

King Richard was a passionate lover of poetry; there even remain some poetical works of his composition; and he bears a rank among the Provencal poets or TROBADORES, who were the first of the modern Europeans that distinguished themselves by attempts of that nature.

CHAPTER XI.

JOHN.

ACCESSION OF THE KING.--HIS MARRIAGE.--WAR WITH FRANCE.—MURDER OF ARTHUR, DUKE OF BRITANY.--THE KING EXPELLED THE FRENCH PROVINCES.--THE KING'S QUARREL WITH THE COURT OF ROME.—CARDINAL LANGTON APPOINTED ARCHBISHOP OF CANTERBURY.--INTERDICT OF THE KINGDOM.--EXCOMMUNICATION OF THE KING.--THE KING'S SUBMISSION TO THE POPE.--DISCONTENTS OF THE BARONS.--INSURRECTION OF THE BARONS.--MAGNA CHARTA.--RENEWAL OF THE CIVIL WARS.—PRINCE LEWIS CALLED OVER.--DEATH AND CHARACTER OF THE KING.

[MN 1199. Accession of the king.] The noble and free genius of the ancients, which made the government of a single person be always regarded as a species of tyranny and usurpation, and kept them from forming any conception of a legal and regular monarchy, had rendered them entirely ignorant both of the rights of PRIMOGENITURE, and a REPRESENTATION in succession; inventions so necessary for preserving order in the lines of princes, for obviating the evils of civil discord and of usurpation, and for begetting moderation in that species of government, by giving security to the ruling sovereign. These innovations arose from the feudal law, which, first introducing the right of primogeniture, made such a distinction between the families of the elder and younger brothers, that the son of the former was thought entitled to succeed to his grandfather, preferably to his uncles, though nearer allied to the deceased monarch. But though this progress of ideas was natural, it was gradual. In the age of which we treat, the practice of representation was indeed introduced, but not thoroughly established; and the minds of men fluctuated between opposite principles. Richard, when he entered on the holy war, declared his nephew, Arthur, Duke of Britany, his successor; and by a formal deed he set aside, in his favour, the title of his brother John, who was younger than Geoffrey, the father of that prince [a]. But John so little acquiesced in that destination, that when he gained the ascendant in the English ministry, by expelling Longchamp, the chancellor and great justiciary, he engaged all the English barons to swear that they would maintain his right of succession; and Richard, on his return, took no steps towards restoring or securing the order which he had at first established. He was even careful, by his last will, to declare his brother John heir to all his dominions [b]; whether that he now thought Arthur, who was only twelve years of age, incapable of asserting his claim against John's faction, or was influenced by Eleanor, the queen-mother, who hated Constantia, mother of the young duke, and who dreaded the credit which that princess would naturally acquire if her son should mount the throne. The authority of a testament was great in that age, even where the succession of a kingdom was concerned; and John had reason to hope that this title, joined to his plausible right in other respects, would ensure him the succession. But the idea of representation seems to have made, at this time, greater progress in France than in England: the barons of the transmarine provinces, Anjou, Maine, and Touraine, immediately declared in favour of Arthur's title, and applied for assistance to the French monarch as their superior lord. Philip, who desired only an occasion to embarrass John, and dismember his dominions, embraced the cause of the young Duke of Britany, took him under his protection, and sent him to Paris to be educated, along with his own son Lewis [c]. In this emergence, John hastened to establish his authority in the chief members of the monarchy; and after sending Eleanor into Poitou and Guienne, where her right was incontestable, and was readily acknowledged, he hurried to Rouen, and having secured the duchy of Normandy, he passed over, without loss of time, to England. Hubert, Archbishop of Canterbury, William Mareschal, Earl of Strigul, who also passes by the name of Earl of Pembroke, and Geoffrey Fitz-Peter, the justiciary, the three most favoured ministers of the late king, were already engaged on his side [d]; and the submission or acquiescence of all the other barons put him, without opposition, in possession of the throne. [FN [a] Hoveden, p. 677. M Paris, p. 112. Chron. de Dunst. p. 43.

Rymer, vol i p. 66, 68. Bened. Abb. p. 619. [b] Hoveden, p. 791. Trivet, p. 138. [c] Hoveden, p. 792. M. Paris, p. 137. M. West. p. 263. Knyghton, p. 2414. [d] Hoveden, p. 793. M. Paris, p. 137.]

The king soon returned to France, in order to conduct the war against Philip, and to recover the revolted provinces from his nephew Arthur. The alliances which Richard had formed with the Earl of Flanders [e], and other potent French princes, though they had not been very effectual, still subsisted, and enabled John to defend himself against all the efforts of his enemy. In an action between the French and Flemings, the elect Bishop of Cambrai was taken prisoner by the former; and when the Cardinal of Capua claimed his liberty, Philip, instead of complying, reproached him with the weak efforts which he had employed in favour of the Bishop of Beauvais, who was in a like condition. The legate, to show his impartiality, laid, at the same time, the kingdom of France and the duchy of Normandy under an interdict; and the two kings found themselves obliged to make an exchange of these military prelates. [FN [e] Rymer, vol. i. p. 114. Hoveden, p. 794. M. Paris, p. 138.]

[MN 1200.] Nothing enabled the king to bring this war to a happy issue so much as the selfish intriguing character of Philip, who acted in the provinces that had declared for Arthur, without any regard to the interests of that prince. Constantia, seized with a violent jealousy that he intended to usurp the entire dominion of them [f], found means to carry off her son secretly from Paris: she put him into the hands of his uncle; restored the provinces which had adhered to the young prince; and made him do homage for the duchy of Britany, which was regarded as a relief of Normandy. From this incident, Philip saw that he could not hope to make any progress against John; and being threatened with an interdict on account of his irregular divorce from Ingelburga, the Danish princess whom he had espoused, he became desirous of concluding a peace with England. After some fruitless conferences, the terms were at last adjusted; and the two monarchs seemed in this treaty to have an intention, besides ending the present quarrel, of preventing all future causes of discord, and of obviating every controversy which could thereafter arise between them. They adjusted the limits of all their territories, mutually secured the interests of their vassals; and, to render the union more durable, John gave his niece, Blanche of Castile, in marriage to Prince Lewis, Philip's eldest son, and with her the baronies of Issoudun and Gracai, and other fiefs in Berri. Nine barons of the King of England, and as many of the King of France, were guarantees of this treaty; and all of them swore that if their sovereign violated any article of it, they would declare themselves against him, and embrace the cause of the injured monarch [g]. [FN [f] Hoveden, p.795. [g] Norman Duchesnii, p. 1055. Rymer, vol. i. p. 117, 118, 119. Hoveden, p. 814. Chron. Dunst. vol. i. p. 47.]

John, now secure, as he imagined, on the side of France, indulged his passion for Isabella, the daughter and heir of Aymar Tailleffer, Count of Angouleme, a lady with whom he had become much enamoured. His queen, the heiress of the family of Gloucester, was still alive: Isabella was married to the Count de la Marche, and was already consigned to the care of that nobleman; though, by reason of her tender years, the marriage had not been consummated. The passion of John made him overlook all these obstacles: he persuaded the Count of Angouleme to carry off his daughter from her husband; and having, on some pretence or other, procured a divorce from his own wife, he espoused Isabella; [MN The king's marriage.] regardless both of the menaces of the pope, who exclaimed against these irregular proceedings, and of the resentment of the injured count, who soon found means of punishing his powerful and insolent rival.

[MN 1201.] John had not the art of attaching his barons either by affection or by fear. The Count de la Marche, and his brother, the Count d'Eu, taking advantage of the general discontent against him, excited commotions in Poitou and Normandy, and obliged the king to have recourse to arms, in order to suppress the insurrection of his vassals. He summoned together the barons of England, and required them to pass the sea under his standard, and to quell the rebels: he found that he possessed as little authority in that kingdom as in his transmarine provinces. The English barons unanimously replied, that they would not attend him on this expedition, unless he would promise to restore and preserve their privileges [h]: the first symptom of a regular association and plan of liberty among those noblemen! but affairs were not yet fully ripe for the revolution projected. John, by menacing the barons, broke the concert; and both engaged many of them to follow him

into Normandy, and obliged the rest who stayed behind to pay him a scutage of two marks on each knight's fee, as the price of their exemption from the service. [FN [h] Annal. Burton, p. 262.]

The force which John carried abroad with him, and that which joined him in Normandy, rendered him much superior to his malecontent barons; and so much the more as Philip did not publicly give them any countenance, and seemed as yet determined to persevere steadily in the alliance which he had contracted with England. But the king, elated with his superiority, advanced claims which gave an universal alarm to his vassals, and diffused still wider the general discontent. As the jurisprudence of those times required that the causes in the lords' court should chiefly be decided by duel, he carried along with him certain bravos, whom he retained as champions, and whom he destined to fight with his barons, in order to determine any controversy which he might raise against them [i]. The Count de la Marche, and other noblemen, regarded this proceeding as an affront, as well as an injury; and declared that they would never draw their swords against men of such inferior quality. The king menaced them with vengeance; but he had not vigour to employ against them the force in his hands, or to prosecute the injustice, by crushing entirely the nobles who opposed it. [FN [i] Ibid.]

[MN War with France.] This government, equally feeble and violent, gave the injured barons courage, as well as inclination, to carry farther their opposition; they appealed to the King of France; complained of the denial of justice in John's court; demanded redress from him as their superior lord; and entreated him to employ his authority, and prevent their final ruin and oppression. [MN 1202.] Philip perceived his advantage, opened his mind to great projects, interposed in behalf of the French barons, and began to talk in a high and menacing style to the King of England. John, who could not disavow Philip's authority, replied, that it belonged to himself first to grant them a trial by their peers in his own court; it was not till he failed in this duty that he was answerable to his peers in the supreme court of the French king [k]; and he promised, by a fair and equitable judicature, to give satisfaction to his barons. When the nobles, in consequence of this engagement, demanded a safe conduct, that they might attend his court, he at first refused it; upon the renewal of Philip's menaces, he promised to grant their demand; he violated this promise; fresh menaces extorted from him a promise to surrender to Philip the fortresses of Tillieres and Boutavant, as a security for performance; he again violated his engagement; his enemies, sensible both of his weakness and want of faith, combined still closer in the resolution of pushing him to extremities; and a new and powerful ally soon appeared to encourage them in their invasion of this odious and despicable government. [FN [k] Philipp. lib. vi.]

[MN 1203.] The young Duke of Britany, who was now rising to man's estate, sensible of the dangerous character of his uncle, determined to seek both his security and elevation by a union with Philip and the malecontent barons. He joined the French army, which had begun hostilities against the King of England: he was received with great marks of distinction by Philip; was knighted by him; espoused his daughter Mary; and was invested not only in the duchy of Britany, but in the counties of Anjou and Maine, which he had formerly resigned to his uncle [l]. Every attempt succeeded with the allies. Tillieres and Boutavant were taken by Philip, after making a feeble defence: Mortimar and Lyons fell into his hands almost without resistance. That prince next invested Gournai; and opening the sluices of a lake which lay in the neighbourhood, poured such a torrent of water into the place, that the garrison deserted it, and the French monarch, without striking a blow, made himself master of that important fortress. The progress of the French arms was rapid, and promised more considerable success than usually in that age attended military enterprises. In answer to every advance which the king made towards peace, Philip still insisted that he should resign all his transmarine dominions to his nephew, and rest contented with the kingdom of England; when an event happened which seemed to turn the scales in favour of John, and to give him a decisive superiority over his enemies. [FN [l] Trivet, p. 142.]

Young Arthur, fond of military renown, had broken into Poictou at the head of a small army; and passing near Mirebeau, he heard that his grandmother, Queen Eleanor, who had always opposed his interests, was lodged in that place, and was protected by a weak garrison and ruinous fortifications [m]. He immediately determined to lay siege to the fortress, and make himself master of her person: but John, roused from his indolence by so pressing an occasion, collected an army of English and Brabancons, and advanced from Normandy with hasty

marches to the relief of the queen-mother. He fell on Arthur's camp before that prince was aware of the danger; dispersed his army; took him prisoner, together with the Count de la Marche, Geoffrey de Lusignan, and the most considerable of the revolted barons; and returned in triumph to Normandy [n]. [MN 1st Aug.] Philip, who was lying before Arques in that duchy, raised the siege, and retired upon his approach [o]. The greater part of the prisoners were sent over to England; but Arthur was shut up in the castle of Falaise. [FN [m] Ann. Waverl. p. 167. M. West. p. 264. [n] Ann. Marg. p. 213. M. West. p. 264. [o] M. West. p. 264.]

The king had here a conference with his nephew; represented to him the folly of his pretensions; and required him to renounce the French alliance, which had encouraged him to live in a state of enmity with all his family: but the brave, though imprudent youth, rendered more haughty from misfortunes, maintained the justice of his cause; asserted his claim not only to the French provinces, but to the crown of England; and in his turn, required the king to restore the son of his elder brother to the possession of his inheritance [p]. John, sensible from these symptoms of spirit that the young prince, though now a prisoner, might hereafter prove a dangerous enemy, determined to prevent all future peril by despatching his nephew; and Arthur was never more heard of. [MN 1203. Murder of Arthur, Duke of Britany.] The circumstances which attended this deed of darkness were, no doubt, carefully concealed by the actors, and are variously related by historians: but the most probable account is as follows: the king, it is said, first proposed to William de la Bray, one of his servants, to despatch Arthur; but William replied that he was a gentleman, not a hangman; and he positively refused compliance. Another instrument of murder was found, and was despatched with proper orders to Falaise; but Hubert de Bourg, chamberlain to the king, and constable of the castle, feigning that he himself would execute the king's mandate, sent back the assassin, spread the report that the young prince was dead, and publicly performed all the ceremonies of his interment; but finding that the Bretons vowed revenge for the murder, and that all the revolted barons persevered more obstinately in their rebellion, he thought it prudent to reveal the secret, and to inform the world that the Duke of Britany was still alive, and in his custody. This discovery proved fatal to the young prince: John first removed him to the castle of Rouen; and coming in a boat, during the night-time, to that place, commanded Arthur to be brought forth to him. The young prince, aware of his danger, and now more subdued by the continuance of his misfortunes, and by the approach of death, threw himself on his knees before his uncle, and begged for mercy: but the barbarous tyrant, making no reply, stabbed him with his own hands; and fastening a stone to the dead body, threw it into the Seine. [FN [p] Ibid. p. 264.]

All men were struck with horror at this inhuman deed; and from that moment the king, detested by his subjects, retained a very precarious authority over both the people and the barons in his dominions. The Bretons, enraged at this disappointment in their fond hopes, waged implacable war against him; and fixing the succession of their government, put themselves in a posture to revenge the murder of their sovereign. John had got into his power his niece, Eleanor, sister to Arthur, commonly called THE DAMSEL OF BRITANY; and carrying her over to England, detained her ever after in captivity [q]; but the Bretons, in despair of recovering this princess, chose Alice for their sovereign; a younger daughter of Constantia, by her second marriage with Guy de Thouars; and they intrusted the government of the duchy to that nobleman. The states of Britany, meanwhile, carried their complaints before Philip, as their liege lord, and demanded justice for the violence committed by John on the person of Arthur, so near a relation, who, notwithstanding the homage which he did to Normandy, was always regarded as one of the chief vassals of the crown. Philip received their application with pleasure; summoned John to stand a trial before him, and on his non-appearance passed sentence, with the concurrence of the peers, upon that prince; declared him guilty of felony and parricide; and adjudged him to forfeit to his superior lord all his seignories and fiefs in France [r]. [FN [q] Trivet, p. 145. T. Wykes, p. 36. Ypod. Neust. p. 459. [r] W. Heming, p. 455. M. West. p. 264. Knyghton, p. 2420.]

[MN The King expelled from the French provinces.] The King of France, whose ambitious and active spirit had been hitherto confined, either by the sound policy of Henry, or the martial genius of Richard, seeing now the opportunity favourable against this base and odious prince, embraced the project of expelling the English, or rather the English king, from France, and of annexing to the crown so many considerable fiefs, which, during several ages, had been dismembered from it. Many of the other great vassals, whose jealousy might

have interposed, and have obstructed the execution of this project, were not at present in a situation to oppose it; and the rest either looked on with indifference, or gave their assistance to this dangerous aggrandizement of their superior lord. The Earls of Flanders and Blois were engaged in the holy war: the Count of Champagne was an infant, and under the guardianship of Philip: the duchy of Britany, enraged at the murder of their prince, vigorously promoted all his measures: and the general defection of John's vassals made every enterprise easy and successful against him. Philip, after taking several castles and fortresses beyond the Loire, which he either garrisoned or dismantled, received the submissions of the Count of Alencon, who deserted John, and delivered up all the places under his command to the French: upon which Philip broke up his camp, in order to give the troops some repose after the fatigues of the campaign. John, suddenly recollecting some forces, laid siege to Alencon; and Philip, whose dispersed army could not be brought together in time to succour it, saw himself exposed to the disgrace of suffering the oppression of his friend and confederate. But his active and fertile genius found an expedient against this evil. There was held at that very time a tournament at Moret, in the Gatinois; whither all the chief nobility of France and the neighbouring countries had resorted, in order to signalize their prowess and address. Philip presented himself before them; craved their assistance in his distress; and pointed out the plains of Alencon, as the most honourable field in which they could display their generosity and martial spirit. Those valorous knights vowed that they would take vengeance on the base parricide, the stain of arms and of chivalry; and putting themselves, with all their retinue, under the command of Philip, instantly marched to raise the siege of Alencon. John, hearing of their approach, fled from before the place; and, in the hurry, abandoned all his tents, machines, and baggage, to the enemy.

This feeble effort was the last exploit of that slothful and cowardly prince for the defence of his dominions. He thenceforth remained in total inactivity at Rouen; passing all his time with his young wife in pastimes and amusements, as if his state had been in the most profound tranquillity, or his affairs in the most prosperous condition. If he ever mentioned war, it was only to give himself vaunting airs, which, in the eyes of all men, rendered him still more despicable and ridiculous. LET THE FRENCH GO ON, said he, I WILL RETAKE IN A DAY WHAT IT HAS COST THEM YEARS TO ACQUIRE [s]. His stupidity and indolence appeared so extraordinary, that the people endeavoured to account for the infatuation by sorcery, and believed that he was thrown into this lethargy by some magic or witchcraft. The English barons, finding that their time was wasted to no purpose, and that they must suffer the disgrace of seeing, without resistance, the progress of the French arms, withdrew from their colours, and secretly returned to their own country [t]. No one thought of defending a man who seemed to have deserted himself; and his subjects regarded his fate with the same indifference to which in this pressing exigency they saw him totally abandoned. [FN [s] M. Paris, p. 146. M. West. p. 266. [t] M. Paris, p. 146. M. West. p. 264.]

John, while he neglected all domestic resources, had the meanness to betake himself to a foreign power, whose protection he claimed: he applied to the pope, Innocent III., and entreated him to interpose his authority between him and the French monarch. Innocent, pleased with any occasion of exerting his superiority, sent Philip orders to stop the progress of his arms, and to make peace with the King of England. But the French barons received the message with indignation; disclaimed the temporal authority assumed by the pontiff; and vowed that they would, to the uttermost, assist their prince against all his enemies; Philip, seconding their ardour, proceeded, instead of obeying the pope's envoys, to lay siege to Chateau Gaillard, the most considerable fortress which remained to guard the frontiers of Normandy.

[MN 1204.] Chateau Gaillard was situated partly on an island in the river Seine, partly on a rock opposite to it; and was secured by every advantage which either art or nature could bestow upon it. The late king, having cast his eye on this favourable situation, had spared no labour or expense in fortifying it; and it was defended by Roger de Laci, Constable of Chester, a determined officer, at the head of a numerous garrison. Philip, who despaired of taking the place by force, purposed to reduce it by famine; and, that he might cut off its communication with the neighbouring country, he threw a bridge across the Seine, while he himself, with his army, blockaded it by land. The Earl of Pembroke, the man of greatest vigour and capacity in the English court, formed a plan for breaking through the French intrenchments, and throwing relief into the place. He

carried with him an army of four thousand infantry and three thousand cavalry, and suddenly attacked, with great success, Philip's camp in the night-time; having left orders that a fleet of seventy flat-bottomed vessels should sail up the Seine, and fall at the same instant on the bridge. But the wind and the current of the river, by retarding the vessels, disconcerted this plan of operations; and it was morning before the fleet appeared; when Pembroke, though successful in the beginning of the action, was already repulsed with considerable loss, and the King of France had leisure to defend himself against these new assailants, who also met with a repulse. After this misfortune, John made no farther efforts for the relief of Chateau Gaillard; and Philip had all the leisure requisite for conducting and finishing the siege. Roger de Laci defended himself for a twelvemonth with great obstinacy; and having bravely repelled every attack, and patiently borne all the hardships of famine, he was at last overpowered by a sudden assault in the night-time, and made prisoner of war, with his garrison [u]. Philip, who knew how to respect valour even in an enemy, treated him with civility, and gave him the whole city of Paris for the place of his confinement. [FN [u] Trivet, p. 144. Gul. Britto, lib. 7. Ann. Waverl. p. 168.]

When this bulwark of Normandy was once subdued, all the province lay open to the inroads of Philip; and the King of England despaired of being any longer able to defend it. He secretly prepared vessels for a scandalous flight, and that the Normans might no longer doubt of his resolution to abandon them, he ordered the fortifications of Pont de l'Arche, Molineaux, and Montfort l'Amauri, to be demolished. Not daring to repose confidence in any of his barons, whom he believed to be universally engaged in a conspiracy against him, he intrusted the government of the province to Archas Martin and Lupicaire, two mercenary Brabancons, whom he had retained in his service. Philip, now secure of his prey, pushed his conquests with vigour and success against the dismayed Normans. Falaise was first besieged; and Lupicaire, who commanded in this impregnable fortress, after surrendering the place, enlisted himself with his troops in the service of Philip, and carried on hostilities against his ancient master. Caen, Coutance, Seez, Evreux, Baieux, soon fell into the hands of the French monarch, and all the Lower Normandy was reduced under his dominion. To forward his enterprises on the other division of the province, Gui de Thouars, at the head of the Bretons, broke into the territory, and took Mount St. Michael, Avranches, and all the other fortresses in that neighbourhood. The Normans, who abhorred the French yoke, and who would have defended themselves to the last extremity if their prince had appeared to conduct them, found no resource but in submission; and every city opened its gates as soon as Philip appeared before it. [MN 1205.] Rouen alone, Arques, and Verneuil, determined to maintain their liberties, and formed a confederacy for mutual defence. Philip began with the siege of Rouen: the inhabitants were so inflamed with hatred to France, that, on the appearance of his army, they fell on all the natives of that country whom they found within their walls, and put them to death. But after the French king had begun his operations with success, and had taken some of their outworks, the citizens, seeing no resource, offered to capitulate; and demanded only thirty days to advertise their prince of their danger, and to require succours against the enemy. [MN 1st June.] Upon the expiration of the term, as no supply had arrived, they opened their gates to Philip [w]; and the whole province soon after imitated the example, and submitted to the victor. Thus was this important territory re-united to the crown of France, about three centuries after the cession of it by Charles the Simple to Rollo, the first duke: and the Normans, sensible that this conquest was probably final, demanded the privilege of being governed by French laws; which Philip, making a few alterations on the ancient Norman customs, readily granted them. But the French monarch had too much ambition and genius to stop in his present career of success. He carried his victorious army into the western provinces; soon reduced Anjou, Maine, Touraine, and part of Poictou [x]; and in this manner the French crown, during the reign of one able and active prince, received such an accession of power and grandeur, as in the ordinary course of things, it would have required several ages to attain. [FN [w] Trivet. p. 147. Ypod. Neust. p. 459. [x] Trivet, p. 149.]

John, on his arrival in England, that he might cover the disgrace of his own conduct, exclaimed loudly against his barons, who, he pretended, had deserted his standard in Normandy; and he arbitrarily extorted from them a seventh of all their moveables, as a punishment for the offence [y]. Soon after he forced them to grant him a scutage of two marks and a half on each knight's fee for an expedition into Normandy; but he did not attempt to execute the service for which he pretended to exact it. Next year he summoned all the barons of his realm to

attend him on this foreign expedition, and collected ships from all the sea-ports; but meeting with opposition from some of his ministers, and abandoning his design, he dismissed both fleet and army, and then renewed his exclamations against the barons for deserting him. He next put to sea with a small army, and his subjects believed that he was resolved to expose himself to the utmost hazard for the defence and recovery of his dominions: but they were surprised, after a few days, to see him return again into harbour, without attempting any thing. [MN 1206.] In the subsequent season, he had the courage to carry his hostile measures a step farther. Gui de Thouars, who governed Britany, jealous of the rapid progress made by his ally, the French king, promised to join the King of England with all his forces; and John ventured abroad with a considerable army, and landed at Rochelle. He marched to Angers, which he took and reduced to ashes. But the approach of Philip with an army threw him into a panic; and he immediately made proposals for peace, and fixed a place of interview with his enemy: but instead of keeping his engagement, he stole off with his army, embarked at Rochelle, and returned, loaded with new shame and disgrace, into England. The mediation of the pope, procured him at last a truce for two years with the French monarch [z]; almost all the transmarine provinces were ravished from him; and his English barons, though harassed with arbitrary taxes and fruitless expeditions, saw themselves and their country baffled and affronted in every enterprise. [FN [y] M. Paris, p. 146. M. West. p. 265. [z] Rymer, vol. i. p. 141.]

In an age when personal valour was regarded as the chief accomplishment, such conduct as that of John, always disgraceful, must be exposed to peculiar contempt; and he must thenceforth have expected to rule his turbulent vassals with a very doubtful authority. But the government exercised by the Norman princes had wound up the royal power to so high a pitch, and so much beyond the usual tenour of the feudal constitutions, that it still behoved him to be debased by new affronts and disgraces, ere his barons could entertain the view of conspiring against him, in order to retrench his prerogatives. The church, which at that time declined not a contest with the most powerful and vigorous monarchs, took first advantage of John's imbecility; and, with the most aggravating circumstances of insolence and scorn, fixed her yoke upon him.

[MN 1207. The king's quarrel with the court of Rome.] The papal chair was then filled by Innocent III., who, having attained that dignity at the age of thirty-seven years, and being endowed with a lofty and enterprising genius, gave full scope to his ambition, and attempted, perhaps more openly than any of his predecessors, to convert that superiority which was yielded him by all the European princes into a real dominion over them. The hierarchy, protected by the Roman pontiff, had already carried to an enormous height its usurpations upon the civil power; but in order to extend them farther, and render them useful to the court of Rome, it was necessary to reduce the ecclesiastics themselves under an absolute monarchy, and to make them entirely dependent on their spiritual leader. For this purpose, Innocent first attempted to impose taxes at pleasure upon the clergy; and in the first year of this century, taking advantage of the popular frenzy for crusades, he sent collectors over all Europe, who levied, by his authority, the fortieth of all ecclesiastical revenues for the relief of the Holy Land, and received the voluntary contributions of the laity to a like amount [a]. The same year Hubert, Archbishop of Canterbury, attempted another innovation, favourable to ecclesiastical and papal power: in the king's absence, he summoned, by his legatine authority, a synod of all the English clergy, contrary to the inhibition of Geoffrey Fitz-Peter, the chief justiciary; and no proper censure was ever passed on this encroachment, the first of the kind, upon the royal power. But a favourable incident soon after happened, which enabled so aspiring a pontiff as Innocent to extend still farther his usurpations on so contemptible a prince as John. [FN [a] Rymer, vol. i. p. 119.]

Hubert the primate died in 1205; and as the monks or canons of Christ-Church, Canterbury, possessed a right of voting in the election of their archbishop, some of the juniors of the order, who lay in wait for that event, met clandestinely the very night of Hubert's death, and, without any congé d'élire from the king, chose Reginald, their sub-prior, for the successor; installed him in the archiepiscopal throne before midnight; and, having enjoined him the strictest secrecy, sent him immediately to Rome, in order to solicit the confirmation of his election [b]. The vanity of Reginald prevailed over his prudence; and he no sooner arrived in Flanders, than he revealed to every one the purpose of his journey, which was immediately known in England [c]. The king was enraged at the novelty and temerity of the attempt, in filling so important an office without his

knowledge or consent: the suffragan bishops of Canterbury, who were accustomed to concur in the choice of their primate, were no less displeased at the exclusion given them in this election: the senior monks of Christ-Church were injured by the irregular proceedings of their juniors: the juniors themselves, ashamed of their conduct, and disgusted with the levity of Reginald, who had broken his engagements with them, were willing to set aside his election [d]: and all men concurred in the design of remedying the false measures which had been taken. But as John knew that this affair would be canvassed before a superior tribunal, where the interposition of royal authority in bestowing ecclesiastical benefices was very invidious; where even the cause of suffragan bishops was not so favourable as that of monks; he determined to make the new election entirely unexceptionable: he submitted the affair wholly to the canons of Christ-Church, and, departing from the right claimed by his predecessors, ventured no farther than to inform them privately, that they would do him an acceptable service if they chose John de Gray, Bishop of Norwich, for their primate [e]. The election of that prelate was accordingly made without a contradictory vote; and the king, to obviate all contests, endeavoured to persuade the suffragan bishops not to insist on their claim of concurring in the election; but those prelates, persevering in their pretensions, sent an agent to maintain their cause before Innocent; while the king and the convent of Christ-Church, despatched twelve monks of that order to support, before the same tribunal, the election of the Bishop of Norwich. [FN [b] M. Paris, p. 148. M. West. p. 266. [c] Ibid. [d] M. West. p. 266. [e] M. Paris, p. 149. M. West. p. 266.]

Thus there lay three different claims before the pope, whom all parties allowed to be the supreme arbiter in the contest. The claim of the suffragans, being so opposite to the usual maxims of the papal court, was soon set aside: the election of Reginald was so obviously fraudulent and irregular, that there was no possibility of defending it; but Innocent maintained that, though this election was null and invalid, it ought previously to have been declared such by the sovereign pontiff, before the monks could proceed to a new election; and that the choice of the Bishop of Norwich was of course as uncanonical as that of his competitor [f]. Advantage was therefore taken of this subtlety for introducing a precedent, by which the see of Canterbury, the most important dignity in the church after the papal throne, should ever after be at the disposal of the court of Rome. [FN [f] M. Paris, p. 155. Chron. de Mailr. p. 182.]

While the pope maintained so many fierce contests, in order to wrest from princes the right of granting investitures, and to exclude laymen from all authority in conferring ecclesiastical benefices, he was supported by the united influence of the clergy, who, aspiring to independence, fought with all the ardour of ambition, and all the zeal of superstition, under his sacred banners. But no sooner was this point, after a great effusion of blood, and the convulsions of many states, established in some tolerable degree, than the victorious leader, as is usual, turned his arms against his own community, and aspired to centre all power in his person. By the invention of reserves, provisions, commendants, and other devices, the pope gradually assumed the right of filling vacant benefices; and the plenitude of his apostolic power, which was not subject to any limitations, supplied all defects of title in the person on whom he bestowed preferment. The canons which regulated elections were purposely rendered intricate and involved: frequent disputes arose among candidates: appeals were every day carried to Rome: the apostolic see, besides reaping pecuniary advantages from these contests, often exercised the power of setting aside both the litigants, and, on pretence of appeasing faction, nominated a third person, who might be more acceptable to the contending parties.

The present controversy about the election to the see of Canterbury afforded Innocent an opportunity of claiming this right; and he failed not to perceive and avail himself of the advantage. He sent for the twelve monks deputed by the convent to maintain the cause of the Bishop of Norwich; and commanded them, under the penalty of excommunication, to choose for their primate Cardinal Langton, an Englishman by birth, but educated in France, and connected, by his interest and attachments, with the see of Rome [g]. [MN Cardinal Langton appointed Archbishop of Canterbury.] In vain did the monks represent, that they had received from their convent no authority for this purpose; that an election, without a previous writ from the king, would be deemed highly irregular; and that they were merely agents for another person, whose right they had no power or pretence to abandon. None of them had the courage to persevere in this opposition, except one, Elias de Brantefield: all the rest, overcome by the menaces and authority of the pope, complied with his orders, and

made the election required of them. [FN [g] M. Paris, p. 155. Ann. Waverl. p. 169. W. Heming. p. 553. Knyghton, p. 2415.]

Innocent, sensible that this flagrant usurpation would be highly resented by the court of England, wrote John a mollifying letter; sent him four golden rings set with precious stones; and endeavoured to enhance the value of the present by informing him of the many mysteries implied in it. He begged him to consider seriously the FORM of the rings, their NUMBER, their MATTER, and their COLOUR. Their form, he said, being round, shadowed out eternity, which had neither beginning nor end; and he ought thence to learn his duty of aspiring from earthly objects to heavenly, from things temporal to things eternal. The number four, being a square, denoted steadiness of mind, not to be subverted either by adversity or prosperity, fixed for ever on the firm basis of the four cardinal virtues. Gold, which is the matter, being the most precious of metals, signified wisdom, which is the most valuable of all accomplishments, and justly preferred by Solomon to riches, power, and all exterior attainments. The blue colour of the sapphire represented faith; the verdure of the emerald, hope; the redness of the ruby, charity; and the splendour of the topaz, good works [h]. By these conceits Innocent endeavoured to repay John for one of the most important prerogatives of his crown, which he had ravished from him; conceits probably admired by Innocent himself: for it is easily possible for a man, especially in a barbarous age, to unite strong talents for business with an absurd taste for literature and the arts. [FN [h] Rymer, vol. i. p. 139. M. Paris, p. 155.]

John was inflamed with the utmost rage when he heard of this attempt of the court of Rome [i]; and he immediately vented his passion on the monks of Christ-Church, whom he found inclined to support the election made by their fellows at Rome. He sent Fulke de Cantelupe, and Henry de Cornhulle, two knights of his retinue, men of violent tempers and rude manners, to expel them the convent, and take possession of their revenues. These knights entered the monastery with drawn swords, commanded the prior and the monks to depart the kingdom, and menaced them, that, in case of disobedience, they would instantly burn them with the convent [k]. Innocent, prognosticating, from the violence and imprudence of these measures, that John would finally sink in the contest, persevered the more vigorously in his pretensions, and exhorted the king not to oppose God and the church any longer, nor to prosecute that cause for which the holy martyr, St. Thomas, had sacrificed his life, and which had exalted him equal to the highest saints in heaven [l]: a clear hint to John to profit by the example of his father; and to remember the prejudices and established principles of his subjects, who bore a profound veneration to that martyr, and regarded his merits as the subject of their chief glory and exultation. [FN [i] Rymer, vol. i. p. 143. [k] M. Paris, p. 156. Trivet, p. 151. Ann. Waverl. p. 169. [l] M. Paris, p. 157.]

Innocent, finding that John was not sufficiently tamed to submission, sent three prelates, the Bishops of London, Ely, and Worcester, to intimate, that if he persevered in his disobedience, the sovereign pontiff would be obliged to lay the kingdom under an interdict [m]. All the other prelates threw themselves on their knees before him, and entreated him, with tears in their eyes, to prevent the scandal of this sentence, by making a speedy submission to his spiritual father, by receiving from his hands the new-elected primate, and by restoring the monks of Christ-Church to all their rights and possessions. He burst out into the most indecent invectives against the prelates; swore by God's teeth, (his usual oath,) that if the pope presumed to lay his kingdom under an interdict, he would send to him all the bishops and clergy of England, and would confiscate all their estates; and threatened that, if thenceforth he caught any Romans in his dominions, he would put out their eyes and cut off their noses, in order to set a mark upon them which might distinguish them from all other nations [n]. Amidst all this idle violence, John stood on such bad terms with his nobility, that he never dared to assemble the states of the kingdom, who, in so just a cause, would probably have adhered to any other monarch, and have defended with vigour the liberties of the nation against these palpable usurpations of the court of Rome. [MN Interdict of the kingdom.] Innocent, therefore, perceiving the king's weakness, fulminated at last the sentence of interdict, which he had for some time held suspended over him [o]. [FN [m] Ibid. [n] Ibid. [o] M. Paris, p. 157. Trivet, p. 152. Ann. Waverl. p. 170. M. West. p. 268.]

The sentence of interdict was at that time the great instrument of vengeance and policy employed by the court

of Rome; was denounced against sovereigns for the lightest offences; and made the guilt of one person involve the ruin of millions, even in their spiritual and eternal welfare. The execution of it was calculated to strike the senses in the highest degree, and to operate with irresistible force on the superstitious minds of the people. The nation was of a sudden deprived of all exterior exercise of its religion: the altars were despoiled of their ornaments: the crosses, the relics, the images, the statues of the saints, were laid on the ground; and, as if the air itself were profaned, and might pollute them by its contact, the priests carefully covered them up, even from their own approach and veneration. The use of bells entirely ceased in all the churches: the bells themselves were removed from the steeples, and laid on the ground with the other sacred utensils. Mass was celebrated with shut doors, and none but the priests were admitted to that holy institution. The laity partook of no religious rite, except baptism to new-born infants, and the communion to the dying: the dead were not interred in consecrated ground: they were thrown into ditches, or buried in common fields; and their obsequies were not attended with prayers or any hallowed ceremony. Marriage was celebrated in the church-yard [p]; and that every action in life might bear the marks of this dreadful situation, the people were prohibited the use of meat, as in Lent, or times of the highest penance; were debarred from all pleasures and entertainments; and were forbidden even to salute each other, or so much as to shave their beards, and give any decent attention to their person and apparel. Every circumstance carried symptoms of the deepest distress, and of the most immediate apprehension of divine vengeance and indignation. [FN [p] Chron. Dunst. vol. i. p. 51.]

The king, that he might oppose HIS temporal to THEIR spiritual terrors, immediately, from his own authority, confiscated the estates of all the clergy who obeyed the interdict [q]; banished the prelates, confined the monks in their convent, and gave them only such a small allowance from their own estates as would suffice to provide them with food and raiment. He treated with the utmost rigour all Langton's adherents, and every one that showed any disposition to obey the commands of Rome; and in order to distress the clergy in the tenderest point, and at the same time expose them to reproach and ridicule, he threw into prison all their concubines, and required high fines as the price of their liberty [r]. [FN [q] Ann. Waverl. p. 170. [r] M. Paris, p. 158. Ann. Waverl. p. 170.]

After the canons which established the celibacy of the clergy were, by the zealous endeavours of Archbishop Anselm, more rigorously executed in England, the ecclesiastics gave, almost universally, and avowedly, in to the use of concubinage; and the court of Rome, which had no interest in prohibiting this practice, made very slight opposition to it. The custom was become so prevalent, that, in some cantons of Switzerland, before the reformation, the laws not only permitted, but, to avoid scandal, enjoined the use of concubines to the younger clergy [s]; and it was usual every where for priests to apply to the ordinary, and obtain from him a formal liberty for this indulgence. The bishop commonly took care to prevent the practice from degenerating into licentiousness: he confined the priest to the use of one woman, required him to be constant to her bed, obliged him to provide for her subsistence and that of her children; and though the offspring was, in the eye of the law, deemed illegitimate, this commerce was really a kind of inferior marriage, such as is still practised in Germany among the nobles; and may be regarded by the candid as an appeal from the tyranny of civil and ecclesiastical institutions, to the more virtuous and more unerring laws of nature. [FN [s] Padre Paolo, Hist. Conc. Trid. lib. I.]

The quarrel between the king and the see of Rome continued for some years; and though many of the clergy, from the fear of punishment, obeyed the orders of John, and celebrated divine service, they complied with the utmost reluctance, and were regarded, both by themselves and the people, as men who betrayed their principles, and sacrificed their conscience to temporal regards and interests. During this violent situation, the king, in order to give a lustre to his government, attempted military expeditions against Scotland, against Ireland, against the Welsh [t]; and he commonly prevailed, more from the weakness of his enemies, than from his own vigour or abilities. Meanwhile, the danger to which his government stood continually exposed from the discontents of the ecclesiastics increased his natural propension to tyranny; and he seems to have even wantonly disgusted all orders of men, especially his nobles, from whom alone he could reasonably expect support and assistance. He dishonoured their families by his licentious amours; he published edicts, prohibiting them from hunting feathered game, and thereby restrained them from their favourite occupation

and amusement [u]; he ordered all the hedges and fences near his forests to be levelled, that his deer might have more ready access into the fields for pasture; and he continually loaded the nation with arbitrary impositions. [MN 1208.] Conscious of the general hatred which he had incurred, he required his nobility to give him hostages for security of their allegiance; and they were obliged to put into his hands their sons, nephews, or near relations. When his messengers came with like orders to the castle of William de Braouse, a baron of great note, the lady of that nobleman replied, that she would never intrust her son into the hands of one who had murdered his own nephew while in his custody. Her husband reproved her for the severity of this speech; but, sensible of his danger, he immediately fled with his wife and son into Ireland, where he endeavoured to conceal himself. The king discovered the unhappy family in their retreat; seized the wife and son, whom he starved to death in prison; and the baron himself narrowly escaped, by flying into France. [FN [t] W. Heming. p. 556. Ypod. Neust, p. 460. Knyghton, p. 2420. [u] M. West. p. 268.]

[MN 1209.] The court of Rome had artfully contrived a gradation of sentences, by which it kept offenders in awe; still affording them an opportunity of preventing the next anathema by submission; and in case of their obstinacy, was able to refresh the horror of the people against them by new denunciations of the wrath and vengeance of Heaven. As the sentence of interdict had not produced the desired effect on John, and as his people, though extremely discontented, had hitherto been restrained from rising in open rebellion against him, he was soon to look for the sentence of excommunication; and he had reason to apprehend, that, notwithstanding all his precautions, the most dangerous consequences might ensue from it. He was witness of the other scenes, which, at that very time, were acting in Europe, and which displayed the unbounded and uncontrolled power of the papacy. Innocent, far from being dismayed at his contests with the King of England, had excommunicated the Emperor Otho, John's nephew [w]; and soon brought that powerful and haughty prince to submit to his authority. He published a crusade against the Abigenses, a species of enthusiasts in the south of France, whom he denominated heretics, because, like other enthusiasts, they neglected the rites of the church, and opposed the power and influence of the clergy: the people from all parts of Europe, moved by their superstition and their passion for wars and adventures, flocked to his standard: Simon de Montfort, the general of the crusade, acquired to himself a sovereignty in these provinces: the Count of Toulouse, who protected, or perhaps only tolerated the Albigenses, was stripped of his dominions: and these sectaries themselves, though the most innocent and inoffensive of mankind, were exterminated with all the circumstances of extreme violence and barbarity. Here were therefore both an army and a general, dangerous from their zeal and valour, who might be directed to act against John; and Innocent, after keeping the thunder long suspended, gave, at last, authority to the Bishops of London, Ely, and Worcester, to fulminate the sentence of excommunication against him [x]. [MN Excommunication of the king.] These prelates obeyed; though their brethren were deterred from publishing, as the pope required of them, the sentence in the several churches of their dioceses. [FN [w] M. Paris, p. 160. Trivet, p. 154. M. West. p. 269. [x] M. Paris, p. 159. M. West. p. 270.]

No sooner was the excommunication known, than the effects of it appeared. Geoffrey, Archdeacon of Norwich, who was intrusted with a considerable office in the court of exchequer, being informed of it while sitting on the bench, observed to his colleagues the danger of serving under an excommunicated king; and he immediately left his chair, and departed the court. John gave orders to seize him, to throw him into prison, to cover his head with a great leaden cope; and, by this and other severe usage, he soon put an end to his life [y]: nor was there any thing wanting to Geoffrey, except the dignity and rank of Becket, to exalt him to an equal station in heaven with that great and celebrated martyr. Hugh de Wells, the chancellor, being elected by the king's appointment Bishop of Lincoln, upon a vacancy in that see, desired leave to go abroad, in order to receive consecration from the Archbishop of Rouen; but he no sooner reached France than he hastened to Pontigny, where Langton then resided, and paid submissions to him as his primate. The bishops, finding themselves exposed either to the jealousy of the king or hatred of the people, gradually stole out of the kingdom; and, at last, there remained only three prelates to perform the functions of the episcopal office [z]. Many of the nobility, terrified by John's tyranny, and obnoxious to him on different accounts, imitated the example of the bishops; and most of the others who remained were, with reason, suspected of having secretly entered into a confederacy against him [a]. John was alarmed at his dangerous situation; a situation which

prudence, vigour, and popularity might formerly have prevented, but which no virtues or abilities were now sufficient to retrieve. He desired a conference with Langton at Dover; offered to acknowledge him as primate, to submit to the pope, to restore the exiled clergy, even to pay them a limited sum as a compensation for the rents of their confiscated estates. But Langton, perceiving his advantage, was not satisfied with these concessions: he demanded that full restitution and reparation should be made to all the clergy; a condition so exorbitant, that the king, who probably had not the power of fulfilling it, and who foresaw that this estimation of damages might amount to an immense sum, finally broke off the conference [b]. [FN [y] M. Paris, p. 159. [z] Ann. Waverl. p. 170. Ann. Marg. p. 14. [a] M. Paris, p. 162. M. West. p. 270, 271. [b] Ann. Waverl. p. 171.]

[MN 1212.] The next gradation of papal sentences was to absolve John's subjects from their oaths of fidelity and allegiance, and to declare every one excommunicated who had any commerce with him in public or in private; at his table, in his council, or even in private conversation [c]; and this sentence was accordingly, with all imaginable solemnity, pronounced against him. But as John still persevered in his contumacy, there remained nothing but the sentence of deposition; which, though intimately connected with the former, had been distinguished from it by the artifice of the court of Rome; and Innocent determined to dart this last thunderbolt against the refractory monarch. But as a sentence of this kind required an armed force to execute it, the pontiff, casting his eyes around, fixed at last on Philip, King of France, as the person into whose powerful hand he could most properly intrust that weapon, the ultimate resource of his ghostly authority. And he offered the monarch, besides the remission of all his sins and endless spiritual benefits, the property and possession of the kingdom of England, as the reward of his labour [d]. [FN [c] M. Paris, p. 161. M. West. p. 270. [d] M. Paris, p. 162. M. West. p. 271.]

[MN 1213.] It was the common concern of all princes to oppose these exorbitant pretensions of the Roman pontiff, by which they themselves were rendered vassals, and vassals totally dependent, of the papal crown: yet even Philip, the most able monarch of the age, was seduced by present interest, and by the prospect of so tempting a prize, to accept this liberal offer of the pontiff, and thereby to ratify that authority which, if he ever opposed its boundless usurpations, might, next day, tumble him from the throne. He levied a great army; summoned all the vassals of the crown to attend him at Rouen; collected a fleet of seventeen hundred vessels, great and small, in the sea-ports of Normandy and Picardy; and partly from the zealous spirit of the age, partly from the personal regard universally paid him, prepared a force, which seemed equal to the greatness of his enterprise. The king, on the other hand, issued out writs, requiring the attendance of all his military tenants at Dover, and even of all able-bodied men, to defend the kingdom in this dangerous extremity. A great number appeared; and he selected an army of sixty thousand men; a power invincible, had they been united in affection to their prince, and animated with a becoming zeal for the defence of their native country [e]. But the people were swayed by superstition, and regarded their king with horror, as anathematized by papal censures: the barons, besides lying under the same prejudices, were all disgusted by his tyranny, and were, many of them, suspected of holding a secret correspondence with the enemy; and the incapacity and cowardice of the king himself, ill fitted to contend with those mighty difficulties, made men prognosticate the most fatal effects from the French invasion. [FN [e] M. Paris, p. 163. M. West. p. 271.]

Pandolf, whom the pope had chosen for his legate, and appointed to head this important expedition, had, before he left Rome, applied for a secret conference with his master, and had asked him, whether, if the King of England, in this desperate situation, were willing to submit to the apostolic see, the church should, without the consent of Philip, grant him any terms of accommodation [f]! Innocent, expecting from his agreement with a prince so abject both in character and fortune, more advantages than from his alliance with a great and victorious monarch, who, after such mighty acquisitions, might become too haughty to be bound by spiritual chains, explained to Pandolf the conditions on which he was willing to be reconciled to the King of England. The legate, therefore, as soon as he arrived in the north of France, sent over two Knights Templars to desire an interview with John at Dover, which was readily granted: he there represented to him, in such strong and probably in such true colours, his lost condition, the disaffection of his subjects, the secret combination of his vassals against him, the mighty armament of France, that John yielded at discretion [g], and subscribed to all

the conditions which Pandolf was pleased to impose upon him. [MN 13th May. The king's submission to the pope.] He promised, among other articles, that he would submit himself entirely to the judgment of the pope; that he would acknowledge Langton for primate; that he would restore all the exiled clergy and laity, who had been banished on account of the contest; that he would make them full restitution of their goods, and compensation for all damages, and instantly consign eight thousand pounds in part of payment; and that every one outlawed or imprisoned for his adherence to the pope should immediately be received into grace and favour [h]. Four barons swore, along with the king, to the observance of this ignominious treaty [i]. [FN [f] M. Paris, p. 162. [g] M. West. p. 271. [h] Rymer, vol. i. p. 166. M. Paris, p. 163. Annal. Burt. p. 268. [i] Rymer, vol. i. p. 170. M. Paris, p. 163.]

But the ignominy of the king was not yet carried to its full height. Pandolf required him, as the first trial of obedience, to resign his kingdom to the church; and he persuaded him, that he could nowise so effectually disappoint the French invasion as by thus putting himself under the immediate protection of the apostolic see. John, lying under the agonies of present terror, made no scruple of submitting to this condition. He passed a charter, in which he said, that, not constrained by fear, but of his own free will, and by the common advice and consent of his barons, he had, for remission of his own sins, and those of his family, resigned England and Ireland, to God, to St. Peter and St. Paul, and to Pope Innocent and his successors in the apostolic chair: he agreed to hold these dominions as feudatory of the church of Rome, by the annual payment of a thousand marks; seven hundred for England, three hundred for Ireland: and he stipulated that if he or his successors should ever presume to revoke or infringe this charter, they should instantly, except upon admonition they repented of their offence, forfeit all right to their dominions [k]. [FN [k] Rymer, vol. i. p. 176. M. Paris, p. 165.]

[MN 15th May.] In consequence of this agreement, John did homage to Pandolf, as the pope's legate, with all the submissive rites which the feudal law required of vassals before their liege lord and superior. He came disarmed into the legate's presence, who was seated on a throne; he flung himself on his knees before him; he lifted up his joined hands, and put them within those of Pandolf; he swore fealty to the pope; and he paid part of the tribute which he owed for his kingdom as the patrimony of St. Peter. The legate, elated by this supreme triumph of sacerdotal power, could not forbear discovering extravagant symptoms of joy and exultation: he trampled on the money, which was laid at his feet as an earnest of the subjection of the kingdom; an insolence of which, however offensive to all the English, no one present, except the Archbishop of Dublin, dared to take any notice. But though Pandolf had brought the king to submit to these base conditions, he still refused to free him from the excommunication and interdict, till an estimation should be taken of the losses of the ecclesiastics, and full compensation and restitution should be made them.

John, reduced to this abject situation under a foreign power, still showed the same disposition to tyrannize over his subjects, which had been the chief cause of all his misfortunes. One Peter of Pomfret, a hermit, had foretold that the king, this very year, should lose his crown; and for that rash prophecy he had been thrown into prison in Corfe-castle. John now determined to bring him to punishment as an impostor; and though the man pleaded that his prophecy was fulfilled, and that the king had lost the royal and independent crown which he formerly wore, the defence was supposed to aggravate his guilt: he was dragged at horses' tails to the town of Warham, and there hanged on a gibbet with his son [l]. [FN [l] M. Paris, p. 165. Chron. Dunst. vol. i. p. 56.]

When Pandolf, after receiving the homage of John, returned to France, he congratulated Philip on the success of his pious enterprise; and informed him that John, moved by the terror of the French arms, had now come to a just sense of his guilt; had returned to obedience under the apostolic see, and even consented to do homage to the pope for his dominions; and having thus made his kingdom a part of St. Peter's patrimony, had rendered it impossible for any Christian prince, without the most manifest and most flagrant impiety, to attack him [m]. Philip was enraged on receiving this intelligence: he exclaimed that having, at the pope's instigation, undertaken an expedition, which had cost him above sixty thousand pounds sterling, he was frustrated of his purpose, at the time when its success was become infallible: he complained that all the expense had fallen

upon him; all the advantages had accrued to Innocent: he threatened to be no longer the dupe of these hypocritical pretences; and, assembling his vassals, he laid before them the ill-treatment which he had received, exposed the interested and fraudulent conduct of the pope, and required their assistance to execute his enterprise against England, in which he told them, that, notwithstanding the inhibitions and menaces of the legate, he was determined to persevere. The French barons were, in that age, little less ignorant and superstitious than the English: yet, so much does the influence of those religious principles depend on the present dispositions of men, they all vowed to follow their prince on his intended expedition, and were resolute not to be disappointed of that glory and those riches which they had long expected from this enterprise. The Earl of Flanders alone, who had previously formed a secret treaty with John, declaring against the injustice and impiety of the undertaking, retired with his forces [n]; and Philip, that he might not leave so dangerous an enemy behind him, first turned his arms against the dominions of that prince. Meanwhile, the English fleet was assembled under the Earl of Salisbury, the king's natural brother; and though inferior in number, received orders to attack the French in their harbours. Salisbury performed this service with so much success, that he took three hundred ships; destroyed a hundred more [o]; and Philip, finding it impossible to prevent the rest from falling into the hands of the enemy, set fire to them himself, and thereby rendered it impossible for him to proceed any farther in his enterprise. [FN [m] Trivet, p. 160. [n] M. Paris, p. 166. [o] Ibid. p. 166. Chron. Dunst, vol. i. p. 59. Trivet, p. 157.]

John, exulting in his present security, insensible to his past disgrace, was so elated with this success, that he thought of no less than invading France in his turn, and recovering all those provinces which the prosperous arms of Philip had formerly ravished from him. He proposed this expedition to the barons, who were already assembled for the defence of the kingdom. But the English nobles both hated and despised their prince: they prognosticated no success to any enterprise conducted by such a leader; and pretending that their time of service was elapsed, and all their provisions exhausted, they refused to second his undertaking [p]. The king, however, resolute in his purpose, embarked with a few followers, and sailed to Jersey, in the foolish expectation that the barons would at last be ashamed to stay behind [q]. But finding himself disappointed, he returned to England; and, raising some troops, threatened to take vengeance on all his nobles for their desertion and disobedience. The Archbishop of Canterbury, who was in a confederacy with the barons, here interposed; strictly inhibited the king from thinking of such an attempt; and threatened him with a renewal of the sentence of excommunication, if he pretended to levy war upon any of his subjects, before the kingdom were freed from the sentence of interdict [r]. [FN [p] M. Paris, p. 166. [q] M. Paris, p. 166. [r] Ibid. p. 167.]

The church had recalled the several anathemas pronounced against John, by the same gradual progress with which she had at first issued them. By receiving his homage, and admitting him to the rank of a vassal, his deposition had been virtually annulled, and his subjects were again bound by their oaths of allegiance. The exiled prelates had then returned in great triumph, with Langton at their head; and the king, hearing of their approach, went forth to meet them, and throwing himself on the ground before them, he entreated them, with tears, to have compassion on him and the kingdom of England [s]. [MN July.] The primate, seeing these marks of sincere penitence, led him to the chapter-house of Winchester, and there administered an oath to him, by which he again swore fealty and obedience to Pope Innocent and his successors; promised to love, maintain, and defend holy church and the clergy; engaged that he would re-establish the good laws of his predecessors, particularly those of St. Edward, and would abolish the wicked ones; and expressed his resolution of maintaining justice and right in all his dominions [t]. The primate next gave him absolution in the requisite forms, and admitted him to dine with him, to the great joy of all the people. The sentence of interdict, however, was still upheld against the kingdom. A new legate, Nicholas, Bishop of Frescati, came into England in the room of Pandolf; and he declared it to be the pope's intentions never to loosen that sentence till full restitution were made to the clergy of every thing taken from them, and ample reparation for all damages which they had sustained. He only permitted mass to be said with a low voice in the churches, till those losses and damages could be estimated to the satisfaction of the parties. Certain barons were appointed to take an account of the claims; and John was astonished at the greatness of the sums to which the clergy made their losses to amount. No less than twenty thousand marks were demanded by the monks of Canterbury alone; twenty-three thousand for the see of Lincoln; and the king, finding these pretensions to be exorbitant

and endless, offered the clergy the sum of a hundred thousand marks for a final acquittal. The clergy rejected the offer with disdain; but the pope, willing to favour his new vassal, whom he found zealous in his declarations of fealty, and regular in paying the stipulated tribute to Rome, directed his legate to accept of forty thousand. The issue of the whole was, that the bishops and considerable abbots got reparation beyond what they had any title to demand; the inferior clergy were obliged to sit down contented with their losses; and the king, after the interdict was taken off, renewed, in the most solemn manner, and by a new charter, sealed with gold, his professions of homage and obedience to the see of Rome. [FN [s] *Ibid.* p. 166. Ann. Waverl. p. 178. [t] *M. Paris*, p. 166.]

[MN 1214.] When this vexatious affair was at last brought to a conclusion, the king, as if he had nothing farther to attend to but triumphs and victories, went over to Poitou, which still acknowledged his authority [u]; and he carried war into Philip's dominions. He besieged a castle near Angiers; but the approach of Prince Lewis, Philip's son, obliged him to raise the siege with such precipitation, that he left his tents, machines, and baggage behind him; and he returned to England with disgrace. About the same time he heard of the great and decisive victory gained by the King of France at Bovines over the Emperor Otho, who had entered France at the head of a hundred and fifty thousand Germans; a victory which established for ever the glory of Philip, and gave full security to all his dominions. John could, therefore, think henceforth of nothing farther than of ruling peaceably his own kingdom; and his close connexions with the pope, which he was determined at any price to maintain, ensured him, as he imagined, the certain attainment of that object. But the last and most grievous scene of this prince's misfortunes still awaited him; and he was destined to pass through a series of more humiliating circumstances than had ever yet fallen to the lot of any other monarch. [FN [u] *Queen Eleanor* died in 1203 or 1204.]

[MN Discontents of the barons.] The introduction of the feudal law into England by William the Conqueror had much infringed the liberties, however imperfect, enjoyed by the Anglo-Saxons in their ancient government, and had reduced the whole people to a state of vassalage under the king or barons, and even the greater part of them to a state of real slavery. The necessity also of intrusting great power in the hands of a prince, who was to maintain military dominion over a vanquished nation, had engaged the Norman barons to submit to a more severe and absolute prerogative than that to which men of their rank, in other feudal governments, were commonly subjected. The power of the crown, once raised to a high pitch, was not easily reduced; and the nation, during the course of a hundred and fifty years, was governed by an authority unknown, in the same degree, to all the kingdoms founded by the northern conquerors. Henry I., that he might allure the people to give an exclusion to his elder brother Robert, had granted them a charter, favourable in many particulars to their liberties; Stephen had renewed the grant; Henry II. had confirmed it: but the concessions of all these princes had still remained without effect; and the same unlimited, at least irregular authority, continued to be exercised both by them and their successors. The only happiness was, that arms were never yet ravished from the hands of the barons and people: the nation, by a great confederacy, might still vindicate its liberties; and nothing was more likely than the character, conduct, and fortunes of the reigning prince to produce such a general combination against him. Equally odious and contemptible, both in public and private life, he affronted the barons by his insolence, dishonoured their families by his gallantries, enraged them by his tyranny, and gave discontent to all ranks of men by his endless exactions and impositions [w]. The effect of these lawless practices had already appeared in the general demand made by the barons of a restoration of their privileges; and after he had reconciled himself to the pope, by abandoning the independence of the kingdom, he appeared to all his subjects in so mean a light, that they universally thought they might with safety and honour insist upon their pretensions. [FN [w] *Chron Mailr.* p. 188. *T. Wykes*, p. 36. Ann. Waverl. p. 181. *W. Heming*, p. 557.]

But nothing forwarded this confederacy so much as the concurrence of Langton, Archbishop of Canterbury; a man whose memory, though he was obtruded on the nation by a palpable encroachment of the see of Rome, ought always to be respected by the English. This prelate, whether he was moved by the generosity of his nature and his affection to public good; or had entertained an animosity against John on account of the long opposition made by that prince to his election; or thought that an acquisition of liberty to the people would

serve to increase and secure the privileges of the church; had formed the plan of reforming the government, and had prepared the way for that great innovation, by inserting those singular clauses above-mentioned in the oath which he administered to the king, before he would absolve him from the sentence of excommunication. Soon after, in a private meeting of some principal barons at London, he showed them a copy of Henry I.'s charter, which, he said, he had happily found in a monastery; and he exhorted them to insist on the renewal and observance of it: the barons swore, that they would sooner lose their lives than depart from so reasonable a demand [x]. The confederacy began now to spread wider, and to comprehend almost all the barons in England; and a new and more numerous meeting was summoned by Langton at St. Edmondsbury, under colour of devotion. [MN Nov. 1.] He again produced to the assembly the old charter of Henry; renewed his exhortations of unanimity and vigour in the prosecution of their purpose; and represented in the strongest colours the tyranny to which they had so long been subjected, and from which it now behoved them to free themselves and their posterity [y]. The barons, inflamed by his eloquence, incited by the sense of their own wrongs, and encouraged by the appearance of their power and numbers, solemnly took an oath, before the high altar, to adhere to each other, to insist on their demands, and to make endless war on the king, till he should submit to grant them [z]. They agreed that, after the festival of Christmas, they would prefer in a body their common petition; and, in the mean time, they separated, after mutually engaging that they would put themselves in a posture of defence, would enlist men and purchase arms, and would supply their castles with the necessary provisions. [FN [x] M. Paris, p. 167. [y] M. Paris, p. 175. [z] Ibid. p. 176.]

[MN 1215. 6th Jan.] The barons appeared in London on the day appointed, and demanded of the king, that, in consequence of his own oath before the primate, as well as in deference to their just rights, he should grant them a renewal of Henry's charter, and a confirmation of the laws of St. Edward. The king, alarmed with their zeal and unanimity, as well as with their power, required a delay; promised that, at the festival of Easter, he would give them a positive answer to their petition; and offered them the Archbishop of Canterbury, the Bishop of Ely, and the Earl of Pembroke, the mareschal, as sureties for his fulfilling this engagement [a]. The barons accepted of the terms, and peaceably returned to their castles. [FN [a] Ibid. p. 176. M. West. p. 273.]

[MN 15th Jan.] During this interval, John, in order to break or subdue the league of his barons, endeavoured to avail himself of the ecclesiastical power, of whose influence he had, from his own recent misfortunes, had such fatal experience. He granted to the clergy a charter, relinquishing for ever that important prerogative, for which his father and all his ancestors had zealously contended; yielding to them the free election on all vacancies; reserving only the power to issue a *congé d'élire*, and to subjoin a confirmation of the election; and declaring that, if either of these were withheld, the choice should nevertheless be deemed just and valid [b]. He made a vow to lead an army into Palestine against the infidels, and he took on him the cross; in hopes that he should receive from the church that protection which she tendered to every one that had entered into this sacred and meritorious engagement [c]. And he sent to Rome his agent, William de Mauclerc, in order to appeal to the pope against the violence of his barons, and procure him a favourable sentence from that powerful tribunal [d]. The barons also were not negligent on their part in endeavouring to engage the pope in their interests: they despatched Eustace de Vescie to Rome; laid their case before Innocent as their feudal lord: and petitioned him to interpose his authority with the king, and oblige him to restore and confirm all their just and undoubted privileges [e]. [FN [b] Rymer, vol. i. p. 197. [c] Rymer, vol. i. p. 200. Trivet, p. 162. T. Wykes, p. 37. M. West. p. 273. [d] Rymer, vol. i. p. 184. [e] Ibid.]

Innocent beheld with regret the disturbances which had arisen in England, and was much inclined to favour John in his pretensions. He had no hopes of retaining and extending his newly-acquired superiority over that kingdom, but by supporting so base and degenerate a prince, who was willing to sacrifice every consideration to his present safety: and he foresaw that, if the administration should fall into the hands of those gallant and high-spirited barons, they would vindicate the honour, liberty, and independence of the nation, with the same ardour which they now exerted in defence of their own. He wrote letters therefore to the prelates, to the nobility, and to the king himself. He exhorted the first to employ their good offices in conciliating peace between the contending parties, and putting an end to civil discord: to the second he expressed his disapprobation of their conduct in employing force to extort concessions from their reluctant sovereign: the

last he advised to treat his nobles with grace and indulgence, and to grant them such of their demands as should appear just and reasonable [f]. [FN [f] Ibid. p. 196, 197.]

The barons easily saw, from the tenour of these letters, that they must reckon on having the pope, as well as the king, for their adversary; but they had already advanced too far to recede from their pretensions, and their passions were so deeply engaged, that it exceeded even the power of superstition itself any longer to control them. They also foresaw, that the thunders of Rome, when not seconded by the efforts of the English ecclesiastics, would be of small avail against them; and they perceived that the most considerable of the prelates, as well as all the inferior clergy, professed the highest approbation of their cause. Besides that these men were seized with the national passion for laws and liberty, blessings of which they themselves expected to partake, there concurred very powerful causes to loosen their devoted attachment to the apostolic see. It appeared from the late usurpations of the Roman pontiff, that he pretended to reap alone all the advantages accruing from that victory which, under his banners, though at their own peril, they had every where obtained over the civil magistrate. The pope assumed a despotic power over all the churches: their particular customs, privileges, and immunities, were treated with disdain: even the canons of general councils were set aside by his dispensing power: the whole administration of the church was centered in the court of Rome: all preferments ran of course in the same channel: and the provincial clergy saw, at least felt, that there was a necessity for limiting these pretensions. The legate, Nicholas, in filling those numerous vacancies which had fallen in England during an interdict of six years, had proceeded in the most arbitrary manner; and had paid no regard, in conferring dignities, to personal merit, to rank, to the inclination of the electors, or to the customs of the country. The English church was universally disgusted; and Langton himself, though he owed his elevation to an encroachment of the Romish see, was no sooner established in his high office than he became jealous of the privileges annexed to it, and formed attachments with the country subjected to his jurisdiction. These causes, though they opened slowly the eyes of men, failed not to produce their effect: they set bounds to the usurpations of the papacy: the tide first stopped, and then turned against the sovereign pontiff: and it is otherwise inconceivable how that age, so prone to superstition, and so sunk in ignorance, or rather so devoted to a spurious erudition, could have escaped falling into an absolute and total slavery under the court of Rome.

[MN 1215. Insurrection of the barons.] About the time that the pope's letters arrived in England, the malecontent barons, on the approach of the festival of Easter, when they were to expect the king's answer to their petition, met by agreement at Stamford; and they assembled a force, consisting of above two thousand knights, besides their retainers and inferior persons without number. [MN 27th April.] Elated with their power, they advanced in a body to Brackley, within fifteen miles of Oxford, the place where the court then resided; and they there received a message from the king, by the Archbishop of Canterbury and the Earl of Pembroke, desiring to know what those liberties were which they so zealously challenged from their sovereign. They delivered to these messengers a schedule containing the chief articles of their demands; which was no sooner shown to the king than he burst into a furious passion, and asked why the barons did not also demand of him his kingdom? swearing that he would never grant them such liberties as must reduce himself to slavery [g]. [FN [g] M. Paris, p. 176.]

No sooner were the confederated nobles informed of John's reply than they chose Robert Fitz-Walter their general, whom they called THE MARESCHAL OF THE ARMY OF GOD AND OF HOLY CHURCH; and they proceeded without farther ceremony to levy war upon the king. They besieged the castle of Northampton during fifteen days, though without success [h]: the gates of Bedford castle were willingly opened to them by William Beauchamp, its owner: [MN 24th May.] they advanced to Ware in their way to London, where they held a correspondence with the principal citizens: they were received without opposition into that capital: and finding now the great superiority of their force, they issued proclamations, requiring the other barons to join them; and menacing them, in case of refusal or delay, with committing devastation on their houses and estates [i]. In order to show what might be expected from their prosperous arms, they made incursions from London, and laid waste the king's parks and palaces; and all the barons, who had hitherto carried the semblance of supporting the royal party, were glad of this pretence for openly joining a cause which they always had secretly favoured. The king was left at Odiham in Hampshire, with a poor retinue of only seven knights; and

after trying several expedients to elude the blow, after offering to refer all differences to the pope alone, or to eight barons, four to be chosen by himself, and four by the confederates [k], he found himself at last obliged to submit at discretion. [FN [h] Ibid. p. 177. Chron. Dunst. vol. i. p. 71. [i] M. Paris, p. 177. [k] Rymer, vol. i. p. 200.]

[MN 15th June. Magna Charta.] A conference between the king and the barons was appointed at Runnemedede, between Windsor and Staines; a place which has ever since been extremely celebrated on account of this great event. The two parties encamped apart, like open enemies; and after a debate of a few days, the king, with a facility somewhat suspicious, signed and sealed the charter which was required of him. [MN 19th June.] This famous deed, commonly called the GREAT CHARTER, either granted or secured very important liberties and privileges to every order of men in the kingdom; to the clergy, to the barons, and to the people.

The freedom of elections was secured to the clergy; the former charter of the king was confirmed, by which the necessity of a royal congé' d'élire and confirmation was superseded: all check upon appeals to Rome was removed, by the allowance granted every man to depart the kingdom at pleasure: and the fines to be imposed on the clergy for any offence were ordained to be proportional to their lay estates, not to their ecclesiastical benefices.

The privileges granted to the barons were either abatements in the rigour of the feudal law, or determinations in points which had been left by that law, or had become, by practice, arbitrary and ambiguous. The reliefs of heirs succeeding to a military fee were ascertained; an earl's and baron's at a hundred marks, a knight's at a hundred shillings. It was ordained by the charter, that, if the heir be a minor, he shall immediately, upon his majority, enter upon his estate, without paying any relief: the king shall not sell his wardship: he shall levy only reasonable profits upon the estate, without committing waste, or hurting the property: he shall uphold the castles, houses, mills, parks, and ponds: and if he commit the guardianship of the estate to the sheriff or any other, he shall previously oblige them to find surety to the same purpose. During the minority of a baron, while his lands are in wardship, and are not in his own possession, no debt which he owes to the Jews shall bear any interest. Heirs shall be married without disparagement; and before the marriage be contracted, the nearest relations of the person shall be informed of it. A widow, without paying any relief, shall enter upon her dower, the third part of her husband's rents: she shall not be compelled to marry, so long as she chooses to continue single; she shall only give security never to marry without her lord's consent. The king shall not claim the wardship of any minor who hold lands by military tenure of a baron, on pretence that he also holds lands of the crown by soccage or any other tenure. Scutages shall be estimated at the same rate as in the time of Henry I.; and no scutage or aid, except in the three general feudal cases, the king's captivity, the knighting of his eldest son, and the marrying of his eldest daughter, shall be imposed but by the great council of the kingdom: the prelates, earls, and great barons, shall be called to this great council, each by a particular writ; the lesser barons by a general summons of the sheriff. The king shall not seize any baron's land for a debt to the crown, if the baron possesses as many goods and chattels as are sufficient to discharge the debt. No man shall be obliged to perform more service for his fee than he is bound to by his tenure. No governor or constable of a castle shall oblige any knight to give money for castle-guard, if the knight be willing to perform the service in person, or by another able-bodied man; and if the knight be in the field himself, by the king's command, he shall be exempted from all other service of this nature. No vassal shall be allowed to sell so much of his land as to incapacitate himself from performing his service to his lord.

These were the principal articles calculated for the interest of the barons; and had the charter contained nothing farther, national happiness and liberty had been very little promoted by it, as it would only have tended to increase the power and independence of an order of men who were already too powerful, and whose yoke might have become more heavy on the people than even that of an absolute monarch. But the barons, who alone drew and imposed on the prince this memorable charter, were necessitated to insert in it other clauses of a more extensive and more beneficent nature: they could not expect the concurrence of the people without comprehending, together with their own, the interests of inferior ranks of men; and all provisions which the barons, for their own sake, were obliged to make, in order to ensure the free and equitable

administration of justice, tended directly to the benefit of the whole community. The following were the principal clauses of this nature.

It was ordained, that all the privileges and immunities above- mentioned, granted to the barons against the king, should be extended by the barons to their inferior vassals. The king bound himself not to grant any writ, empowering a baron to levy aids from his vassals, except in the three feudal cases. One weight and one measure shall be established throughout the kingdom. Merchants shall be allowed to transact all business, without being exposed to any arbitrary tolls and impositions; they and all freemen shall be allowed to go out of the kingdom and return to it at pleasure: London, and all cities and burghs, shall preserve their ancient liberties, immunities, and free customs: aids shall not be required of them but by the consent of the great council: no towns or individuals shall be obliged to make or support bridges but by ancient custom: the goods of every freeman shall be disposed of according to his will: if he die intestate, his heirs shall succeed to them. No officer of the crown shall take any horses, carts, or wood, without the consent of the owner. The king's courts of justice shall be stationary, and shall no longer follow his person: they shall be open to every one; and justice shall no longer be sold, refused, or delayed by them. Circuits shall be regularly held every year: the inferior tribunals of justice, the county court, sheriff's turn, and court leet, shall meet at their appointed time and place: the sheriffs shall be incapacitated to hold pleas of the crown, and shall not put any person upon his trial from rumour or suspicion alone, but upon the evidence of lawful witnesses. No freeman shall be taken or imprisoned, or dispossessed of his free tenement and liberties, or outlawed, or banished, or anywise hurt or injured, unless by the legal judgment of his peers, or by the law of the land; and all who suffered otherwise, in this or the two former reigns, shall be restored to their rights and possessions. Every freeman shall be fined in proportion to his fault; and no fine shall be levied on him to his utter ruin: even a villain or rustic shall not, by any fine, be bereaved of his carts, ploughs, and implements of husbandry. This was the only article calculated for the interests of this body of men, probably at that time the most numerous in the kingdom.

It must be confessed, that the former articles of the great charter contain such mitigations and explanations of the feudal law as are reasonable and equitable; and that the latter involve all the chief outlines of a legal government, and provide for the equal distribution of justice and free enjoyment of property; the great objects for which political society was at first founded by men, which the people have a perpetual and unalienable right to recall, and which no time, nor precedent, nor statute, nor positive institution, ought to deter them from keeping ever uppermost in their thoughts and attention. Though the provisions made by this charter might, conformably to the genius of the age, be esteemed too concise, and too bare of circumstances, to maintain the execution of its articles, in opposition to the chicanery of lawyers, supported by the violence of power; time gradually ascertained the sense of all the ambiguous expressions; and those generous barons who first extorted this concession still held their swords in their hands, and could turn them against those who dared, on any pretence, to depart from the original spirit and meaning of the grant. We may now, from the tenour of this charter, conjecture what those laws were of King Edward, which the English nation, during so many generations, still desired, with such an obstinate perseverance, to have recalled and established. They were chiefly these latter articles of MAGNA CHARTA; and the barons who, at the beginning of these commotions, demanded the revival of the Saxon laws, undoubtedly thought that they had sufficiently satisfied the people, by procuring them this concession, which comprehended the principal objects to which they had so long aspired. But what we are most to admire is, the prudence and moderation of those haughty nobles themselves, who were enraged by injuries, inflamed by opposition, and elated by a total victory over their sovereign. They were content, even in this plenitude of power, to depart from some articles of Henry I.'s charter, which they made the foundation of their demands, particularly from the abolition of wardships, a matter of the greatest importance; and they seem to have been sufficiently careful not to diminish too far the power and revenue of the crown. If they appear, therefore, to have carried other demands to too great a height, it can be ascribed only to the faithless and tyrannical character of the king himself, of which they had long had experience, and which, they foresaw, would, if they provided no farther security, lead him soon to infringe their new liberties, and revoke his own concessions. This alone gave birth to those other articles, seemingly exorbitant, which were added as a rampart for the safeguard of the great charter.

The barons obliged the king to agree that London should remain in their hands, and the Tower be consigned to the custody of the primate, till the fifteenth of August ensuing, or till the execution of the several articles of the great charter [l]. The better to ensure the same end, he allowed them to choose five-and-twenty members from their own body, as conservators of the public liberties; and no bounds were set to the authority of these men either in extent or duration. If any complaint were made of a violation of the charter, whether attempted by the king, justiciaries, sheriffs, or foresters, any four of these barons might admonish the king to redress the grievance: if satisfaction were not obtained, they could assemble the whole council of twenty-five, who, in conjunction with the great council, were empowered to compel him to observe the charter, and, in case of resistance, might levy war against him, attack his castles, and employ every kind of violence, except against his royal person, and that of his queen and children. All men throughout the kingdom were bound, under the penalty of confiscation, to swear obedience to the twenty-five barons; and the freeholders of each county were to choose twelve knights, who were to make report of such evil customs as required redress, conformably to the tenour of the great charter [m]. The names of those conservators were, the Earls of Clare, Albemarle, Gloucester, Winchester, Hereford, Roger Bigod, Earl of Norfolk, Robert de Vere, Earl of Oxford, William Mareschal the younger, Robert Fitz-Walter, Gilbert de Clare, Eustace de Vescey, Gilbert Delaval, William de Mowbray, Geoffrey de Say, Roger de Mombezou, William de Huntingfield, Robert de Ros, the constable of Chester, William de Aubenie, Richard de Perci, William Malet, John Fitz-Robert, William de Lanvalay, Hugh de Bigod, and Roger de Montfichet [n]. These men were, by this convention, really invested with the sovereignty of the kingdom: they were rendered co-ordinate with the king, or rather superior to him, in the exercise of the executive power: and as there was no circumstance of government which, either directly or indirectly, might not bear a relation to the security or observance of the great charter, there could scarcely occur any incident in which they might not lawfully interpose their authority. [FN [l] Rymer, vol. i. p. 201. Chron. Dunst. vol. i. p. 73. [m] This seems a very strong proof that the House of Commons was not then in being; otherwise the knights and burgesses from the several counties could have given in to the Lords a list of grievances, without so unusual an election. [n] M. Paris, p. 181.]

John seemed to submit passively to all these regulations, however injurious to majesty: he sent writs to all the sheriffs, ordering them to constrain every one to swear obedience to the twenty-five barons [o]: he dismissed all his foreign forces: he pretended that his government was thenceforth to run in a new tenour, and be more indulgent to the liberty and independence of his people. But he only dissembled, till he should find a favourable opportunity for annulling all his concessions. The injuries and indignities which he had formerly suffered from the pope and the King of France, as they came from equals or superiors, seemed to make but small impression on him: but the sense of this perpetual and total subjection under his own rebellious vassals sunk deep in his mind, and he was determined, at all hazards, to throw off so ignominious a slavery [p]. He grew sullen, silent, and reserved: he shunned the society of his courtiers and nobles: he retired into the Isle of Wight, as if desirous of hiding his shame and confusion; but in this retreat he meditated the most fatal vengeance against all his enemies [q]. He secretly sent abroad his emissaries to enlist foreign soldiers, and to invite the rapacious Brabancons into his service, by the prospect of sharing the spoils of England, and reaping the forfeitures of so many opulent barons, who had incurred the guilt of rebellion by rising in arms against him [r]: and he despatched a messenger to Rome, in order to lay before the pope the great charter, which he had been compelled to sign, and to complain, before that tribunal, of the violence which had been imposed upon him [s]. [FN [o] Ibid. p. 182. [p] M. Paris, p. 183. [q] Ibid. [r] Ibid. Chron. Dunst. vol. i. p. 72. Chron. Malr. p. 188. [s] M. Paris, p. 183. Chron. Dunst. vol. i. p. 73.]

Innocent, considering himself as feudal lord of the kingdom, was incensed at the temerity of the barons, who, though they pretended to appeal to his authority, had dared, without waiting for his consent, to impose such terms on a prince, who, by resigning to the Roman pontiff his crown and independence, had placed himself immediately under the papal protection. He issued, therefore, a bull, in which, from the plenitude of his apostolic power, and from the authority which God had committed to him, to build and destroy kingdoms, to plant and overthrow, he annulled and abrogated the whole charter, as unjust in itself, as obtained by compulsion, and as derogatory to the dignity of the apostolic see. He prohibited the barons from exacting the observance of it: he even prohibited the king himself from paying any regard to it: he absolved him and his

subjects from all oaths which they had been constrained to take to that purpose: and he pronounced a general sentence of excommunication against every one who should persevere in maintaining such treasonable and iniquitous pretensions [t]. [FN [t] Rymer, vol. i. p. 203, 204, 205, 208. M. Paris, p. 184, 185, 187.]

[MN Renewal of the civil wars.] The king, as his foreign forces arrived along with this bull, now ventured to take off the mask; and, under sanction of the pope's decree, recalled all the liberties which he had granted to his subjects, and which he had solemnly sworn to observe. But the spiritual weapon was found, upon trial, to carry less force with it than he had reason from his own experience to apprehend. The primate refused to obey the pope in publishing the sentence of excommunication against the barons: and though he was cited to Rome, that he might attend a general council there assembled, and was suspended, on account of his disobedience to the pope, and his secret correspondence with the king's enemies [u]; though a new and particular sentence of excommunication was pronounced by name against the principal barons [w]; John still found, that his nobility and people, and even his clergy, adhered to the defence of their liberties, and to their combination against him: the sword of his foreign mercenaries was all he had to trust to for restoring his authority. [FN [u] M. Paris, p. 189. [w] Rymer, vol. i. p. 211. M. Paris, p. 192.]

The barons, after obtaining the great charter, seem to have been lulled into a fatal security, and to have taken no rational measures, in case of the introduction of a foreign force, for reassembling their armies. The king was, from the first, master of the field; and immediately laid siege to the castle of Rochester, which was obstinately defended by William de Aubenie, at the head of a hundred and forty knights with their retainers, but was at last reduced by famine. [MN 30th Nov.] John, irritated with the resistance, intended to have hanged the governor and all the garrison; but, on the representation of William de Mauleon, who suggested to him the danger of reprisals, he was content to sacrifice, in this barbarous manner, the inferior prisoners only [x]. The captivity of William de Aubenie, the best officer among the confederated barons, was an irreparable loss to their cause; and no regular opposition was thenceforth made to the progress of the royal arms. The ravenous and barbarous mercenaries, incited by a cruel and enraged prince, were let loose against the estates, tenants, manors, houses, parks of the barons, and spread devastation over the face of the kingdom. Nothing was to be seen but the flames of villages and castles reduced to ashes, the consternation and misery of the inhabitants, tortures exercised by the soldiery to make them reveal their concealed treasures, and reprisals no less barbarous committed by the barons and their partisans on the royal demesnes, and on the estates of such as still adhered to the crown. The king, marching through the whole extent of England, from Dover to Berwick, laid the provinces waste on each side of him; and considered every estate, which was not his immediate property, as entirely hostile, and the object of military execution. The nobility of the north, in particular, who had shown the greatest violence in the recovery of their liberties, and who, acting in a separate body, had expressed their discontent even at the concessions made by the great charter, as they could expect no mercy, fled before him with their wives and families, and purchased the friendship of Alexander, the young King of Scots, by doing homage to him. [FN [x] M. Paris, p. 187.]

[MN Prince Lewis called over.] The barons, reduced to this desperate extremity, and menaced with the total loss of their liberties, their properties, and their lives, employed a remedy no less desperate; and making applications to the court of France, they offered to acknowledge Lewis, the eldest son of Philip, for their sovereign, on condition that he would afford them protection from the violence of their enraged prince. Though the sense of the common rights of mankind, the only rights that are entirely indefeasible, might have justified them in the deposition of their king; they declined insisting, before Philip, on a pretension which is commonly so disagreeable to sovereigns, and which sounds harshly in the royal ears. They affirmed, that John was incapable of succeeding to the crown, by reason of the attainder passed upon him during his brother's reign; though that attainder had been reversed, and Richard. had even, by his last will, declared him his successor. They pretended that he was already legally deposed by sentence of the Peers of France, on account of the murder of his nephew; though that sentence could not possibly regard any thing but his transmarine dominions, which alone he held in vassalage to that crown. On more plausible grounds they affirmed, that he had already deposed himself by doing homage to the pope, changing the nature of his sovereignty, and resigning an independent crown for a fee under a foreign power. And as Blanche of Castile, the wife of Lewis,

was descended by her mother from Henry II., they maintained, though many other princes stood before her in the order of succession, that they had not shaken off the royal family, in choosing her husband for their sovereign.

Philip was strongly tempted to lay hold on the rich prize which was offered to him. The legate menaced interdicts and excommunications, if he invaded the patrimony of St. Peter, or attacked a prince who was under the immediate protection of the holy see [y]: but as Philip was assured of the obedience of his own vassals, his principles were changed with the times, and he now undervalued as much all papal censures, as he formerly pretended to pay respect to them. His chief scruple was with regard to the fidelity which he might expect from the English barons in their new engagements, and the danger of intrusting his son and heir into the hands of men, who might, on any caprice or necessity, make peace with their native sovereign, by sacrificing a pledge of so much value. He therefore exacted from the barons twenty- five hostages of the most noble birth in the kingdom [z]; and having obtained this security, he sent over first a small army to the relief of the confederates; then more numerous forces, which arrived with Lewis himself at their head. [FN [y] M. Paris, p. 194. M. West. p. 275. [z] M. Paris, p. 193. Chron. Dunst. vol. i. p. 74.]

The first effect of the young prince's appearance in England was the desertion of John's foreign troops, who, being mostly levied in Flanders, and other provinces of France, refused to serve against the heir of their monarchy [a]. The Gascons and Poitevins alone, who were still John's subjects, adhered to his cause; but they were too weak to maintain that superiority in the field which they had hitherto supported against the confederated barons. Many considerable noblemen deserted John's party, the Earls of Salisbury, Arundel, Warrenne, Oxford, Albemarle, and William Mareschal the younger: his castles fell daily into the hands of the enemy; Dover was the only place which, from the valour and fidelity of Hubert de Burgh, the governor, made resistance to the progress of Lewis [b]: and the barons had the melancholy prospect of finally succeeding in their purpose, and of escaping the tyranny of their own king, by imposing on themselves and the nation a foreign yoke. But this union was of short duration between the French and English nobles: and the imprudence of Lewis, who, on every occasion, showed too visible a preference to the former, increased that jealousy which it was so natural for the latter to entertain in their present situation [c]. The Viscount of Melun, too, it is said, one of his courtiers, fell sick at London, and finding the approaches of death, he sent for some of his friends among the English barons, and warning them of their danger, revealed Lewis's secret intentions of exterminating them and their families as traitors to their prince, and of bestowing their estates and dignities on his native subjects, in whose fidelity he could more reasonably place confidence [d]: this story, whether true or false, was universally reported and believed; and concurring with other circumstances which rendered it credible, did great prejudice to the cause of Lewis. The Earl of Salisbury, and other noblemen, deserted again to John's party [e]; and as men easily change sides in a civil war, especially where their power is founded on an hereditary and independent authority, and is not derived from the opinion and favour of the people, the French prince had reason to dread a sudden reverse of fortune. The king was assembling a considerable army, with a view of fighting one great battle for his crown; but passing from Lynn to Lincolnshire, his road lay along the sea-shore, which was overflowed at high water; and not choosing the proper time for his journey, he lost in the inundation all his carriages, treasure, baggage, and regalia. The affliction for this disaster, and vexation from the distracted state of his affairs, increased the sickness under which he then laboured; and though he reached the castle of Newark, he was obliged to halt there, [MN 17th Oct. Death,] and his distemper soon after put an end to his life, in the forty-ninth year of his age, and eighteenth of his reign; and freed the nation from the dangers to which it was equally exposed by his success or by his misfortunes. [FN [a] M. Paris, p. 195. [b] M. Paris, p. 198. Chron. Dunst. vol. i. p. 75, 76. [c] W. Heming. p. 559. [d] M. Paris, p. 199. M. West. p. 277. [e] Chron. Dunst. vol. i. p. 76.]

[MN and character of the king.] The character of this prince is nothing but a complication of vices, equally mean and odious; ruinous to himself, and destructive to his people. Cowardice, inactivity, folly, levity, licentiousness, ingratitude, treachery, tyranny, and cruelty; all these qualities appear too evidently in the several incidents of his life, to give us room to suspect that the disagreeable picture has been anywise overcharged by the prejudices of the ancient historians. It is hard to say whether his conduct to his father, his

brother, his nephew, or his subjects, was most culpable; or whether his crimes, in these respects, were not even exceeded by the baseness which appeared in his transactions with the King of France, the pope, and the barons. His European dominions, when they devolved to him by the death of his brother, were more extensive than have ever, since his time, been ruled by an English monarch; but he first lost, by his misconduct, the flourishing provinces in France, the ancient patrimony of his family: he subjected his kingdom to a shameful vassalage under the see of Rome: he saw the prerogatives of his crown diminished by law, and still more reduced by faction: and he died at last, when in danger of being totally expelled by a foreign power, and of either ending his life miserably in prison, or seeking shelter, as a fugitive, from the pursuit of his enemies.

The prejudices against this prince were so violent, that he was believed to have sent an embassy to the Miramoulin, or Emperor of Morocco, and to have offered to change his religion and become Mahometan, in order to purchase the protection of that monarch. But though this story is told us, on plausible authority, by Matthew Paris [f], it is in itself utterly improbable; except that there is nothing so incredible but may be believed to proceed from the folly and wickedness of John. [FN [f] P. 169.]

The monks throw great reproaches on this prince for his impiety and even infidelity; and as an instance of it, they tell us, that having one day caught a very fat stag, he exclaimed, HOW PLUMP AND WELL FED IS THIS ANIMAL! AND YET, I DARE SWEAR, HE NEVER HEARD MASS [g]. This sally of wit upon the usual corpulency of the priests, more than all his enormous crimes and iniquities, made him pass with them for an atheist.

John left two legitimate sons behind him; Henry, born on the first of October, 1207, and now nine years of age; and Richard, born on the sixth of January, 1209; and three daughters; Jane, afterwards married to Alexander King of Scots; Eleanor, married first to William Mareschal the younger, Earl of Pembroke, and then to Simon Mountfort, Earl of Leicester; and Isabella, married to the Emperor Frederic II. All these children were born to him by Isabella of Angoulesme, his second wife. His illegitimate children were numerous, but none of them were anywise distinguished.

It was this king who, in the ninth year of his reign, first gave by charter, to the city of London, the right of electing, annually, a mayor out of its own body, an office which was till now held for life. He gave the city also power to elect and remove its sheriffs at pleasure, and its common-councilmen annually. London-bridge was finished in this reign. The former bridge was of wood. Maud, the empress, was the first that built a stone bridge in England. [FN [g] M. Paris, p. 170.]

APPENDIX II.

THE FEUDAL AND ANGLO-NORMAN GOVERNMENT AND MANNERS.

ORIGIN OF THE FEUDAL LAW.--ITS PROGRESS.--FEUDAL GOVERNMENT OF ENGLAND.--THE FEUDAL PARLIAMENT.--THE COMMONS.--JUDICIAL POWER.--REVENUE OF THE CROWN.--COMMERCE.--THE CHURCH.--CIVIL LAWS.--MANNERS.

The feudal law is the chief foundation, both of the political government and of the jurisprudence established by the Normans in England. Our subject therefore requires, that we should form a just idea of this law, in order to explain the state, as well of that kingdom, as of all other kingdoms of Europe, which, during those ages, were governed by similar institutions. And though I am sensible, that I must here repeat many observations and reflections which have been communicated by others [a]; yet, as every book, agreeably to the observation of a great historian [b], should be as complete as possible within itself, and should never refer, for any thing material, to other books, it will be necessary, in this place, to deliver a short plan of that prodigious fabric, which, for several centuries, preserved such a mixture of liberty and oppression, order and anarchy, stability and revolution, as was never experienced in any other age, or any other part of the world. [FN [a] L'Esprit des Loix. Dr. Robertson's History of Scotland. [b] Padre Paolo, Hist. Conc. Trid.]

[MN Origin of the feudal law.] After the northern nations had subdued the provinces of the Roman empire, they were obliged to establish a system of government which might secure their conquests, as well against the revolt of their numerous subjects, who remained in the provinces, as from the inroads of other tribes, who might be tempted to ravish from them their new acquisitions. The great change of circumstances made them here depart from those institutions which prevailed among them while they remained in the forests of Germany; yet it was still natural for them to retain, in their present settlement, as much of their ancient customs as was compatible with their new situation.

The German governments, being more a confederacy of independent warriors than a civil subjection, derived their principal force from many inferior and voluntary associations, which individuals formed under a particular head or chieftain, and which it became the highest point of honour to maintain with inviolable fidelity. The glory of the chief consisted in the number, the bravery, and the zealous attachment of his retainers: the duty of the retainers required, that they should accompany their chief in all wars and dangers, that they should fight and perish by his side, and that they should esteem his renown or his favour a sufficient recompense for all their services [c]. The prince himself was nothing but a great chieftain, who was chosen from among the rest on account of his superior valour or nobility; and who derived his power from the voluntary association or attachment of the other chieftains. [FN [c] Tacit. de Mor. Germ.]

When a tribe, governed by these ideas, and actuated by these principles, subdued a large territory, they found, that though it was necessary to keep themselves in a military posture, they could neither remain united in a body, nor take up their quarters in several garrisons, and that their manners and institutions debarred them from using these expedients; the obvious ones, which, in a like situation, would have been employed by a more civilized nation. Their ignorance in the art of finances, and perhaps the devastations inseparable from such violent conquests, rendered it impracticable for them to levy taxes sufficient for the pay of numerous armies; and their repugnance to subordination, with their attachment to rural pleasures, made the life of the camp or garrison, if perpetuated during peaceful times, extremely odious and disgusting to them. They seized, therefore, such a portion of the conquered lands as appeared necessary; they assigned a share for supporting the dignity of their prince and government; they distributed other parts, under the title of fiefs, to the chiefs; these made a new partition among their retainers: the express condition of all these grants was, that they might be resumed at pleasure, and that the possessor, so long as he enjoyed them, should still remain in readiness to take the field for the defence of the nation. And though the conquerors immediately separated, in order to enjoy their new acquisitions, their martial disposition made them readily fulfil the terms of their engagement: they assembled on the first alarm; their habitual attachment to the chieftain made them willingly submit to his command; and thus a regular military force, though concealed, was always ready to defend, on any emergence, the interest and honour of the community.

We are not to imagine that all the conquered lands were seized by the northern conquerors; or that the whole of the land thus seized was subjected to those military services. This supposition is confuted by the history of all the nations on the continent. Even the idea given us of the German manners by the Roman historian may convince us, that that bold people would never have been content with so precarious a subsistence, or have fought to procure establishments which were only to continue during the good pleasure of their sovereign. Though the northern chieftains accepted of lands, which, being considered as a kind of military pay, might be resumed at the will of the king or general; they also took possession of estates, which being hereditary and independent, enabled them to maintain their native liberty, and support, without court favour, the honour of their rank and family.

[MN Progress of the feudal law.] But there is a great difference, in the consequences, between the distribution of a pecuniary subsistence, and the assignment of lands burdened with the condition of military service. The delivery of the former, at the weekly, monthly, or annual terms of payment, still recalls the idea of a voluntary gratuity from the prince, and reminds the soldier of the precarious tenure by which he holds his commission. But the attachment naturally formed with a fixed portion of land gradually begets the idea of something like property, and makes the possessor forget his dependent situation, and the condition which was at first annexed

to the grant. It seemed equitable that one who had cultivated and sowed a field should reap the harvest: hence fiefs, which were at first entirely precarious, were soon made annual. A man who had employed his money in building, planting, or other improvements, expected to reap the fruits of his labour or expense: hence they were next granted during a term of years. It would be thought hard to expel a man from his possessions, who had always done his duty, and performed the conditions on which he originally received them: hence the chieftains, in a subsequent period, thought themselves entitled to demand the enjoyment of their feudal lands during life. It was found that a man would more willingly expose himself in battle, if assured that his family should inherit his possessions, and should not be left by his death in want and poverty: hence fiefs were made hereditary in families, and descended, during one age, to the son, then to the grandson, next to the brothers, and afterwards to more distant relations [d]. The idea of property stole in gradually upon that of military pay; and each century made some sensible addition to the stability of fiefs and tenures. [FN [d] Lib. Feud. lib. I. tit. 1.]

In all these successive acquisitions, the chief was supported by his vassals; who, having originally a strong connexion with him, augmented by the constant intercourse of good offices, and by the friendship arising from vicinity and dependence, were inclined to follow their leader against all his enemies, and voluntarily, in his private quarrels, paid him the same obedience, to which, by their tenure, they were bound in foreign wars. While he daily advanced new pretensions to secure the possession of his superior fief, they expected to find the same advantage, in acquiring stability to their subordinate ones; and they zealously opposed the intrusion of a new lord, who would be inclined, as he was fully entitled, to bestow the possession of their lands on his own favourites and retainers. Thus the authority of the sovereign gradually decayed; and each noble, fortified in his own territory by the attachment of his vassals, became too powerful to be expelled by an order from the throne; and he secured by law what he had at first acquired by usurpation.

During this precarious state of the supreme power, a difference would immediately be experienced between those portions of territory which were subjected to the feudal tenures, and those which were possessed by an allodial or free title. Though the latter possessions had at first been esteemed much preferable, they were soon found, by the progressive changes introduced into public and private law, to be of an inferior condition to the former. The possessors of a feudal territory, united by a regular subordination under one chief, and by the mutual attachments of the vassals, had the same advantages over the proprietors of the other, that a disciplined army enjoys over a dispersed multitude; and were enabled to commit with impunity all injuries on their defenceless neighbours. Every one, therefore, hastened to seek that protection which he found so necessary; and each allodial proprietor, resigning his possessions into the hands of the king, or of some nobleman respected for power or valour, received them back with the condition of feudal services [e], which, though a burden somewhat grievous, brought him ample compensation, by connecting him with the neighbouring proprietors, and placing him under the guardianship of a potent chieftain. The decay of the political government thus necessarily occasioned the extension of the feudal: the kingdoms of Europe were universally divided into baronies, and these into inferior fiefs: and the attachment of vassals to their chief, which was at first an essential part of the German manners, was still supported by the same causes from which it at first arose; the necessity of mutual protection, and the continued intercourse between the head and the members, of benefits and services. [FN [e] Marculf. Form. 47. apud Lindenbr. p. 1238.]

But there was another circumstance which corroborated these feudal dependencies, and tended to connect the vassals with their superior lord by an indissoluble bond of union. The northern conquerors, as well as the more early Greeks and Romans, embraced a policy which is unavoidable to all nations that have made slender advances in refinement: they every where united the civil jurisdiction with the military power. Law, in its commencement, was not an intricate science, and was more governed by maxims of equity, which seem obvious to common sense, than by numerous and subtle principles, applied to a variety of cases by profound reasonings from analogy. An officer, though he had passed his life in the field, was able to determine all legal controversies which could occur within the district committed to his charge; and his decisions were the most likely to meet with a prompt and ready obedience, from men who respected his person, and were accustomed to act under his command. The profit arising from punishments, which were then chiefly pecuniary, was

another reason for his desiring to retain the judicial power; and when his fief became hereditary, this authority, which was essential to it, was also transmitted to his posterity. The counts and other magistrates, whose power was merely official, were tempted, in imitation of the feudal lords, whom they resembled in so many particulars, to render their dignity perpetual and hereditary; and in the decline of the regal power, they found no difficulty in making good their pretensions. After this manner, the vast fabric of feudal subordination became quite solid and comprehensive; it formed every where an essential part of the political constitution; and the Norman and other barons, who followed the fortunes of William, were so accustomed to it that they could scarcely form an idea of any other species of civil government [f]. [FN [f] The ideas of the feudal government were so rooted, that even lawyers, in those ages, could not form a notion of any other Constitution REGNUM (says Bracton, lib. 2. cap. 34.) QUOD EX COMITATIBUS ET BARONIBUS DICITUR ESSE CONSTITUTUM.]

The Saxons who conquered England, as they exterminated the ancient inhabitants, and thought themselves secured by the sea against new invaders, found it less requisite to maintain themselves in a military posture: the quantity of land which they annexed to offices seems to have been of small value; and for that reason continued the longer in its original situation, and was always possessed during pleasure by those who were intrusted with the command. These conditions were too precarious to satisfy the Norman barons, who enjoyed more independent possessions and jurisdictions in their own country; and William was obliged, in the new distribution of land, to copy the tenures which were now become universal on the continent. England of a sudden became a feudal kingdom [g]; and received all the advantages, and was exposed to all the inconveniences, incident to that species of civil polity. [FN [g] Coke, Comm. on Lit. p. 1, 2. ad sect. 1.]

[MN The feudal government of England.] According to the principles of the feudal law, the king was the supreme lord of the landed property: all possessors, who enjoyed the fruits or revenue of any part of it, held those privileges, either mediately or immediately, of him; and their property was conceived to be in some degree conditional [h]. The land was still apprehended to be a species of BENEFICE, which was the original conception of a feudal property; and the vassal owed, in return for it, stated services to his baron, as the baron himself did for his land to the crown. The vassal was obliged to defend his baron in war; and the baron, at the head of his vassals, was bound to fight in defence of the king and kingdom. But besides these military services, which were casual, there were others imposed of a civil nature, which were more constant and durable. [FN [h] Somner of Gavelk. p. 109. Smith de Rep. lib. 3. cap. 10.]

The northern nations had no idea that any man, trained up to honour, and inured to arms, was ever to be governed, without his own consent, by the absolute will of another; or that the administration of justice was ever to be exercised by the private opinion of any one magistrate, without the concurrence of some other persons, whose interest might induce them to check his arbitrary and iniquitous decisions. The king, therefore, when he found it necessary to demand any service of his barons or chief tenants, beyond what was due by their tenures, was obliged to assemble them in order to obtain their CONSENT: and when it was necessary to determine any controversy which might arise among the barons themselves, the question must be discussed in their presence, and be decided according to their opinion or ADVICE. In these two circumstances of consent and advice consisted chiefly the civil services of the ancient barons; and these implied all the considerable incidents of government. In one view, the barons regarded this attendance as their principal PRIVILEGE; in another, as a grievous BURDEN. That no momentous affairs could be transacted without their consent and advice was in GENERAL esteemed the great security of their possessions and dignities: but as they reaped no immediate profit from their attendance at court, and were exposed to great inconvenience and charge by an absence from their own estates, every one was glad to exempt himself from each PARTICULAR exertion of this power; and was pleased both that the call for that duty should seldom return upon him, and that others should undergo the burden in his stead. The king, on the other hand, was usually anxious, for several reasons, that the assembly of the barons should be full at every stated or casual meeting: this attendance was the chief badge of their subordination to his crown, and drew them from that independence which they were apt to affect in their own castles and manors; and where the meeting was thin or ill attended, its determinations had less authority, and commanded not so ready an obedience from the whole community.

The case was the same with the barons in their courts, as with the king in the supreme council of the nation. It was requisite to assemble the vassals, in order to determine by their vote any question which regarded the barony; and they sat along with the chief in all trials, whether civil or criminal, which occurred within the limits of their jurisdiction. They were bound to pay suit and service at the court of their baron: and as their tenure was military, and consequently honourable, they were admitted into his society, and partook of his friendship. Thus, a kingdom was considered only as a great barony, and a barony as a small kingdom. The barons were peers to each other in the national council, and, in some degree, companions to the king: the vassals were peers to each other in the court of barony, and companions to their baron [i]. [FN [i] Du Cange, Gloss. in verb. PAR Cujac. Commun. in Lib. Feud. lib. I. tit. p. 18. Spellm. Gloss. in verb.]

But though this resemblance so far took place, the vassals, by the natural course of things, universally, in the feudal constitutions, fell into a greater subordination under the baron, than the baron himself under his sovereign; and these governments had a necessary and infallible tendency to augment the power of the nobles. The great chief, residing in his country-seat, which he was commonly allowed to fortify, lost, in a great measure, his connexion or acquaintance with the prince; and added every day new force to his authority over the vassals of the barony. They received from him education in all military exercises: his hospitality invited them to live and enjoy society in his hall: their leisure, which was great, made them perpetual retainers on his person, and partakers of his country sports and amusements: they had no means of gratifying their ambition but by making a figure in his train: his favour and countenance was their greatest honour: his displeasure exposed them to contempt and ignominy: and they felt every moment the necessity of his protection, both in the controversies which occurred with other vassals, and, what was more material, in the daily inroads and injuries which were committed by the neighbouring barons. During the time of general war, the sovereign, who marched at the head of his armies, and was the great protector of the state, always acquired some accession to his authority, which he lost during the intervals of peace and tranquillity: but the loose police, incident to the feudal constitutions, maintained a perpetual, though secret hostility, between the several members of the state; and the vassals found no means of securing themselves against the injuries to which they were continually exposed, but by closely adhering to their chief, and falling into a submissive dependence upon him.

If the feudal government was so little favourable to the true liberty even of the military vassal, it was still more destructive of the independence and security of the other members of the state, or what, in a proper sense, we call the people. A great part of them were SERFS, and lived in a state of absolute slavery or villanage: the other inhabitants of the country paid their rents in services, which were in a great measure arbitrary; and they could expect no redress of injuries, in a court of barony, from men who thought they had a right to oppress and tyrannize over them. The towns were situated either within the demesnes of the king, or the lands of the great barons, and were almost entirely subjected to the absolute will of their master. The languishing state of commerce kept the inhabitants poor and contemptible; and the political institutions were calculated to render that poverty perpetual. The barons and gentry, living in rustic plenty and hospitality, gave no encouragement to the arts, and had no demand for any of the more elaborate manufactures: every profession was held in contempt but that of arms: and if any merchant or manufacturer rose by industry and frugality to a degree of opulence, he found himself but the more exposed to injuries, from the envy and avidity of the military nobles.

These concurring causes gave the feudal governments so strong a bias towards aristocracy, that the royal authority was extremely eclipsed in all the European states; and, instead of dreading the growth of monarchical power, we might rather expect, that the community would every where crumble into so many independent baronies, and lose the political union by which they were cemented. In elective monarchies, the event was commonly answerable to this expectation; and the barons, gaining ground on every vacancy of the throne, raised themselves almost to a state of sovereignty, and sacrificed to their power both the rights of the crown and the liberties of the people. But hereditary monarchies had a principle of authority which was not so easily subverted; and there were several causes which still maintained a degree of influence in the hands of the sovereign.

The greatest baron could never lose view entirely of those principles of the feudal constitution which bound him, as a vassal, to submission and fealty towards his prince; because he was every moment obliged to have recourse to those principles, in exacting fealty and submission from his own vassals. The lesser barons, finding that the annihilation of royal authority left them exposed, without protection, to the insults and injuries of more potent neighbours, naturally adhered to the crown, and promoted the execution of general and equal laws. The people had still a stronger interest to desire the grandeur of the sovereign; and the king, being the legal magistrate, who suffered by every internal convulsion or oppression, and who regarded the great nobles as his immediate rivals, assumed the salutary office of general guardian or protector of the Commons. Besides the prerogatives with which the law invested him, his large demesnes and numerous retainers rendered him, in one sense, the greatest baron in his kingdom; and where he was possessed of personal vigour and abilities, (for his situation required these advantages,) he was commonly able to preserve his authority, and maintain his station as head of the community, and the chief fountain of law and justice.

The first kings of the Norman race were favoured by another circumstance, which preserved them from the encroachments of their barons. They were generals of a conquering army, which was obliged to continue in a military posture, and to maintain great subordination under their leader, in order to secure themselves from the revolt of the numerous natives, whom they had bereaved of all their properties and privileges. But though this circumstance supported the authority of William and his immediate successors, and rendered them extremely absolute, it was lost as soon as the Norman barons began to incorporate with the nation, to acquire a security in their possessions, and to fix their influence over their vassals, tenants, and slaves: and the immense fortunes which the Conqueror had bestowed on his chief captains served to support their independence, and make them formidable to their sovereign.

He gave, for instance, to Hugh de Abrincis, his sister's son, the whole county of Chester, which he erected into a palatinate, and rendered by his grant almost independent of the crown [k]. Robert, Earl of Mortaigne, had 973 manors and lordships: Allan, Earl of Britany and Richmond, 442: Odo, Bishop of Baieux, 439 [l]: Geoffrey, Bishop of Coutance, 280 [m]: Walter Giffard, Earl of Buckingham, 107: William, Earl Warrenne, 298, besides 28 towns or hamlets in Yorkshire: Todenei, 81: Roger Bigod, 123: Robert, Earl of Eu, 119: Roger Mortimer, 132, besides several hamlets: Robert de Stafford, 130: Walter de Eurus, Earl of Salisbury, 46: Geoffrey de Mandeville, 118: Richard de Clare, 171: Hugh de Beauchamp, 47: Baldwin de Ridvers, 164: Henry de Ferrars, 222: William de Percy, 119 [n]: Norman d'Arcy, 33 [o]. Sir Henry Spellman computes, that, in the large county of Norfolk, there were not, in the Conqueror's time, above sixty-six proprietors of land [p]. Men, possessed of such princely revenues and jurisdictions, could not long be retained in the rank of subjects. The great Earl Warrenne, in a subsequent reign, when he was questioned concerning his right to the lands which he possessed, drew his sword, which he produced as his title; adding, that William the Bastard did not conquer the kingdom himself; but that the barons, and his ancestor among the rest, were joint adventurers in the enterprise [q]. [FN [k] Camd. in Chesh. Spellm. Gloss. in verb. COMES PALATINUS. [l] Brady's Hist. p. 198, 200. [m] Order. Vital. [n] Dugdale's Baronage, from Doomsday Book, vol. i. p. 60, 74; iii. 112, 132, 136, 138, 156, 174, 200, 207, 223, 254, 257, 269. [o] Ibid. p. 369. It is remarkable, that this family of d'Arcy seems to be the only male descendants of any of the Conqueror's barons now remaining among the Peers. Lord Holderness is the heir of that family. [p] Spellm. Gloss. in verb. DOMESDAY. [q] Dugd. Bar. vol. i. p. 79. Ibid. Origines Juridicales, p. 13.]

[MN The feudal Parliament.] The supreme legislative power of England was lodged in the king and great council, or what was afterwards called the Parliament. It is not doubted but the archbishops, bishops, and most considerable abbots, were constituent members of this council. They sat by a double title: by prescription, as having always possessed that privilege, through the whole Saxon period, from the first establishment of Christianity; and by their right of baronage, as holding of the king IN CAPITE, by military service. These two titles of the prelates were never accurately distinguished. When the usurpations of the church had risen to such a height as to make the bishops affect a separate dominion, and regard their seat in Parliament as a degradation of their episcopal dignity; the king insisted, that they were barons, and, on that account, obliged, by the general principles of the feudal law, to attend on him in his great councils [r]. Yet there still remained

some practices, which supposed their title to be derived merely from ancient possession. When a bishop was elected, he sat in Parliament before the king had made him restitution of his temporalities; and during the vacancy of a see, the guardian of the spiritualities was summoned to attend along with the bishops. [FN [r] Spellm. Gloss. In verb. BARO.]

The barons were another constituent part of the great council of the nation. These held immediately of the crown by a military tenure: they were the most honourable members of the state, and had a RIGHT to be consulted in all public deliberations: they were the immediate vassals of the crown, and owed as a SERVICE their attendance in the court of their supreme lord. A resolution taken without their consent was likely to be but ill executed; and no determination of any cause or controversy among them had any validity, where the vote and advice of the body did not concur. The dignity of earl or count was official and territorial, as well as hereditary; and as all the earls were also barons, they were considered as military vassals of the crown, were admitted in that capacity into the general council, and formed the most honourable and powerful branch of it.

But there was another class of the immediate military tenants of the crown, no less, or probably more numerous than the barons, the tenants IN CAPITE by knights' service; and these, however inferior in power or property, held by a tenure which was equally honourable with that of the others. A barony was commonly composed of several knights' fees; and though the number seems not to have been exactly defined, seldom consisted of less than fifty hides of land [s]: but where a man held of the king only one or two knights' fees, he was still an immediate vassal of the crown, and as such had a title to have a seat in the general councils. But as this attendance was usually esteemed a burden, and one too great for a man of slender fortune to bear constantly, it is probable that, though he had a title, if he pleased, to be admitted, he was not obliged, by any penalty, like the barons, to pay a regular attendance. All the immediate military tenants of the crown amounted not fully to 700, when Domesday Book was framed; and as the members were well pleased, on any pretext, to excuse themselves from attendance, the assembly was never likely to become too numerous for the despatch of public business. [FN [s] Four hides made one knight's fee: the relief of a barony was twelve times greater than that of a knight's fee; whence we may conjecture its usual value. Spellm. Gloss. in verb. FEODUM. There were 243,600 hides in England, and 60,215 knights' fees; whence it is evident, that there were a little more than four hides in each knight's fee.]

[MN The Commons.] So far the nature of a general council, or ancient Parliament, is determined, without any doubt or controversy. The only question seems to be with regard to the Commons, or the representatives of counties and boroughs, whether they were also, in more early times, constituent parts of Parliament? This question was once disputed in England with great acrimony; but such is the force of time and evidence, that they can sometimes prevail, even over faction; and the question seems by general consent, and even by their own, to be at last determined against the ruling party. It is agreed, that the Commons were no part of the great council, till some ages after the Conquest; and that the military tenants alone of the crown composed that supreme and legislative assembly.

The vassals of a baron were, by their tenure, immediately dependent on him, owed attendance at his court, and paid all their duty to the king, through that dependence which their lord was obliged by HIS tenure to acknowledge to his sovereign and superior. Their land, comprehended in the barony, was represented in Parliament by the baron himself, who was supposed, according to the fictions of the feudal law, to possess the direct property of it; and it would have been deemed incongruous to give it any other representation. They stood in the same capacity to him, that he and the other barons did to the king. The former were peers of the barony; the latter were peers of the realm. The vassals possessed a subordinate rank within their district; the baron enjoyed a superior dignity in the great assembly: they were in some degree his companions at home; he the king's companion at court: and nothing can be more evidently repugnant to all feudal ideas, and to that gradual subordination which was essential to those ancient institutions, than to imagine that the king would apply either for the advice or consent of men, who were of a rank so much inferior, and whose duty was immediately paid to the MESNE lord that was interposed between them and the throne [t]. [FN [t] Spellm. Gloss. in verb. BARO.]

If it be unreasonable to think that the vassals of a barony, though their tenure was military, and noble, and honourable, were ever summoned to give their opinion in national councils, much less can it be supposed, that the tradesmen or inhabitants of boroughs, whose condition was so much inferior, would be admitted to that privilege. It appears from Domesday, that the greatest boroughs were, at the time of the Conquest, scarcely more than country villages; and that the inhabitants lived in entire dependence on the king or great lords, and were of a station little better than servile [u]. They were not then so much as incorporated; they formed no community; were not regarded as a body politic; and being really nothing but a number of low dependent tradesmen, living, without any particular civil tie, in neighbourhood together, they were incapable of being represented in the states of the kingdom. Even in France, a country which made more early advances in arts and civility than England, the first corporation is sixty years posterior to the Conquest under the Duke of Normandy; and the erecting of these communities was an invention of Lewis the Gross, in order to free the people from slavery under the lords, and to give them protection, by means of certain privileges and a separate jurisdiction [w]. An ancient French writer calls them a new and wicked device, to procure liberty to slaves, and encourage them in shaking off the dominion of their masters [x]. The famous charter, as it is called, of the Conqueror to the city of London, though granted at a time when he assumed the appearance of gentleness and lenity, is nothing but a letter of protection, and a declaration that the citizens should not be treated as slaves [y]. By the English feudal law, the superior lord was prohibited from marrying his female ward to a burgess or a villain [z]; so near were these two ranks esteemed to each other, and so much inferior to the nobility and gentry. Besides possessing the advantages of birth, riches, civil powers, and privileges, the nobles and gentlemen alone were armed; a circumstance which gave them a mighty superiority, in an age when nothing but the military profession was honourable, and when the loose execution of laws gave so much encouragement to open violence, and rendered it so decisive in all disputes and controversies [a]. [FN [u] LIBER HOMO anciently signified a gentleman; for scarce any one beside was entirely free. Spellm. Gloss. in verbo. [w] Du Cange's Gloss in verb. COMMUNE, COMMUNITAS. [x] Guibertus, de vita sua, lib. 2. cap. 7. [y] Stat. of Merton, 1235. cap. 6. [z] Hollingshed, vol. iii. p. 15. [a] Madox's Baron. Angl. p. 19.]

The great similarity among the feudal governments of Europe is well known to every man that has any acquaintance with ancient history; and the antiquaries of all foreign countries, where the question was never embarrassed by party disputes, have allowed, that the Commons came very late to be admitted to a share in the legislative power. In Normandy particularly, whose constitution was most likely to be William's model in raising his new fabric of English government, the states were entirely composed of the clergy and nobility; and the first incorporated boroughs or communities of that duchy were Rouen and Falaise, which enjoyed their privileges by a grant of Philip Augustus in the year 1207 [b]. All the ancient English historians, when they mention the great council of the nation, call it an assembly of the baronage, nobility, or great men; and none of their expressions, though several hundred passages might be produced, can, without the utmost violence, be tortured to a meaning, which will admit the Commons to be constituent members of that body [c]. If in the long period of two hundred years, which elapsed between the Conquest and the latter end of Henry III., and which abounded in factions, revolutions, and convulsions of all kinds, the House of Commons never performed one single legislative act, so considerable as to be once mentioned by any of the numerous historians of that age, they must have been totally insignificant: and, in that case, what reason can be assigned for their ever being assembled? Can it be supposed that men of so little weight or importance possessed a negative voice against the king and the barons? Every page of the subsequent histories discovers their existence; though these histories are not written with greater accuracy than the preceding ones, and indeed scarcely equal them in that particular. The MAGNA CHARTA of King John provides, that no scutage or aid should be imposed, either on the land or towns, but by consent of the great council; and for more security, it enumerates the persons entitled to a seat in that assembly, the prelates and immediate tenants of the crown, without any mention of the Commons: an authority so full, certain, and explicit, that nothing but the zeal of party could ever have procured credit to any contrary hypothesis. [FN [b] Norman. Du Chesnii, p. 1066. Du Cange, Gloss, in verb. COMMUNE. [c] Sometimes the historians mention the people, POPULUS, as part of the Parliament; but they always mean the laity, in opposition to the clergy. Sometimes the word COMMUNITAS is found; but it always means COMMUNITAS BARONAGII. These points are clearly proved by Dr. Brady. There is also mention sometimes made of a crowd or multitude that thronged into the

great council on particular interesting occasions; but as deputies from boroughs are never once spoken of, the proof that they had not then any existence becomes the more certain and undeniable. These never could make a crowd, as they must have had a regular place assigned them, if they had made a regular part of the legislative body. There were only one hundred and thirty boroughs who received writs of summons from Edward I. It is expressly said in *Gesta. Reg. Steph.* p. 932, that it was usual for the populace, VULGUS, to crowd into the great councils; where they were plainly mere spectators, and could only gratify their curiosity.]

It was probably the example of the French barons which first emboldened the English to require greater independence from their sovereign: it is also probable, that the boroughs and corporations of England were established in imitation of those of France. It may, therefore, be proposed as no unlikely conjecture, that both the chief privileges of the Peers in England and the liberty of the Commons were originally the growth of that foreign country.

In ancient times, men were little solicitous to obtain a place in the legislative assemblies; and rather regarded their attendance as a burden, which was not compensated by any return of profit or honour proportionate to the trouble and expense. The only reason for instituting those public councils was, on the part of the subject, that they desired some security from the attempts of arbitrary power; and on the part of the sovereign, that he despaired of governing men of such independent spirits without their own consent and concurrence. But the Commons, or the inhabitants of boroughs, had not as yet reached such a degree of consideration as to desire SECURITY against their prince, or to imagine that, even if they were assembled in a representative body, they had power or rank sufficient to enforce it. The only protection which they aspired to, was against the immediate violence and injustice of their fellow-citizens; and this advantage each of them looked for, from the courts of justice, or from the authority of some great lord, to whom, by law or his own choice, he was attached. On the other hand, the sovereign was sufficiently assured of obedience in the whole community, if he procured the concurrence of the nobles; nor had he reason to apprehend, that any order of the state could resist his and their united authority. The military sub-vassals could entertain no idea of opposing both their prince and their superiors: the burgesses and tradesmen could much less aspire to such a thought: and thus, even if history were silent on the head, we have reason to conclude, from the known situation of society during those ages, that the Commons were never admitted as members of the legislative body.

The EXECUTIVE power of the Anglo-Norman government was lodged in the king. Besides the stated meetings of the national council at the three great festivals of Christmas, Easter, and Whitsuntide [d], he was accustomed, on any sudden exigence, to summon them together. He could at his pleasure command the attendance of his barons and their vassals, in which consisted the military force of the kingdom; and could employ them, during forty days, either in resisting a foreign enemy, or reducing his rebellious subjects. And what was of great importance, the whole JUDICIAL power was ultimately in his hands, and was exercised by officers and ministers of his appointment. [FN [d] *Dugd. Orig. Jurid.* p. 15. *Spellm. Gloss.* In verbo PARLIAMENTUM.]

[MN Judicial power.] The general plan of the Anglo-Norman government was, that the court of barony was appointed to decide such controversies as arose between the several vassals or subjects of the same barony; the hundred court and county court, which were still continued as during the Saxon times [e], to judge between the subjects of different baronies [f]; and the CURIA REGIS, or king's court, to give sentence among the barons themselves [g]. But this plan, though simple, was attended with some circumstances which, being derived from a very extensive authority assumed by the Conqueror, contributed to increase the royal prerogative: and, as long as the state was not disturbed by arms, reduced every order of the community to some degree of dependence and subordination. [FN [e] *Ang. Sacra*, vol. i. p. 334, &c. *Dugd. Orig. Jurid.* p. 27, 29. *Madox, Hist. of Exch.* p. 75, 76. *Spellm. Gloss.* in verbo HUNDRED. [f] None of the feudal governments in Europe had such institutions as the county courts, which the great authority of the Conqueror still retained from the Saxon customs. All the freeholders of the county, even the greatest barons, were obliged to attend the sheriffs in these courts, and to assist them in the administration of justice. By these means they received frequent and sensible admonitions of their dependence on the king or supreme magistrate: they formed a kind

of community with their fellow barons and freeholders: they were often drawn from their individual and independent state, peculiar to the feudal system, and were made members of a political body: and, perhaps, this institution of county courts in England has had greater effects on the government than has yet been distinctly pointed out by historians, or traced by antiquaries. The barons were never able to free themselves from this attendance on the sheriffs and itinerant justices till the reign of Henry III. [g] Brady, Pref. p. 143.]

The king himself often sat in his court, which always attended his person [h]: he there heard causes and pronounced judgment [i]; and though he was assisted by the advice of the other members, it is not to be imagined that a decision could easily be obtained contrary to his inclination or opinion. In his absence the chief justiciary presided, who was the first magistrate in the state, and a kind of viceroy, on whom depended all the civil affairs of the kingdom [k] The other chief officers of the crown, the constable, mareschal, seneschal, chamberlain, treasurer, and chancellor [l], were members, together with such feudal barons as thought proper to attend, and the barons of the exchequer, who at first were also feudal barons, appointed by the king [m]. This court, which was sometimes called the king's court, sometimes the court of exchequer, judged in all causes, civil and criminal, and comprehended the whole business which is now shared out among four courts, the chancery, the king's-bench, the common-pleas, and the exchequer [n]. [FN [h] Madox, Hist. of Exch. p. 103. [i] Bracton, lib. 3. cap. 9. Sec. 1. cap. 10. Sec. 1. [k] Spellm. Gloss. in verbo JUSTICIARII. [l] Madox, Hist. Exch. p. 27, 29, 33, 38, 41, 54. The Normans introduced the practice of sealing charters; and the chancellor's office was to keep the great seal. Ingulph. Dugd. p. 33, 34. [m] Madox, Hist. of the Exch. p. 134, 135. Gerv. Dorob. p. 1387. [n] Madox, Hist. of the Exch. p. 56, 70.]

Such an accumulation of powers was itself a great source of authority, and rendered the jurisdiction of the court formidable to all the subjects; but the turn which judicial trials took soon after the Conquest served still more to increase its authority, and to augment the royal prerogatives. William, among the other violent changes which he attempted and effected, had introduced the Norman law into England [o], had ordered all the pleadings to be in that tongue, and had interwoven, with the English jurisprudence, all the maxims and principles, which the Normans, more advanced in cultivation, and naturally litigious, were accustomed to observe in the distribution of justice. Law now became a science, which at first fell entirely into the hands of the Normans; and which, even after it was communicated to the English, required so much study and application, that the laity, in those ignorant ages, were incapable of attaining it, and it was a mystery almost solely confined to the clergy, and chiefly to the monks [p]. The great officers of the crown, and the feudal barons, who were military men, found themselves unfit to penetrate into those obscurities; and though they were entitled to a seat in the supreme judicature, the business of the court was wholly managed by the chief justiciary and the law barons, who were men appointed by the king and entirely at his disposal [q]. This natural course of things was forwarded by the multiplicity of business which flowed into that court, and which daily augmented by the appeals from all the subordinate judicatures of the kingdom. [FN [o] Dial. de Scac. p. 30. apud Madox, Hist. of the Exchequer. [p] Malmes. lib. 4. p. 123. [q] Dugd. Orig. Jurid. p. 25.]

In the Saxon times, no appeal was received in the king's court, except upon the denial or delay of justice by the inferior courts; and the same practice was still observed in most of the feudal kingdoms of Europe. But the great power of the Conqueror established, at first, in England, an authority, which the monarchs in France were not able to attain till the reign of St. Lewis, who lived near two centuries after: he empowered his court to receive appeals both from the courts of barony and the county courts, and by that means brought the administration of justice ultimately into the hands of the sovereign [r]. And lest the expense or trouble of a journey to courts should discourage suitors, and make them acquiesce in the decision of the inferior judicatures, itinerant judges were afterwards established, who made their circuits throughout the kingdom, and tried all causes that were brought before them [s]. By this expedient the courts of barony were kept in awe; and if they still preserved some influence, it was only from the apprehensions which the vassals might entertain of disobliging their superior, by appealing from his jurisdiction. But the county courts were much discredited; and as the freeholders were found ignorant of the intricate principles and forms of the new law, the lawyers gradually brought all business before the king's judges, and abandoned the ancient simple and popular judicature. After this manner, the formalities of justice, which, though they appear tedious and

cumbersome, are found requisite to the support of liberty in all monarchical governments, proved at first, by a combination of causes, very advantageous to royal authority in England. [FN [r] Madox, Hist. of the Exch. p. 65. Glanv. lib. 12. cap. 1. 7. LL. Hen. I. Sec. 31, apud Wilkins, p. 248. Fitz-Stephens, p. 36. Coke's Comment. on the statute of Marlbridge, cap. 20. [s] Madox, Hist. of the Exch. p. 83, 84, 100. Gerv. Dorob. p. 1410. What made the Anglo-Norman barons more readily submit to appeals from their court to the king's court of exchequer, was their being accustomed to like appeals in Normandy to the ducal court of exchequer. See Gilbert's History of the Exchequer, p. 1, 2; though the author thinks it doubtful, whether the Norman court was not rather copied from the English, p. 6.]

[MN Revenue of the crown.] The power of the Norman kings was also much supported by a great revenue; and by a revenue that was fixed, perpetual, and independent of the subject. The people, without betaking themselves to arms, had no check upon the king, and no regular security for the due administration of justice. In those days of violence, many instances of oppression passed unheeded; and soon after were openly pleaded as precedents, which it was unlawful to dispute or control. Princes and ministers were too ignorant to be themselves sensible of the advantages attending an equitable administration; and there was no established council or assembly which could protect the people, and, by withdrawing supplies, regularly and peaceably admonish the king of his duty, and ensure the execution of the laws.

The first branch of the king's stated revenue was the royal demesnes or crown lands, which were very extensive, and comprehended, besides a great number of manors, most of the chief cities of the kingdom. It was established by law, that the king could alienate no part of his demesne, and that he himself, or his successor, could at any time resume such donations [t]: but this law was never regularly observed; which happily rendered in time the crown somewhat more dependent. The rent of the crown lands, considered merely as so much riches, was a source of power: the influence of the king over his tenants and the inhabitants of his towns increased this power: but the other numerous branches of his revenue, besides supplying his treasury, gave, by their very nature, a great latitude to arbitrary authority, and were a support of the prerogative; as will appear from an enumeration of them. [FN [t] Fleta, lib. 1. cap. 8. Sec. 17. lib. 3. cap. 6. Sec. 3. Bracton, lib. 2. cap. 5.]

The king was never content with the stated rents, but levied heavy talliages at pleasure on the inhabitants both of town and country, who lived within his demesne. All bargains of sale, in order to prevent theft, being prohibited, except in boroughs and public markets [u], he pretended to exact tolls, on all goods which were there sold [w]. He seized two hogsheads, one before and one behind the mast, from every vessel that imported wine. All goods paid to his customs a proportionable part of their value [x]: passage over bridges and on rivers was loaded with tolls at pleasure [y]: and though the boroughs by degrees bought the liberty of farming these impositions, yet the revenue profited by these bargains: new sums were often exacted for the renewal and confirmation of their charters [z] and the people were thus held in perpetual dependence. [FN [u] LL. Will. I. cap. 61. [w] Madox, p. 530. [x] Ibid. p. 529. This author says a fifteenth. But it is not easy to reconcile this account to other authorities. [y] Madox, p. 529. [z] Madox's Hist. of the Exch. p. 275, 276, 277, &c.]

Such was the situation of the inhabitants within the royal demesnes. But the possessors of land, or the military tenants, though they were better protected both by law, and by the great privilege of carrying arms, were, from the nature of their tenures, much exposed to the inroads of power, and possessed not what we should esteem, in our age, a very durable security. The Conqueror ordained, that the barons should be obliged to pay nothing beyond their stated services [a], except a reasonable aid to ransom his person if he were taken in war, to make his eldest son a knight, and to marry his eldest daughter. What should, on these occasions, be deemed a reasonable aid, was not determined; and the demands of the crown were so far discretionary. [FN [a] LL. Will. Conq. Sec. 55.]

The king could require in war the personal attendance of his vassals, that is, of almost all the landed proprietors; and if they declined the service, they were obliged to pay him a composition in money, which was called a scutage. The sum was, during some reigns, precarious and uncertain; it was sometimes levied without

allowing the vassal the liberty of personal service [b]; and it was an usual artifice of the king, to pretend an expedition, that he might be entitled to levy the scutage from his military tenants. Danegelt was another species of land-tax levied by the early Norman kings, arbitrarily, and contrary to the laws of the Conqueror [c]. Moneyage was also a general land-tax of the same nature, levied by the two first Norman kings, and abolished by the charter of Henry I. [d]. It was a shilling paid every three years by each hearth, to induce the king not to use his prerogative in debasing the coin. Indeed it appears from that charter, that though the Conqueror had granted his military tenants an immunity from all taxes and talliages, he and his son William had never thought themselves bound to observe that rule, but had levied impositions at pleasure on all the landed estates of the kingdom. The utmost that Henry grants, is, that the land cultivated by the military tenant himself shall not be so burdened; but he reserves the power of taxing the farmers; and as it is known that Henry's charter was never observed in any one article, we may be assured that this prince and his successors retracted even this small indulgence, and levied arbitrary impositions on all the lands of all their subjects. These taxes were sometimes very heavy; since Malmesbury tells us, that in the reign of William Rufus, the farmers, on account of them, abandoned tillage, and a famine ensued [e]. [FN [b] Gervase de Tilbury, p. 25. [c] Madox's Hist of the Exch. p. 475. [d] Matth. Paris, p. 38. [e] So also Chron. Abb. St. Petri de Burgo, p. 55. Knyghton, p. 2366.]

The escheats were a great branch both of power and of revenue, especially during the first reigns after the Conquest. In default of posterity from the first baron, his land reverted to the crown, and continually augmented the king's possessions. The prince had indeed by law a power of alienating these escheats; but by this means he had an opportunity of establishing the fortunes of his friends and servants, and thereby enlarging his authority. Sometimes he retained them in his own hands; and they were gradually confounded with the royal demesnes, and became difficult to be distinguished from them. This confusion is probably the reason why the king acquired the right of alienating his demesnes.

But besides escheats from default of heirs, those which ensued from crimes, or breach of duty towards the superior lord, were frequent in ancient times. If the vassal, being thrice summoned to attend his superior's court, and do fealty, neglected or refused obedience, he forfeited all title to his land [f]. If he denied his tenure, or refused his service, he was exposed to the same penalty [g]. If he sold his estate without licence from his lord [h], or if he sold it upon any other tenure or title than that by which he himself held it [i], he lost all right to it. The adhering to his lord's enemies [k], deserting him in war [l], betraying his secrets [m], debauching his wife, or his near relations [n], or even using indecent freedoms with them [o], might be punished by forfeiture. The higher crimes, rapes, robbery, murder, arson, &c., were called felony; and being interpreted want of fidelity to his lord, made him lose his fief [p]. Even where the felon was vassal to a baron, though his immediate lord enjoyed the forfeiture, the king might retain possession of his estate during a twelvemonth, and had the right of spoiling and destroying it, unless the baron paid him a reasonable composition [q]. We have not here enumerated all the species of felonies, or of crimes by which forfeiture was incurred: we have said enough to prove, that the possession of feudal property was anciently somewhat precarious, and that the primary idea was never lost, of its being a kind of FEE or BENEFICE. [FN [f] Hottom. de Feud. Disp. cap. 38. col. 886. [g] Lib. Feud. lib. 3. tit. 1; lib. 4. tit. 21, 39. [h] Id. lib. 1. tit. 21. [i] Id. lib. 4. tit. 44. [k] Id. lib. 3. tit. 1. [l] Id. lib. 4. tit. 14, 21. [m] Id. lib. 4. tit. 14. [n] Id. lib. 1. tit. 14, 23. [o] Id. lib. 1. tit. 1. [p] Spellm. Gloss. in verb. FELONIA. [q] Ibid. Glanville, lib. 7 cap. 17.]

When a baron died, the king immediately took possession of the estate; and the heir, before he recovered his right, was obliged to make application to the crown, and desire that he might be admitted to do homage for his land, and pay a composition to the king. This composition was not at first fixed by law, at least by practice: the king was often exorbitant in his demands, and kept possession of the land till they were complied with.

If the heir were a minor, the king retained the whole profit of the estate till his majority; and might grant what sum he thought proper for the education and maintenance of the young baron. This practice was also founded on the notion, that a fief was a benefice, and that while the heir could not perform his military services, the revenue devolved to the superior, who employed another in his stead. It is obvious, that a great proportion of

the landed property must, by means of this device, be continually in the hands of the prince, and that all the noble families were thereby held in perpetual dependence. When the king granted the wardship of a rich heir to any one, he had the opportunity of enriching a favourite or minister: if he sold it, he thereby levied a considerable sum of money. Simon de Mountfort paid Henry III. ten thousand marks, an immense sum in those days, for the wardship of Gilbert de Umfreville [r]. Geoffrey de Mandeville paid to the same prince the sum of twenty thousand marks, that he might marry Isabel, Countess of Gloucester, and possess all her lands and knights' fees. This sum would be equivalent to three hundred thousand, perhaps four hundred thousand pounds in our time [s]. [FN [r] Madox's Hist. of the Exch. p. 223. [s] Madox's Hist. of the Exch. p. 322.]

If the heir were a female, the king was entitled to offer her any husband of her rank he thought proper; and if she refused him, she forfeited her land. Even a male heir could not marry without the royal consent; and it was usual for men to pay large sums for the liberty of making their own choice in marriage [t]. No man could dispose of his land, either by sale or will, without the consent of his superior. The possessor was never considered as full proprietor: he was still a kind of beneficiary; and could not oblige his superior to accept of any vassal that was not agreeable to him. [FN [t] Ibid. p. 320.]

Fines, amerciaments, and oblatas, as they were called, were another considerable branch of the royal power and revenue. The ancient records of the exchequer, which are still preserved, give surprising accounts of the numerous fines and amerciaments levied in those days [u] and of the strange inventions fallen upon to exact money from the subject. It appears that the ancient kings of England put themselves entirely on the footing of the barbarous eastern princes, whom no man must approach without a present, who sell all their good offices, and who intrude themselves into every business that they may have a pretence for extorting money. Even justice was avowedly bought and sold; the king's court itself, though the supreme judicature of the kingdom, was open to none that brought not presents to the king; the bribes given for the expedition, delay [w], suspension, and, doubtless for the perversion of justice, were entered in the public registers of the royal revenue, and remain as monuments of the perpetual iniquity and tyranny of the times. The barons of the exchequer, for instance, the first nobility of the kingdom, were not ashamed to insert, as an article in their records, that the county of Norfolk paid a sum that they might be fairly dealt with [x]; the borough of Yarmouth, that the king's charters, which they have for their liberties, might not be violated [y]; Richard, son of Gilbert, for the king's helping him to recover his debt from the Jews [z]; Serlo, son of Terlavaston, that he might be permitted to make his defence in case he were accused of a certain homicide [a]; Walter de Burton, for free law, if accused of wounding another [b]; Robert de Essart, for having an inquest to find whether Roger the Butcher, and Wace and Humphrey, accused him of robbery and theft out of envy and ill-will or not [c]; William Buhurst, for having an inquest to find whether he were accused of the death of one Godwin out of ill-will, or for just cause [d]. I have selected these few instances from a great number of a like kind, which Madox had selected from a still greater number, preserved in the ancient rolls of the exchequer [e]. [FN [u] Id. p. 272. [w] Id. p. 274, 309. [x] Id. p. 295. [y] Id. ibid. [z] Madox's Hist. of the Exch. p. 296. He paid two hundred marks, great sum in those days. [a] Id. p. 296. [b] Id. ibid. [c] Id. p. 298. [d] Id. p. 302. [e] Id. chap. 12.]

Sometimes the party litigant offered the king a certain portion, a half, a third, a fourth, payable out of the debts, which he, as the executor of justice, should assist him in recovering [f]. Theophania de Westland agreed to pay the half of two hundred and twelve marks, that she might recover that sum against James de Fughleston [g]; Solomon, the Jew, engaged to pay one mark out of every seven that he should recover against Hugh de la Hose [h]; Nicholas Morrel promised to pay sixty pounds, that the Earl of Flanders might be distrained to pay him three hundred and forty-three pounds, which the earl had taken from him; and these sixty pounds were to be paid out of the first money that Nicholas should recover from the earl [i]. [FN [f] Id. p. 311. [g] Id. ibid. [h] Id. p. 79, 312. [i] Id. p. 312.]

As the king assumed the entire power over trade, he was to be paid for a permission to exercise commerce or industry of any kind [k]. Hugh Oisel paid four hundred marks for liberty to trade in England [l]; Nigel de Havene gave fifty marks for the partnership in merchandize which he had with Gervase de Hanton [m]; the

men of Worcester paid one hundred shillings, that they might have the liberty of selling and buying dyed cloth as formerly [n]; several other towns paid for a like liberty [o]. The commerce indeed of the kingdom was so much under the control of the king, that he erected guilds, corporations, and monopolies, wherever he pleased; and levied sums for these exclusive privileges [p]. [FN [k] Id. p. 323. [l] Id. *ibid.* [m] Id. *ibid.* [n] Id. p. 324. [o] Id. *ibid.* [p] Madox's Hist. of the Exch. p. 232, 233, &c.]

There were no profits so small as to be below the king's attention. Henry, son of Arthur, gave ten dogs to have a recognition against the Countess of Copland for one knight's fee [q]. Roger, son of Nicholas, gave twenty lampreys and twenty shads for an inquest to find, whether Gilbert, son of Alured, gave to Roger two hundred muttons to obtain his confirmation for certain lands, or whether Roger took them from him by violence [r]; Geoffrey Fitz-Pierre, the chief justiciary, gave two good Norway hawks, that Walter le Madine might have leave to export a hundred weight of cheese out of the king's dominions [s]. [FN [q] Id. p. 298. [r] Id. p. 305. [s] Id. p. 325.]

It is really amusing to remark the strange business in which the king sometimes interfered, and never without a present. The wife of Hugh de Neville gave the king two hundred hens, that she might lie with her husband one night [t]; and she brought with her two sureties, who answered each for a hundred hens. It is probable that her husband was a prisoner, which debarred her from having access to him. The Abbot of Rucford paid ten marks for leave to erect houses and place men upon his land near Welhang, in order to secure his wood there from being stolen [u]. Hugh, Archdeacon of Wells, gave one tun of wine for leave to carry six hundred sums of corn whither he would [w]; Peter de Peraris gave twenty marks for leave to salt fishes, as Peter Chevalier used to do [x]. [FN [t] Id. p. 320. [u] Id. p. 326. [w] Id. p. 320. [x] Id. p. 326.]

It was usual to pay high fines, in order to gain the king's good-will, or mitigate his anger. In the reign of Henry II., Gilbert, the son of Fergus, fines in nine hundred and nineteen pounds, nine shillings, to obtain that prince's favour; William de Chataignes, a thousand marks, that he would remit his displeasure. In the reign of Henry III., the city of London fines in no less a sum than twenty thousand pounds on the same account [y]. [FN [y] Id. p. 327, 329.]

The king's protection and good offices of every kind were bought and sold. Robert Grislet paid twenty marks of silver, that the king would help him against the Earl of Mortaigne, in a certain plea [z]: Robert de Cundet gave thirty marks of silver, that the king would bring him to an accord with the Bishop of Lincoln [a]: Ralph de Breckham gave a hawk, that the king would protect him [b]; and this is a very frequent reason for payments: John, son of Ordgar, gave a Norway hawk, to have the king's request to the king of Norway to let him have his brother Godard's chattels [c]: Richard de Neville gave twenty palfreys to obtain the king's request to Isolda Bisset, that she should take him for a husband [d]: Roger Fitz-Walter gave three good palfreys to have the king's letter to Roger Bertram's mother, that she should marry him [e]: Eling, the dean, paid one hundred marks, that his whore and his children might be let out upon bail [f]: the Bishop of Winchester gave one tun of good wine for his not putting the king in mind to give a girdle to the Countess of Albemarle [g]: Robert de Veaux gave five of the best palfreys, that the king would hold his tongue about Henry Pinel's wife [h]. There are in the records of exchequer, many other singular instances of a like nature [i]. It will, however, be just to remark, that the same ridiculous practices and dangerous abuses prevailed in Normandy, and probably in all the other states of Europe [k]: England was not, in this respect, more barbarous than its neighbours. [FN [z] Madox's Hist. of the Exch. p. 329. [a] Id. p. 330. [b] Id. p. 332. [c] Id. *ibid.* [d] Id. p. 333. [e] Id. *ibid.* [f] Id. p. 342. PRO HABENDA AMICA SUA ET FILIIS, &c. [g] Id. p. 352. [h] Id. *ibid.* UT REX TACERET DE UXORE HENRICI PINEL. [i] WE SHALL GRATIFY THE READER'S CURIOSITY BY SUBJOINING A FEW MORE INSTANCES FROM MADOX, p. 332. Hugh Oisel was to give the king two robes of a good green colour, to have the king's letters patent to the merchants of Flanders, with a request to render him one thousand marks, which he lost in Flanders. The Abbot of Hyde paid thirty marks, to have the king's letters of request to the Archbishop of Canterbury, to remove certain monks that were against the abbot. Roger de Trihanton paid twenty marks and a palfrey, to have the king's request to Richard de Umfreville to give him his sister to wife, and to the sister, that she would accept him for a

husband. William de Cheveringworth paid five marks, to have the king's letter to the Abbot of Perfore, to let him enjoy peaceably his tithes as formerly. Matthew de Hereford, clerk, paid ten marks for a letter of request to the Bishop of Llandaff, to let him enjoy peaceably his church of Schenfrith. Andrew Neulun gave three Flemish caps for the king's request to the Prior of Chikesand, for performance of an agreement made between them. Henry de Fontibus gave a Lombardy horse of value, to have the king's request to Henry Fitz-Hervey, that he would grant him his daughter to wife. Roger, son of Nicholas, promised all the lampreys he could get, to have the king's request to Earl William Marshall, that he would grant him the manor of Langeford at Firm. The burgesses of Gloucester promised three hundred lampreys, that they might not be distrained to find the prisoners of Poitou with necessaries, unless they pleased. Id. p. 352. Jordan, son of Reginald, paid twenty marks, to have the king's request to William Paniel, that he would grant him the land of Mill Nieresult, and the custody of his heirs: and if Jordan obtained the same, he was pay the twenty marks, otherwise not. Id. p. 333. [k] Madox's Hist. of the Exch. p. 359.]

These iniquitous practices of the Norman kings were so well known, that on the death of Hugh Bigod, in the reign of Henry II., the best and most just of these princes, the eldest son and the widow of this nobleman came to court, and strove, by offering large presents to the king, each of them to acquire possession of that rich inheritance. The king was so equitable as to order the cause to be tried by the great council! But, in the mean time, he seized all the money and treasure of the deceased [l]. Peter of Blois, a judicious, and even an elegant writer for that age, gives a pathetic description of the venality of justice, and the oppressions of the poor, under the reign of Henry; and he scruples not to complain to the king himself of these abuses [m]. We may judge what the case would be under the government of worst princes. The articles of inquiry concerning the conduct of sheriffs, which Henry promulgated in 1170, show the great power, as well as the licentiousness of these officers [n]. [FN [l] Bened. Abb. p. 180, 181. [m] Petri Bles. Epist. 95. apud Bibl. Patrum, tom. p. xxiv. 2014. [n] Hoveden, Chron. Gerv. p. 1410.]

Amerciaments, or fines for crimes and trespasses, were another considerable branch of the royal revenue [o]. Most crimes were atoned for by money; the fines imposed were not limited by any rule or statute; and frequently occasioned the total ruin of the person, even for the slightest trespasses. The forest-laws, particularly, were a great source of oppression. The king possessed sixty-eight forests, thirteen chases, and seven hundred and eighty-one parks, in different parts of England [p]; and considering the extreme passion of the English and Normans for hunting, these were so many snares laid for the people, by which they were allured into trespasses, and brought within the reach of arbitrary and rigorous laws, which the king had thought proper to enact by his own authority. [FN [o] Madox, chap. 14. [p] Spellm. Gloss. in verbo FORESTA.]

But the most barefaced acts of tyranny and oppression were practised against the Jews, who were entirely out of the protection of law, were extremely odious from the bigotry of the people, and were abandoned to the immeasurable rapacity of the king and his ministers. Besides many other indignities to which they were continually exposed, it appears that they were once all thrown into prison, and the sum of sixty-six thousand marks exacted for their liberty [q]: at another time, Isaac the Jew paid alone five thousand one hundred marks [r]; Brun, three thousand marks [s]; Jurnet, two thousand; Bennet, five hundred: at another, Licorica, widow of David, the Jew of Oxford, was required to pay six thousand marks; and she was delivered over to six of the richest and discreetest Jews in England, who were to answer for the sum [t]. Henry III. borrowed five thousand marks from the Earl of Cornwall; and for his repayment, consigned over to him all the Jews in England [u]. The revenue arising from exactions upon this nation was so considerable, that there was a particular court of exchequer set apart for managing it [w]. [FN [q] Madox's Hist. of the Exch. p. 151. This happened in the reign of King John. [r] Id. p. 151. [s] Id. p. 153. [t] Id. p. 168. [u] Id. p. 156. [w] Id. chap. 7.]

[MN Commerce.] We may judge concerning the low state of commerce among the English, when the Jews, notwithstanding these oppressions, could still find their account in trading among them, and lending them money. And as the improvements of agriculture were also much checked by the immense possessions of the nobility, by the disorders of the times, and by the precarious state of feudal property, it appears that industry

of no kind could then have place in the kingdom [x]. [FN [x] We learn from the extracts given us of Doomsday by Brady, in his Treatise of Boroughs, that almost all the boroughs of England had suffered in the shock of the Conquest, and had extremely decayed between the death of the Confessor, and the time when Doomsday was framed.]

It is asserted by Sir Henry Spellman [y], as an undoubted truth, that, during the reigns of the first Norman princes, every edict of the king, issued with the consent of his privy council, had the full force of law. But the barons, surely, were not so passive as to intrust a power, entirely arbitrary and despotic, into the hands of the sovereign. It only appears, that the constitution had not fixed any precise boundaries to the royal power; that the right of issuing proclamations on any emergence, and of exacting obedience to them, a right which was always supposed inherent in the crown, is very difficult to be distinguished from a legislative authority; that the extreme imperfection of the ancient laws, and the sudden exigencies which often occurred in such turbulent governments, obliged the prince to exert frequently the latent powers of his prerogative; that he naturally proceeded, from the acquiescence of the people, to assume, in many particulars of moment, an authority from which he had excluded himself by express statutes, charters, or concessions, and which was, in the main, repugnant to the general genius of the constitution; and that the lives, the personal liberty, and the properties of all his subjects, were less secured by law against the exertion of his arbitrary authority, than by the independent power and private connexions of each individual. It appears from the great charter itself, that not only John, a tyrannical prince, and Richard, a violent one, but their father, Henry, under whose reign the prevalence of gross abuses is the least to be suspected, were accustomed, from their sole authority, without process of law, to imprison, banish, and attain the freemen of their kingdom. [FN [y] Gloss. in verb. JUDICIUM DEI. The author of the MIROIR DES JUSTICES complains, that ordinances are only made by the king and his clerks, and by aliens and others, who dare not contradict the king, but study to please him. Whence, he concludes, laws are oftener dictated by will, than founded on right.]

A great baron, in ancient times, considered himself as a kind of sovereign within his territory; and was attended by courtiers and dependents more zealously attached to him than the ministers of state and the great officers were commonly to THEIR sovereign. He often maintained in his court the parade of royalty, by establishing a justiciary, constable, mareschal, chamberlain, seneschal, and chancellor, and assigning to each of these officers a separate province and command. He was usually very assiduous in exercising his jurisdiction; and took such delight in that image of sovereignty, that it was found necessary to restrain his activity, and prohibit him by law from holding courts too frequently [z]. It is not to be doubted, but the example, set him by the prince of a mercenary and sordid extortion, would be faithfully copied, and that all his good and bad offices, his justice and injustice, were equally put to sale. He had the power, with the king's consent, to exact talliages even from the free citizens who lived within his barony; and as his necessities made him rapacious, his authority was usually found to be more oppressive and tyrannical than that of the sovereign [a]. He was ever engaged in hereditary or personal animosities or confederacies with his neighbours, and often gave protection to all desperate adventurers and criminals, who could be useful in serving his violent purposes. He was able alone, in times of tranquillity, to obstruct the execution of justice within his territories; and by combining with a few malecontent barons of high rank and power, he could throw the state into convulsions. And, on the whole, though the royal authority was confined within bounds, and often within very narrow ones, yet the check was irregular, and frequently the source of great disorders; nor was it derived from the liberty of the people, but from the military power of many petty tyrants, who were equally dangerous to the prince and oppressive to the subject. [FN [z] Dugd. Jurid. Orig. p. 26. [a] Madox, Hist. of the Exch. p. 520.]

[MN The Church.] The power of the church was another rampart against royal authority; but this defence was also the cause of many mischiefs and inconveniences. The dignified clergy, perhaps, were not so prone to immediate violence as the barons; but as they pretended to a total independence on the state, and could always cover themselves with the appearances of religion, they proved, in one respect, an obstruction to the settlement of the kingdom, and to the regular execution of the laws. The policy of the Conqueror was in this particular liable to some exception. He augmented the superstitious veneration for Rome, to which that age

was so much inclined; and he broke those bands of connexion, which, in the Saxon times, had preserved an union between the lay and the clerical orders. He prohibited the bishops from sitting in the county courts; he allowed ecclesiastical causes to be tried in spiritual courts only [b]; and he so much exalted the power of the clergy, that of sixty thousand two hundred and fifteen knights' fees, into which he divided England, he placed no less than twenty- eight thousand and fifteen under the church [c]. [FN [b] Char. Will. apud Wilkins, p. 230. Spellm. Conc. vol. ii. p. 14. [c] Spellm. Gloss. in verb. MANUS MORTUA. We are not to imagine, as some have done, that the church possessed lands in this proportion, but only that they and their vassals enjoyed such a proportionable part of the landed property.]

[MN Civil laws.] The right of primogeniture was introduced with the feudal law: an institution which is hurtful, by producing and maintaining an unequal division of private property; but is advantageous, in another respect, by accustoming the people to a preference in favour of the eldest son, and thereby preventing a partition or disputed succession in the monarchy. The Normans introduced the use of surnames, which tend to preserve the knowledge of families and pedigrees. They abolished none of the old absurd methods of trial by the cross or ordeal; and they added a new absurdity, the trial by single combat [d], which became a regular part of jurisprudence, and was conducted with all the order, method, devotion, and solemnity imaginable [e]. The ideas of chivalry also seem to have been imported by the Normans: no traces of those fantastic notions are to be found among the plain and rustic Saxons. [FN [d] LL. Will. cap. 68. [e] Spellm. Gloss. in verb. CAMPUS. The last instance of these duels was in the 15th of Eliz. So long did that absurdity remain.]

[MN Manners.] The feudal institutions, by raising the military tenants to a kind of sovereign dignity, by rendering personal strength and valour requisite, and by making every knight and baron his own protector and avenger, begat that martial pride and sense of honour, which, being cultivated and embellished by the poets and romance-writers of the age, ended in chivalry. The virtuous knight fought not only in his own quarrel, but in that of the innocent, of the helpless, and, above all, of the fair, whom he supposed to be for ever under the guardianship of his valiant arm. The uncourteous knight who, from his castle, exercised robbery on travellers, and committed violence on virgins, was the object of his perpetual indignation; and he put him to death, without scruple, or trial, or appeal, whenever he met with him. The great independence of men made personal honour and fidelity the chief tie among them; and rendered it the capital virtue of every true knight, or genuine professor of chivalry. The solemnities of single combat, as established by law, banished the notion of every thing unfair or unequal in rencounters; and maintained an appearance of courtesy between the combatants till the moment of their engagement. The credulity of the age grafted on this stock the notion of giants, enchanters, dragons, spells [f], and a thousand wonders, which still multiplied during the time of the crusades; when men, returning from so great a distance, used the liberty of imposing every fiction on their believing audience. These ideas of chivalry infected the writings, conversation, and behaviour of men, during some ages; and even after they were, in a great measure, banished by the revival of learning, they left modern GALLANTRY and the POINT OF HONOUR, which still maintain their influence, and are the genuine offspring of those ancient affectations. [FN [f] In all legal single combats, it was part of the champion's oath, that he carried not about him any herb, spell, or enchantment, by which he might procure victory. Dugd. Orig. Jurid. p. 82.]

The concession of the great charter, or rather its full establishment, (for there was a considerable interval of time between the one and the other,) gave rise, by degrees, to a new species of government, and introduced some order and justice into the administration. The ensuing scenes of our history are therefore somewhat different from the preceding. Yet the great charter contained no establishment of new courts, magistrates, or senates, nor abolition of the old. It introduced no new distribution of the powers of the commonwealth, and no innovation in the political or public law of the kingdom. It only guarded, and that merely by verbal clauses, against such tyrannical practices as are incompatible with civilized government, and, if they become very frequent, are incompatible with all government. The barbarous license of the kings, and perhaps of the nobles, was thenceforth somewhat more restrained: men acquired some more security for their properties and their liberties: and government approached a little nearer to that end for which it was originally instituted, the distribution of justice, and the equal protection of the citizens. Acts of violence and iniquity in the crown,

which before were only deemed injurious to individuals, and were hazardous chiefly in proportion to the number, power, and dignity of the persons affected by them, were now regarded, in some degree, as public injuries, and as infringements of a charter calculated for general security. And thus the establishment of the great charter, without seeming anywise to innovate in the distribution of political power, became a kind of epoch in the constitution.

CHAPTER XII.

HENRY III.

SETTLEMENT OF THE GOVERNMENT.--GENERAL PACIFICATION.--DEATH OF THE PROTECTOR.--SOME COMMOTIONS.--HUBERT DE BURGH DISPLACED.--THE BISHOP OF WINCHESTER MINISTER.--KING'S PARTIALITY TO FOREIGNERS.--GRIEVANCES.--ECCLESIASTICAL GRIEVANCES.--EARL OF CORNWALL ELECTED KING OF THE ROMANS.--DISCONTENT OF THE BARONS.--SIMON DE MOUNTFORT, EARL OF LEICESTER.--PROVISIONS OF OXFORD.—USURPATION OF THE BARONS.--PRINCE EDWARD.--CIVIL WARS OF THE BARONS.--REFERENCE TO THE KING OF FRANCE.--RENEWAL OF THE CIVIL WARS.--BATTLE OF LEWES.--HOUSE OF COMMONS.--BATTLE OF EVESHAM AND DEATH OF LEICESTER.--SETTLEMENT OF THE GOVERNMENT.--DEATH--AND CHARACTER OF THE KING.--MISCELLANEOUS TRANSACTIONS OF THIS REIGN.

[MN 1216.] Most sciences, in proportion as they increase and improve, invent methods by which they facilitate their reasonings; and, employing general theorems, are enabled to comprehend, in a few propositions, a great number of inferences and conclusions. History also, being a collection of facts which are multiplying without end, is obliged to adopt such arts of abridgment, to retain the more material events, and to drop all the minute circumstances, which are only interesting during the time, or to the persons engaged in the transactions. This truth is no where more evident than with regard to the reign upon which we are going to enter. What mortal could have the patience to write or read a long detail of such frivolous events as those with which it is filled, or attend to a tedious narrative which would follow, through a series of fifty-six years, the caprices and weaknesses of so mean a prince as Henry? The chief reason why Protestant writers have been so anxious to spread out the incidents of this reign is, in order to expose the rapacity, ambition, and artifices of the court of Rome; and to prove that the great dignitaries of the Catholic church, while they pretended to have nothing in view but the salvation of souls, had bent all their attention to the acquisition of riches, and were restrained by no sense of justice or of honour in the pursuit of that great object [a]. But this conclusion would readily be allowed them, though it were not illustrated by such a detail of uninteresting incidents; and follows, indeed, by an evident necessity, from the very situation in which that church was placed with regard to the rest of Europe. For, besides that ecclesiastical power, as it can always cover its operations under a cloak of sanctity, and attacks men on the side where they dare not employ their reason, lies less under control than civil government; besides this general cause, I say, the pope and his courtiers were foreigners to most of the churches which they governed; they could not possibly have any other object than to pillage the provinces for present gain; and as they lived at a distance, they would be little awed by shame or remorse, in employing every lucrative expedient which was suggested to them. England being one of the most remote provinces attached to the Romish hierarchy, as well as the most prone to superstition, felt severely during this reign, while its patience was not yet fully exhausted, the influence of these causes; and we shall often have occasion to touch cursorily upon such incidents. But we shall not attempt to comprehend every transaction transmitted to us; and, till the end of the reign, when the events become more memorable, we shall not always observe an exact chronological order in our narration. [FN [a] M. Paris, p. 623.]

[MN Settlement of the government.] The Earl of Pembroke, who, at the time of John's death, was Mareschal of England, was, by his office, at the head of the armies, and consequently, during a state of civil wars and convulsions, at the head of the government; and it happened fortunately for the young monarch and for the