament proved more profitable than the previous extortions of the Exchequer. The proportion of their grant generally exceeded that of the other estates by a tenth. Their representatives too proved far more compliant with the royal will than the barons or knights of the shire; only on one occasion during Edward's reign did the burgesses waver from their general support of the Crown. It was easy indeed to control them, for the selection of boroughs to be represented remained wholly in the King's hands, and their numbers could be increased or diminished at the King's pleasure. The determination was left to the sheriff, and at a hint from the royal Council a sheriff of Wilts would cut down the number of represented boroughs in his shire from eleven to three, or a sheriff of Bucks declare he could find but a single borough, that of Wycombe, within the bounds of the county. Nor was this exercise of the prerogative hampered by any anxiety on the part of the towns to claim repre-It was difficult to suspect that a power

CHAP.

SCEPTRE OF THE LORD MAYOR OF LONDON. Jewitt and Hope, "Corporation Plate."

sentative privileges.



340

SEC. II.

THE ENGLISH PARLIA-

MENT 1283

TO

IV

before which the Crown would have to bow lay in the ranks of soberly clad traders, summoned only to assess the contributions of their boroughs, and whose attendance was as difficult to secure as it seemed burthensome to themselves and the towns who sent them. The mass of citizens took little or no part in their choice, for they were elected in the county court by a few of the principal burghers deputed for the purpose; but the cost of their maintenance, the two shillings a day paid to the burgess by his town, as four were paid to the knight by his county, was a burthen from which the boroughs made desperate efforts to escape. Some persisted in



Early Fourteenth Century.

making no return to the sheriff. Some bought charters of exemption from the troublesome privilege. Of the 165 who were summoned by Edward the First more than a third ceased to send representatives after a single compliance with the royal summons. During the whole time from the reign of Edward the Third to the reign of Henry the Sixth the sheriff of Lancashire declined to return the names of any boroughs at all within that county, "on account of their poverty." Nor were the representatives themselves more anxious to appear than their boroughs to send them. The busy country squire and the thrifty trader were equally reluctant to undergo the trouble and expense of a journey 341

SEC. II

THE ENGLISH

PARLIA-MENT

1283

CHAP.

to Westminster. Legal measures were often necessary to ensure their presence. Writs still exist in abundance such as that by which Walter le Rous is "held to bail in eight oxen and four cart-horses to come before the King on the day specified" for attendance in Parliament. But in spite of obstacles such as these the presence of representatives from the boroughs may be regarded as continuous from the Parliament of 1295. As the representation of the lesser barons had widened through a silent change into that of the shire, so that of the boroughs—restricted in theory to those in royal demesne—seems practically from Edward's time to have been extended to all who were in a condition to pay the cost of their representatives' support. By a change as silent within the Parliament itself the burgess, originally summoned to take part only in matters of taxation, was at last admitted to a full share in the deliberations and authority of the other orders of the State.

The Early Parliaments

Representation of the Clergy

The admission of the burgesses and knights of the shire to the assembly of 1295 completed the fabric of our representative constitution. The Great Council of the Barons had become the Parliament of the Realm, a parliament in which every order of the state found itself represented, and took part in the grant of supplies, the work of legislation, and in the end the control of government. But though in all essential points the character of Parliament has remained the same from that time to this, there were some remarkable particulars in which this assembly of 1295 differed widely from the present Parliament at St. Stephen's. Some of these differences, such as those which sprang from the increased powers and changed relations of the different orders among themselves, we shall have occasion to consider at a later time. But a difference of a far more startling kind than these lay in the presence of the clergy. If there is any part in the Parliamentary scheme of Edward the First which can be regarded as especially his own, it is his project for the representation of the ecclesiastical order. The King had twice at least summoned its "proctors" to Great Councils before 1295, but it was then only that the complete representation of the Church was definitely organized by the insertion of a clause in the writ which summoned a bishop to Parliament requiring the personal attendance of all archdeacons, deans, or priors of cathedral churches, of a proctor for each cathedral chapter, and

342

SEC. II

THE ENGLISH

PARLIA-

1283

two for the clergy within his diocese. The clause is repeated in the writs of the present day, but its practical effect was foiled almost from the first by the resolute opposition of those to whom it was addressed. What the towns failed in doing the clergy actually



S. ETHELBERT'S GATE, NORWICH.

did. Even when forced to comply with the royal summons, as they seem to have been forced during Edward's reign, they sat jealously by themselves, and their refusal to vote supplies in any but their own provincial assemblies, or convocations, of Canterbury

IV

343

SEC. II THE ENGLISH PARLIA-MENT 1283 TO 1295

CHAP.

and York left the Crown without a motive for insisting on their continued attendance. Their presence indeed, though still occasionally granted on some solemn occasions, became so pure a formality that by the end of the fifteenth century it had sunk wholly into desuetude. In their anxiety to preserve their existence as an isolated and privileged order the clergy flung away a power which, had they retained it, would have ruinously hampered the healthy developement of the state. To take a single instance, it is difficult to see how the great changes of the Reformation could have been brought about had a good half of the House of Commons consisted purely of churchmen, whose numbers would have been backed by the weight of property as possessors of a third of the landed estates of the realm. A hardly less important difference may be found in the gradual restriction of the meetings of Parliament to Westminster. The names of the early statutes remind us of its convocation at the most various quarters, at Winchester, Acton Burnell, or Northampton. It was at a later time that Parliament became settled in the straggling village which had grown up in the marshy swamp of the Isle of Thorns, beside the palace whose embattled pile towered over the Thames and the great minster which was still rising in Edward's day on the site of the older church of the Confessor. It is possible that, while contributing greatly to its constitutional importance, this settlement of the Parliament may have helped to throw into the background its character as a supreme court of appeal. The proclamation by which it was called together invited "all who had any grace to demand of the King in Parliament, or any plaint to make of matters which could not be redressed or determined by ordinary course of law, or who had been in any way aggrieved by any of the King's ministers or justices or sheriffs, or their bailiffs, or any other officer, or have been unduly assessed, rated, charged, or surcharged to aids, subsidies, or taxes," to deliver their petitions to receivers who sat in the Great Hall of the Palace of Westminster. The petitions were forwarded to the King's Council, and it was probably the extension of the jurisdiction of that body, and the subsequent rise of the Court of Chancery, which reduced this ancient right of the subject to the formal election of "Triers of Petitions" at the opening of every new Parliament by the House

Restriction of Parliament to Westminster

Parliament the Court of Appeal

SEC. II

THE NGLISH

PARLIA

1283

of Lords, a usage which is still continued. But it must have been owing to some memory of the older custom that the subject always THE CON-QUEST OF SCOTLAND looked for redress against injuries from the Crown or its ministers to the Parliament of the realm.

Section III .- The Conquest of Scotland, 1290-1305

[Authorities.-Scotland itself has no contemporary chronicles for this period : the jingling rimes of Blind Harry are two hundred years later than the death of his hero, Wallace. Those of England are meagre and inaccurate ; the most important are the "Annales Angliæ et Scotiæ" end "Annales Regni Scotiæ," Rishanger's Chronicle, his "Gesta Edwardi Primi," and three fragments of annais (all published in the Rolls Series). The portion of the so-called Walsingham's History which relates to this time is now attributed by its latest editor, Mr. Riley, to Rishanger's hand. But the main source of our information lies in the copious collection of state papers preserved in Rymer's "Fœdera," in the "Rotuli Scotiæ," and in the "Documents and Records illustrative of the History of Scotland," edited by Sir F. Palgrave. Mr. Robertson, in his" Scotland under her Early Kings," has admirably illustrated the ages before the quarrel, and Mr. Burton in his History of Scotland has stated the quarrel itself with great accuracy and fairness. For Edward's side see the preface of Sir F. Palgrave to the work above, and Mr. Freeman's essay on "The Relations between the Crowns of England and Scotland."]

The personal character of Edward the First had borne a large Edward part in the constitutional changes which we have described, but it becomes of the highest moment during the war with Scotland which covers the latter half of his reign.

In his own time, and amongst his own subjects, Edward was the object of almost boundless admiration. He was in the truest sense a national King. At the moment when the last trace of foreign conquest passed away, when the descendants of those who won and those who lost at Senlac blended for ever into an English people, England saw in her ruler no stranger, but an Englishman. The national tradition returned in more than the golden hair or the English name which linked him to our earlier Kings. Edward's very temper was English to the core. In good as in evil he stands out as the typical representative of the race he ruled, like them wilful and imperious, tenacious of his rights, indomitable in his pride, dogged, stubborn, slow of apprehension, narrow in sympathy,

the First 1272-1307

1290

TO 1305

IV

but like them, too, just in the main, unselfish, laborious, conscientious, haughtily observant of truth and self-respect, temperate, THE CON-QUEST OF reverent of duty, religious. He inherited indeed from the Angevins their fierce and passionate wrath; his punishments, when he punished in anger, were without pity; and a priest who ventured at a moment of storm into his presence with a



ELEANOR OF CASTILE. From her Tomb in Westminster Abbey.

remonstrance dropped dead from sheer fright at his feet. But for the most part his impulses were generous, trustful, averse from cruelty, prone to forgiveness. "No man ever asked mercy of me," he said in his old age, "and was refused." The rough soldierly nobleness of his nature breaks out at Falkirk, where he lay on the bare ground among his men, or in his refusal during a Welsh campaign to drink of the one cask of wine which had been saved from marauders : "It is I who have brought you into this strait," he said to his thirsty fellow-soldiers, "and I will have no advantage of you in meat or drink." A strange tenderness and sensitiveness to affection lay in fact beneath the stern imperiousness of his outer bearing. Every subject throughout his realm was drawn closer to the King who wept bitterly at the news of his father's death, though it gave him a crown: whose fiercest burst of vengeance was called out by an insult to his mother ; whose crosses rose as memorials of his love and sorrow at every spot where his wife's bier rested. " I loved her tenderly in her lifetime,"

CHAP.

wrote Edward to Eleanor's friend, the Abbot of Cluny ; "I do not cease to love her now she is dead." And as it was with mother and wife, so it was with his people at large. All the self-concentrated isolation of the earlier Angevins disappears in Edward. He was the first English king since the Conquest who loved

346

SEC. III

1200

TO 1305

his people with a personal love, and craved for their love back again. To his trust in them we owe our Parliament, to his care for them the great statutes which stand in the forefront of our Even in his struggles with her England understood a laws. temper which was so perfectly her own, and the quarrels between King and people during his reign are quarrels where, doggedly as they fought, neither disputant doubted for a moment the worth or affection of the other. Few scenes in our history are more touching than that which closes the long contest over the Charter, when Edward stood face to face with his people in Westminster Hall, and with a sudden burst of tears owned himself frankly in the wrong.

But it was just this sensitiveness, this openness to outer impres- Influence sions and outer influences, that led to the strange contradictions Chivalry which meet us in Edward's career. Under the first king whose temper was distinctly English a foreign influence told most fatally on our manners, our literature, our national spirit. The rise of France into a compact and organized monarchy from the time of Philip Augustus was now making its influence dominant in Western Europe. The "chivalry" so familiar in Froissart, that picturesque mimicry of high sentiment, of heroism, love, and courtesy, before which all depth and reality of nobleness disappeared to make room for the coarsest profligacy, the narrowest caste-spirit, and a brutal indifference to human suffering, was specially of French creation. There was a nobleness in Edward's nature from which the baser influences of this chivalry fell away. His life was pure, his piety, save when it stooped to the superstition of the time, manly and sincere, while his high sense of duty saved him from the frivolous self-indulgence of his successors. But he was far from being wholly free from the taint of his age. His passionate desire was to be a model of the fashionable chivalry of his day. He had been famous from his very youth as a consummate general; Earl Simon had admired the skill of his advance at Evesham, and in his Welsh campaign he had shown a tenacity and force of will which wrested victory out of the midst of defeat. He could head a furious charge of horse at Lewes, or organize a commissariat which enabled him to move army after army across the harried Lowlands. In his old age he was quick to

1305

347

SEC. III THE CON-

QUEST OF SCOTLAND

1290

TO

IV

HISTORY OF THE ENGLISH PEOPLE CHAP. IV

discover the value of the English archery, and to employ it as a SEC. III THE CONmeans of victory at Falkirk. But his fame as a general seemed a QUEST OF SCOTLAND small thing to Edward when compared with his fame as a knight. He shared to the full his people's love of hard fighting. His frame,



TILTING. Early Fourteenth Century. MS. Roy. 10 E. iv.

indeed, was that of a born soldier-tall, deep-chested, long of limb, capable alike of endurance or action. When he encountered Adam Gurdon, a knight of gigantic size and renowned prowess, after Evesham he forced him single-handed to beg for mercy. At the



A ROYAL BANQUET, A.D. 1338-1344. MS. Bodl. Misc. 264.

opening of his reign he saved his life by sheer fighting in a tournament at Challon. It was this love of adventure which lent itself to the frivolous unreality of the new chivalry. At his "Round Table

1290

TO 1305



CHAP.

of Kenilworth" a hundred lords and ladies, "clad all in silk," renewed the faded glories of Arthur's Court. The false air of romance which was soon to turn the gravest political resolutions into outbursts of sentimental feeling appeared in his "Vow of the Swan," when rising at the royal board he swore on the dish before him to avenge on Scotland the murder of Comyn. Chivalry exerted on him a yet more fatal influence in its narrowing of his sympathy to the noble class, and in its exclusion of the peasant and the craftsman from all claim to pity. "Knight without reproach" as he was, he looked calmly on at the massacre of the burghers of Berwick, and saw in William Wallace nothing but a common robber.

Influence of

Hardly less powerful than the French notion of chivalry in its Legality influence on Edward's mind was the new French conception of kingship, feudality, and law. The rise of a lawyer class was everywhere hardening customary into written rights, allegiance into subjection, loose ties such as commendation into a definite vassalage. But it was specially through French influence, the influence of St. Lewis and his successors, that the imperial theories of the Roman Law were brought to bear upon this natural tendency of the time. When the "sacred majesty" of the Cæsars was transferred by a legal fiction to the royal head of a feudal baronage, every constitutional relation was changed. The "defiance" by which a vassal renounced service to his lord became treason, his after resistance "sacrilege." That Edward could appreciate what was sound and noble in the legal spirit around him was shown in his reforms of our judicature and our Parliament ; but there was something as congenial to his mind in its definiteness, its rigidity, its narrow technicalities. He was never wilfully unjust, but he was too often captious in his justice, fond of legal chicanery, prompt to take advantage of the letter of the law. The high conception of royalty which he had borrowed from St. Lewis united with this legal turn of mind in the worst acts of his reign. Of rights or liberties unregistered in charter or roll Edward would know nothing, while his own good sense was overpowered by the majesty of his crown. It was incredible to him that Scotland should revolt against a legal bargain which made her national independence conditional on the terms extorted from a claimant of her throne; nor could he view

350

SEC. III THE CON-

QUEST OF

1290

TO 1305



in any other light but as treason the resistance of his own baronage to an arbitrary taxation which their fathers had borne. It is in the very anomalies of such a character, in its strange union of justice and wrong-doing, of nobleness and meanness, that we must look for any fair explanation of much that has since been bitterly blamed in Edward's conduct and policy.

Fairly to understand his quarrel with the Scots, we must clear Scotland our minds of the ideas which we now associate with the words 'Scotland," or the "Scotch people." At the opening of the fourteenth century the kingdom of the Scots was composed of four districts, each of which had originally its different people, its different speech, or at least dialect, and its different history. The first of these was the Lowland district, at one time called Saxony, and which now bears the name of Lothian and the Merse (or border land), the space, roughly speaking, between the Forth and Tweed. We have seen that at the close of the English conquest of Britain the kingdom of Northumbria stretched from the Humber to the Firth of Forth, and of this kingdom the Lowlands formed simply the northern portion. The English conquest and the English colonization were as complete here as over the rest of Britain. Rivers and hills indeed retained their Celtic names, but the "tons" and "hams" scattered over the country told the story of its Teutonic settlement. Livings and Dodings left their names to Livingstone and Duddingstone; Elphinstone, Dolphinstone and Edmundstone preserved the memory of English Elphins, Dolphins, and Edmunds, who had raised their homesteads beyond the Teviot and the Tweed. To the northward and westward of this Northumbrian land lay the kingdoms of the conquered. Over the "Waste" or "Desert"-the range of barren moors which stretches from Derbyshire to the Cheviots-the Briton had sought a Cumbria refuge in the long strip of coast between the Clyde and the Dee which formed the earlier Cumbria. Against this kingdom the efforts of the Northumbrian rulers had been incessantly directed; the victory of Chester had severed it from the Welsh kingdoms to the south ; Lancashire, Westmoreland, and Cumberland were already subdued by the time of Ecgfrith ; while the fragment which was suffered to remain unconquered between the Firths of Solway and of Clyde, and to which the name of Cumbria is in its later use

SEC. III THE CON-QUEST OF 1290 1305

351

Saxony

IV

CHAP

SEC. III THE CON-QUEST OF SCOTLAND 1290 TO 1305 Pict-land confined, owned the English supremacy. At the close of the seventh century it seemed likely that the same supremacy would extend over the Celtic tribes to the north. The district north of the Clyde and Forth was originally inhabited chiefly by the Picts, a Latin name for the people who seem to have called themselves the Cruithne. To these Highlanders the country south of the Forth was a foreign land, and significant entries in their rude chronicles tell us how in their forays "the Picts made a raid upon Saxony." But during the period of Northumbrian greatness they had begun to yield at least on their borders some kind of sub-



EDINBURGH, FROM THE SOUTH. Slezer, "Theatrum Scotia," 1693.

mission to its kings. Eadwine had built a fort at Dunedin, which became Edinburgh and looked menacingly across the Forth; and at Abercorn beside it was established an English prelate with the title of Bishop of the Picts. Ecgfrith, in whose hands the power of Northumbria reached its highest point, marched across the Forth to change this over-lordship into a direct dominion, and to bring the series of English victories to a close. His host poured burning and ravaging across the Tay, and skirted the base of the Grampians as far as the field of Nectansmere, where King Bruidi awaited them at the head of the Picts. The great battle which followed proved a turning-point in the history of the North;

682

685

the invaders were cut to pieces, Ecgfrith himself being among the slain, and the power of Northumbria was broken for ever. On the other hand, the kingdom of the Picts started into new life with its great victory, and pushed its way in the hundred years that followed westward, eastward, and southward, till the whole country north of the Forth and the Clyde acknowledged its supremacy. But the hour of Pictish greatness was marked by the sudden extinction of the Pictish name. Centuries before, when the English Scot-land invaders were beginning to harry the south coast of Britain, a fleet of coracles had borne a tribe of the Scots, as the inhabitants of Ireland were at that time called, from the black cliff-walls of Antrim to the rocky and indented coast of South Argyle. The little kingdom of Scot-land which these Irishmen founded slumbered in obscurity among the lakes and mountains to the south of Loch Linnhe, now submitting to the over-lordship of Northumbria, now to that of the Picts, till the extinction of the direct Pictish line of sovereigns raised the Scot King, Kenneth Mac-Alpin, who chanced to be their nearest kinsman, to the vacant throne. For fifty years these rulers of Scottish blood still call themselves "Kings of the Picts"; but with the opening of the tenth century the very name passes away, the tribe which had given its chief to the common throne gives its designation to the common realm, and "Pict-land" vanishes from the page of the chronicler or annalist to make way for the "land of the Scots."

It was even longer before the change made way among the people itself, and the real union of the nation with its kings was only effected by the common suffering of the Danish wars. In the north, as in the south of Britain, the invasion of the Danes brought about political unity. Not only were Picts and Scots thoroughly blended into a single people, but by the annexation of Cumbria and the Lowlands, their monarchs became rulers of the territory which we now call Scotland. The annexation was owing to the new policy of the English Kings. Their aim, after the long struggle of England with the northmen, was no longer to crush the kingdom across the Forth, but to raise it into a bulwark against the northmer who were still settled in Caithness and the Orkneys, and for whose aggressions Scotland was the natural highway. On the other hand, it was only in English aid that the Scot

SEC. III THE CON-QUEST OF 1290 TO 1305

353

CHAP. IV

AA



BISHOP.



KNIGHT.

PAWN.

BONE CHESS-MEN, OF SCANDINAVIAN DESIGN. Twelfth or Thirteenth Century. Found in Isle of Lewis; now in British Museum. Kings could find a support for their throne against these Norse Iarls of Orkney and Caithness. It was probably this common hostility to a common foe which brought about the "commendation" by which the Scots beyond the Forth, with the Welsh of Strath-clyde, chose the English King, Eadward the Elder, "to father and lord." The choice, whatever weight after events may have given to it, seems to have been little more than the renewal of the loose English supremacy over the tribes of the North which had existed during the times of Northumbrian greatness; it certainly implied at the time nothing save a right on either side to military aid, though the aid then rendered was necessarily placed in the hands of the stronger party to the agreement. Such a connexion naturally ceased in the event of any war between the two contracting parties; it was in fact by no means the feudal vassalage of a later time, but rather a military convention. But loose as was the tie which bound the two countries, a closer tie soon bound the Scot King himself to his English overlord. Strath-clyde, which, after the defeat of Nectansmere, had shaken off the English yoke, and which at a later time had owned the supremacy of the Scots, rose into a temporary independence only to be conquered by the English Eadmund. By him it was granted to Malcolm of Scotland on condition that he should become his "fellow-worker" both by land and sea, and became from that time the appanage of the eldest son of the Scottish king. At a later time, under Eadgar or Cnut, the whole of Northern Northumbria, or what we now call the Lothians, was ceded to the Scottish sovereigns, but whether on Northumthe same terms of feudal dependence or on the same loose terms of "commendation" as already existed for lands north of the Forth, we have no means of deciding. The retreat, however, of the bounds of the great English bishopric of the North, the see of St. Cuthbert, as far southward as the Pentland Hills, would seem to imply a greater change in the political character of the ceded district than the first theory would allow.

Whatever change these cessions may have brought about in the England relation of the Scottish to the English Kings, they certainly affected in a very marked way their relation both to England and to their own realm. One result of the acquisition of the Lowlands was the ultimate fixing of the royal residence in their new southern

and the Scot Kings

SEC. III THE CON-QUEST OF SCOTLAND 1290 TO 1305

924

355

Grant of Strathclyde to the Scot King

Grant of Northern bria

AA2


dominion at Edinburgh; and the English civilization with which they were then surrounded changed the Scot Kings in all but blood into Englishmen. A way soon opened itself to the English crown by the marriage of Malcolm with Margaret, the sister of Eadgar Ætheling. Their children were regarded by a large party within England as representatives of the older royal race and as claimants of the throne, and this danger grew as William's devastation of the North not only drove fresh multitudes of Englishmen to settle in the

SEC. III THE CON-QUEST OF 1290 1305 1060

357



S. MARGARET'S CHAPEL, EDINBURGH CASTLE,

Lowlands, but filled the Scotch court with English nobles, who fled thither for refuge. So formidable, indeed, became the pretensions of the Scot Kings, that they forced the ablest of our Norman sovereigns into a complete change of policy. The Conqueror and William the Red had met the threats of the Scot sovereigns by invasions which ended again and again in an illusory homage; but the marriage of Henry the First with the Scottish Matilda not only robbed the claims of the Scottish line of much of their force, but enabled him to draw it into far closer relations with the Norman throne. King David not only abandoned the ambitious dreams of 1124-1153

1100

David

CHAP. IV

HISTORY OF THE ENGLISH PEOPLE

his predecessors to place himself later at the head of his niece Matilda's party in her contest with Stephen, but as Henry's brother-in-law he figured as the first noble of the English court, and found English models and English support in the work of organization which he attempted within his own dominions. As the marriage with Margaret had changed Malcolm from a Celtic



WEST DOOR OF ABERBROTHOCK ABBEY. Built by William the Lion.

chieftain into an English King, so that of Matilda converted David into a Norman and feudal sovereign. His court was filled with Norman nobles from the South, such as the Balliols and Bruces, who were destined to play so great a part afterwards but who now for the first time obtained fiefs in the Scottish realm ; and a feudal jurisprudence modelled on that of England was introduced into the

358

SEC. III THE CON-QUEST OF SCOTLAND 1290 TO 1305

Lowlands. A fresh connexion between the countries began with the grant of lordships in England to the Scot Kings or their sons. Homage was sometimes rendered, whether for these lordships, for the Lowlands, or for the whole Scottish realm, but it was the capture of William the Lion during the revolt of the English baronage which suggested to Henry the Second the project of a closer dependence of Scotland on the English Crown. To gain his freedom, William consented to hold his crown of Henry and his heirs, the prelates and lords of the Scotch kingdom did homage to Henry as to their direct lord, and a right of appeal in all Scotch causes was allowed to the superior court of the English suzerain. From this bondage, however, Scotland was soon freed by the prodigality of Richard, who allowed her to buy back the freedom she had forfeited, and from that time the difficulties of the older claim were evaded by a legal compromise. The Scot Kings repeatedly did homage to the English sovereign, but with a reservation of rights which were prudently left unspecified. The English King accepted the homage on the assumption that it was rendered to him as overlord of the Scottish realm, and this assumption was neither granted nor denied. For nearly a hundred years the relations of the two countries were thus kept peaceful and friendly, and the death of Alexander the Third seemed destined to remove even the necessity of protests by a closer union of the two kingdoms. Alexander had wedded his only daughter to the King of Norway, and after long negotiation the Scotch Parliament proposed the marriage of her child Margaret, "the Maid of Norway," with the son of Edward the First. It was, however, carefully provided in the marriage treaty of Brigham that Scotland should remain a separate and free kingdom, and that its laws and customs should be preserved inviolate. No military aid was to be claimed by the English King, no Scotch appeal to be carried to an English court. But this project was abruptly frustrated by the child's death on her voyage to Scotland, and with the rise of claimant after claimant of the vacant throne Edward was drawn into far other relations to the Scottish realm.

Of the thirteen pretenders to the throne of Scotland, only three The First could be regarded as serious claimants. By the extinction of the line of William the Lion the right of succession passed to the daughters of his brother David. The claim of John Balliol, Lord

Conquest 1290-1296

IMPERIAL

1286

1290

SEC. III THE CON-QUEST OF SCOTLAND 1290 TO 1305 1174

359

IV



of Galloway, rested on his descent from the eldest of these; that of Robert Bruce, Lord of Annandale, on his descent from the second ; that of John Hastings, Lord of Abergavenny, on his descent from the third. At this crisis the Norwegian King, the Primate of St. Andrew's, and seven of the Scotch Earls, had already appealed to Edward before Margaret's death ; and the death itself was followed by the consent both of the claimants and the Council of Regency to refer the question of the succession to his decision in a Parliament at Norham. But the over-lordship which the Scots acknowledged was something far less direct and definite than what Edward May, 1291 claimed at the opening of this conference. His claim was supported by excerpts from English monastic chronicles, and by the slow advance of an English army, while the Scotch lords, taken by surprise, found little help in the delay which was granted them, and at last, in common with nine of the claimants themselves, formally admitted Edward's direct suzerainty. To the nobles, in fact, the concession must have seemed a small one, for like the principal claimants they were for the most part Norman in blood, with estates in both countries and looking for honours and pensions from. the English Court. From the Commons who were gathered with the nobles at Norham no admission of Edward's claims could be extorted ; but in Scotland, feudalized as it had been by David, the Commons were as yet of little weight, and their opposition was quietly passed by. All the rights of a feudal suzerain were at once assumed by the English King ; he entered into the possession of the country as into that of a disputed fief to be held by its over-lord till the dispute was settled, his peace was sworn throughout the land, its castles delivered into his charge, while its bishops and nobles swore homage to him directly as their lord superior. Scotland was thus reduced to the subjection which she had experienced under Henry the Second, but the full discussion which followed over the various claims to the throne showed that, while exacting to the full what he believed to be his right, Edward desired to do justice to the country itself. The commissioners whom he named to report on the claims to the throne were mainly Scotch; a proposal for the partition of the realm among the claimants was rejected as contrary to Scotch law; and the claim of Balliol as representative of the elder branch was finally preferred to that of his rivals.

SEC. III THE CON-QUEST OF SCOTLAND 1290 1305

361

CHAP. IV

HISTORY OF THE ENGLISH PEOPLE

CHAP.

SEC. 111 THE CON-QUEST OF SCOTLAND 1290 TO 1305 The castles were at once delivered to the new monarch, and Balliol did homage to Edward with full acknowledgement of the services due to him from the realm of Scotland. For a time there was peace. Edward in fact seemed to have no desire to push farther the rights of his crown. Even allowing that Scotland was a dependent kingdom, it was far from being an ordinary fief of the English Crown. By feudal custom a distinction had always been held to exist between the relations of a dependent king to a superior lord and those of a vassal noble to his sovereign. At Balliol's homage Edward had disclaimed, in strict accordance with the marriage treaty of Brigham, any right to the ordinary



CAERLAVEROCK CASTLE, After J. M. W. Turner.

incidents of a fief, those of wardship or marriage; but there were other customs of the realm of Scotland as incontestable as these. The Scot King had never been held bound to attend the council of the English baronage, to do service in English warfare, or to contribute on the part of his Scotch realm to English aids. No express acknowledgement of these rights had been given by Edward, but for a time they were practically observed. The claim of independent justice was more doubtful, as it was of higher import than these. It was certain that no appeal from a Scotch King's court to that of his supposed overlord had been allowed

362

since the days of William the Lion, and the judicial independence of Scotland had been expressly reserved in the marriage treaty. But in feudal jurisprudence the right of ultimate appeal was the test of sovereignty. This right of appeal Edward now determined to enforce, and Balliol at first gave way. It was alleged, however, that the resentment of his baronage and people forced him to resist; and while appearing formally at Westminster he refused to answer an appeal save by advice of his Council. He was in fact looking to France, which, as we shall afterwards see, was jealously watching Edward's proceedings, and ready to force. him into war. By a new breach of customary law Edward summoned the Scotch nobles to follow him in arms against this foreign foe. But the summons was disregarded, and a second and formal refusal of aid was followed by a secret alliance with France and by a Papal absolution of Balliol from his oath of fealty.

Edward was still reluctant to begin the war, when all hope of accommodation was ended by the refusal of Balliol to attend his Parliament at Newcastle, the rout of a small body of English troops, and the investment of Carlisle by the Scots. Orders were at once given for an advance upon Berwick. The taunts of its citizens stung the King to the quick. "Kynge Edward, waune thou havest Berwick, pike thee; waune thou havest geten, dike thee." they shouted from behind the wooden stockade, which formed the only rampart of the town. But the stockade was stormed with the loss of a single knight, and nearly eight thousand of the citizens were mown down in a ruthless carnage, while a handful of Flemish traders who held the town-hall stoutly against all assailants were burned alive in it. The massacre only ceased when a procession of priests bore the host to the King's presence, praving for mercy, and Edward with a sudden and characteristic burst of tears called off his troops; but the town was ruined for ever, and the great merchant city of the North sank from that time into a petty seaport. At Berwick Edward received Balliol's defiance. "Has the fool done this folly?" the King cried in haughty scorn. "If he will not come to us, we will come to him." The terrible slaughter, however, had done its work, and his march was a triumphal progress. Edinburgh, Stirling, and Perth opened their gates, Bruce joined the English army, and Balliol himself

SEC. 111 THE CON-QUEST OF SCOTLAND 1290 TO 1305 1293

1296

363

IV

SEC. III THE CON-QUEST OF SCOTLAND 1290 TO 1305

364

surrendered and passed without a blow from his throne to an English prison. No further punishment, however, was exacted from the prostrate realm. Edward simply treated it as a fief, and declared its forfeiture to be the legal consequence of Balliol's treason. It lapsed in fact to the overlord, and its earls, barons, and gentry swore homage in Parliament at Berwick to Edward as their king.

The sacred stone on which its older sovereigns had been installed, an oblong block of sandstone, which legend asserted to have been the pillow of Jacob as angels ascended and descended upon him, was removed from Scone and placed in Westminster by the shrine of the Confessor. It was enclosed by Edward's order in a stately seat, which became from that hour the coronation chair of English kings.

The Second

To the King himself Conquest the whole business must 1297 1305 have seemed another and easier conquest of Wales, and the mercy and just government which had followed his first success



CHAP.

THE CORONATION-CHAIR, WESTMINSTER ABREV.

followed his second also. The government of the new dependency was entrusted to Warenne, Earl of Surrey, at the head of an English Council of Regency. Pardon was freely extended to all who had resisted the invasion, and order and public peace were rigidly enforced. But both the justice and injustice of the new rule proved fatal to it; the wrath of the Scots, already kindled by the intrusion of English priests into Scotch livings, and by the grant of lands across the border to English barons, was fanned to

IV

fury by the strict administration of law, and the repression of feuds and cattle-lifting. The disbanding, too, of troops, which was caused by the penury of the royal exchequer, united with the licence of the soldiery who remained to quicken the national sense of wrong. The disgraceful submission of their leaders brought the people themselves to the front. In spite of a hundred years of peace the farmer of the Lowlands and the artisan of the towns remained stout-hearted Northumbrian Englishmen; they had never consented to Edward's supremacy, and their



STIRLING. After J. M. W. Turner.

blood rose against the insolent rule of the stranger. The genius of an outlaw knight, William Wallace, saw in their smouldering discontent a hope of freedom for his country, and his daring raids on outlying parties of the English soldiery roused the country at last into revolt. Of Wallace himself, of his life or temper, we know little or nothing; the very traditions of his gigantic stature and enormous strength are dim and unhistorical. But the instinct of the Scotch people has guided it aright in choosing Wallace for its national hero. He was the first to assert freedom as a national birthright, and amidst the despair of nobles and priests to call 365

SEC. III

THE CON-QUEST OF SCOTLAND

1290

то 1305

HISTORY OF THE ENGLISH PEOPLE CHAP.

SEC. III THE CON-QUEST OF SCOTLAND 1290

Battle of

1305

Stirling

the people itself to arms. At the head of an army drawn principally from the coast districts north of the Tay, which were inhabited by a population of the same blood as that of the Lowlands, Wallace, in September, 1297, encamped near Stirling, the pass between the north and the south, and awaited the English advance. The offers of John of Warenne were scornfully rejected : "We have come," said the Scottish leader, "not to make peace, but to free our country." The position of Wallace, a rise of Sept. 1297 hills behind a loop of Forth, was in fact chosen with consummate skill. The one bridge which crossed the river was only broad enough to admit two horsemen abreast ; and though the English army had been passing from daybreak, only half its force was across at noon when Walkace closed on it and cut it after a short combat to pieces in the sight of its comrades. The retreat of the Earl of Surrey over the border left Wallace head of the country he had freed, and for a time he acted as "Guardian of the Realm" in Balliol's name, and headed a wild foray into Northumberland.



SCOTTISH FOOT SOLDIER Temp. Edward I. hapter House Liber A. Public Record Office.

His reduction of Stirling Castle at last called Edward to the field. The King, who marched northward with a larger host than had ever followed his banner, was enabled by treachery to surprise Wallace, as he fell back to avoid an engagement and to force him to battle near Falkirk. The Scotch force consisted almost wholly of foot, and Wallace drew up his spearmen in four great hollow circles or squares, the outer ranks kneeling, and the whole supported by bowmen within, while a small force of horse were drawn up as a reserve in the rear. It was the formation of Waterloo, the first appearance in our history since the day of Seulac of "that unconquerable British infantry," before which chivalry was destined to go down. For a

moment it had all Waterloo's success. "I have brought you to the ring, hop (dance) if you can," are words of rough humour that reveal the very soul of the patriot leader, and the

366

IV

serried ranks answered well to his appeal. The Bishop of Durham, who led the English van, shrank wisely from the look of the "Back to your mass, Bishop," shouted the reckless squares. knights behind him, but the body of horse dashed itself vainly on the wall of spears. Terror spread through the English army, and its Welsh auxiliaries drew off in a body from the field. But the generalship of Wallace was met by that of the King. Drawing July, 1298 his bowmen to the front, Edward riddled the Scottish ranks with arrows, and then hurled his cavalry afresh on the wavering line. In a moment all was over, and the maddened knights rode in and out of the broken ranks, slaying without mercy. Thousands fell on the field, and Wallace himself escaped with difficulty, followed by a handful of men. But ruined as the cause of freedom seemed, He had roused Scotland into life, and even his work was done. a defeat like Falkirk left her unconquered. Edward remained master only of the ground he stood on ; want of supplies forced him to retreat; and in the following year a regency of Scotch nobles under Bruce and Comyn continued the struggle for independence. Troubles at home and dangers from abroad stayed Edward's hand. The barons were pressing more and more vigorously for redress of their grievances and the heavy taxation brought about by the war. France was still menacing, and a claim advanced by Pope Boniface the Eighth, at its suggestion, to the feudal superiority over Scotland, arrested a fresh advance of the King. A quarrel, however, which broke out between Philippe le Bel and the Papacy removed all obstacles, and enabled Edward to defy Boniface and to wring from France a treaty in which Scotland was abandoned. In 1304 he resumed the work of invasion, and again the nobles flung down their arms as he marched to the North. Comyn, at the head of the Regency, acknowledged his sovereignty, and the surrender of Stirling completed the conquest of Scotland. The triumph of Edward was but the prelude to the full execution of his designs for knitting the two countries together by a clemency and wisdom which reveal the greatness of his statesmanship. A general amnesty was extended to all who had shared in the revolt. Wallace, who refused to avail himself of Edward's mercy, was captured, and condemned to death at Westminster on charges of treason,

SEC. III THE CON-QUEST OF SCOTLAND 1290 TO 1305

367

Battle of Falkirk

1300

1303

HISTORY OF THE ENGLISH PEOPLE

CHAP.

sacrilege, and robbery. The head of the great patriot, crowned in mockery with a circlet of laurel, was placed upon London Bridge. But the execution of Wallace was the one blot on Edward's clemency. With a masterly boldness he entrusted the government of the country to a council of Scotch nobles, many of whom were freshly pardoned for their share in the war, and anticipated the policy of Cromwell by allotting ten representatives to Scotland in the Common Parliament of his realm. A Convocation was summoned at Perth for the election of these representatives, and a great judicial scheme which was promulgated in this assembly adopted the amended laws of King David as the base of a new legislation, and divided the country for judicial purposes into four districts, Lothian, Galloway, the Highlands, and the land between the Highlands and the Forth, at the head of each of which were placed two justiciars, the one English and the other Scotch.

Section IV .- The English Towns

[Authorities.—For the general history of London see its "Liber Albus" and "Liber Custumarum," in the series of the Master of the Rolls; for its communal revolution, the "Liber de Antiquis Legibus," edited by Mr. Stapleton for the Camden Society; for the rising of William Longbeard, the story in William of Newburgh. In his "Essay on English Municipal History" (1867), Mr. Thompson has given a useful account of the relations of Leicester with its Earls. A great store of documents will be found in the Charter Rolls published by the Record Commission, in Brady's work on English Boroughs, and (though rather for Parliamentary purposes) in Stephen's and Merewether's "History of Boroughs and Corporations." But the only full and scientific examination of our early municipal history, at least on one of its sides, is to be found in the Essay prefixed by Dr. Brentano to the "Ordinances of English Gilds," published by the Early English Text Society.]

From scenes such as we have been describing, from the wrong and bloodshed of foreign conquest, we pass to the peaceful life and progress of England itself.

Through the reign of the three Edwards two revolutions, which have been almost ignored by our historians, were silently changing the whole character of English society. The first of these, the rise of a new class of tenant-farmers, we shall have to notice hereafter

368

SEC. 1V THE ENGLISH TOWNS

in its connection with the great agrarian revolt which bears the name of Wat Tyler. The second, the rise of the craftsmen within our towns, and the struggle by which they won power and privilege from the older burghers, is the most remarkable event in the period of our national history at which we have arrived.

The English borough was originally a mere township or group of The Early townships whose inhabitants happened, either for purposes of trade Boroughs or protection, to cluster together more thickly than elsewhere. It is this characteristic of our boroughs which separates them at once from the cities of Italy and Provence, which had preserved the municipal institutions of their Roman past, from the German towns

English

founded by Henry the Fowler with the special purpose of sheltering industry from the feudal oppression around them, or from the communes of northern France which sprang into existence in revolt against feudal outrage within their walls. But in England the tradition of Rome had utterly passed away, while feudal op-

IV



FELLING A TREE. Probably drawn by Matthew Paris. MS. Cott. Nero D. i.

pression was held fairly in check by the Crown. The English town, therefore, was in its beginning simply a piece of the general country, organized and governed precisely in the same manner as the townships around it. The burh or borough was probably a more defensible place than the common village ; it may have had a ditch or mound about it instead of the quickset-hedge or "tun" from which the township took its name. But its constitution was simply that of the people at large. The obligations of the dwellers within its bounds were those of the townships round, to keep fence

BB

369

SEC. IV THE ENGLISH TOWNS

HISTORY OF THE ENGLISH PEOPLE CHAP.

SEC. IV THE ENGLISH TOWNS

370

and trench in good repair, to send a contingent to the fyrd, and a reeve and four men to the hundred court and shire court; and the inner rule of the borough lay as in the townships about in the hands of its own freemen, gathered in "boroughmoot" or "portmannimote." But the social change brought about by the Danish wars, the legal requirement that each man should have a lord, affected the towns, as it affected the rest of the country. Some passed into the hands of great thegns near to them; the bulk became known as in the demesne of the king. A new officer, the lord's or king's reeve, was a sign of this revolution. It was the reeve who now summoned the borough-moot and administered justice in it; it was he who collected the lord's dues or annual rent of the town, and who exacted the services it owed to its



WINDMILL, A.D. 1338-1344. MS. Bodl, Misc. 264.

lord. To modern eves these services would imply almost complete subjection. When Leicester, for instance, passed from the hands of the Conqueror into those of its Earls, its townsmen were bound to reap their, lord's corn-crops,

to grind at his mill, to redeem their strayed cattle from his pound. The great forest around was the Earl's, and it was only out of his grace that the little borough could drive its swine into the woods or pasture its cattle in the glades. The justice and government of the town lay wholly in its master's hands; he appointed its bailiffs, received the fines and forfeitures of his tenants, and the fees and tolls of their markets and fairs. But when once these dues were paid and these services rendered the English townsman was practically free. His rights were as rigidly defined by custom as those of his lord. Property and person alike were secured against arbitrary seizure. He could demand a fair trial on any charge, and