

CHAPTER XII.

Discovery of the intrigues of the king with France.—Impeachment of Danby.—Dissolution of Parliament.—Elections.—The duke of York goes abroad.—Pretensions of Monmouth to legitimacy.—The king's declaration as to his marriage.—The new Council upon Temple's plan.—The Exclusion Bill passed in the Commons.—The Habeas Corpus Act.—Continued trials for the Popish Plot.—Analysis of Payments to the Witnesses.—Persecutions of Covenanters in Scotland.—Murder of archbishop Sharp.—Claverhouse defeated at Drumlog.—Monmouth sent to Scotland as General.—Battle of Bothwell Bridge.—Whig and Tory.—York and Monmouth rivals for the Succession.—Proclamation against Petitions.—Abhorrrers.

THE political excitement of the Christmas time of 1678 had not been equalled since the early days of the Long parliament. In the very height of the fever of the Popish Plot a discovery was made of the intrigues of the king with France, which very soon led to the ruin of the Lord Treasurer, Danby. In the secret treaty between Charles and Louis in May, 1678, it was agreed that the English army should be disbanded. The French ambassador, Barillon, pressed its reduction to 8000 men; which Charles as constantly evaded; and he is said to have exclaimed, "God's fish! are all the king of France's promises to make me master of my subjects come to this? or does he think that a matter to be done with 8000 men?" Louis was out of humour with Charles, who appeared disposed to set up for a despot without his brother despot's aid; and he urged Ralph Montague, the English minister at Paris, to betray the secrets of their intrigues. Montague was also out of humour with his own government. He came home, and was elected a member of parliament. The Lord Treasurer dreaded Montague's disclosures; and ordered his papers to be seized, under pretence that he had held private conferences with the Pope's nuncio. A royal message to this effect was sent to the Commons. "But Montague," says Burnet, "understood the arts of a Court too well to be easily caught." He had put a box, in which certain letters were, "in sure hands, out of the way." The object in endeavouring to obtain possession of these papers was to destroy the evidence of the transactions of May, 1678. Montague, in his place in the House said, "I believe that the seizing my cabinets

and papers was to get into their hands some papers of great consequences, that I have to produce, of the designs of a great minister of state." The box containing these was opened in the House; and Montague read two letters, one of which, signed Danby, empowered him to stipulate for a payment to the king of six hundred thousand livres annually for three years, as the price of his neutrality. At the bottom of the letter were these words: "This letter is writ by my order, C. R." Mr. Hallam has forcibly observed of the conduct of the king, as indicated by this letter, that it "bears date five days after an Act had absolutely passed to raise money for carrying on the war; a circumstance worthy of particular attention, as it both puts an end to every pretext or apology which the least scrupulous could venture to urge in behalf of this negotiation, and justifies the Whig party of England in an invincible distrust, an inexpiable hatred, of so perfidious a cozenor."* There was a passage in this letter of instructions to Montague, which gave dire offence to those in the House of Commons who felt as Englishmen. Charles asked for the pension, "because it will be two or three years before he can hope to find his Parliament in humour to give him supplies, after your having made any peace with France." One member, Mr. Bennet, exclaimed, "I wonder the House sits so silent when they see themselves sold for six millions of livres to the French." Another, Mr. Harbord, said, "I hope now gentlemen's eyes are open, by the design on foot to destroy the government and our liberties." Sir Henry Capel, calling upon the House to impeach Danby of treason, said, "This minister has let the French king grow upon us, and let our king take money from him, to lay aside his people." † From this time the unity which the Lord Chancellor Finch so earnestly implored was impossible. The arts of the Court were met by counter-arts of the Opposition; the craft of the despot was resisted by the turbulence of the demagogue; the same foreign hand which had bribed the king to degrade his country now bribed the Parliament to contend against the king. It is a sickening spectacle. The only consolation is that ultimate good came out of the instant evil. Danby was impeached of high treason. He had reluctantly written this letter at the command of his unworthy master; but the penalty constitutionally fell upon the minister. He defended himself upon the plea that upon the matter of peace and war the king was the sole judge, and that he ought to be obeyed by his minis-

* "Constitutional History," chap. xiii.

† "Parl. Hist." vol. iv.

ters of state, as by all his subjects. It is now well understood that the commands of the sovereign furnish no justification for evil measures of the Crown; that the minister must have the responsibility. Danby, though a mere accomplice in guilt, was the one guilty minister; for the letter said "To the Secretary [sir W. Coventry] you must not mention one syllable of the money." The continuance of proceedings against the Lord Treasurer was interrupted by the prorogation of Parliament on the 21st of December, and by its dissolution on the 24th of January, 1679. This was the last Session of the Parliament that had continued since 1661. It commenced in a frenzy of loyalty; it ended in all the embitterment of discontent at the present, and in dread of the future.

Roger North says that the vacation of Parliament "was indeed a dismal one. . . . All populous places were made unquiet with artificial fears and jealousies. . . . All incidents were made wonders, and odd accidents right down prodigies." The Londoners were frightened, as if it were a terrible omen, by a great darkness in London on a Sunday morning, "so that the people in church could not read in their bibles." North asks a question which shows that our metropolitan atmosphere has not much changed during two hundred years. "To what end is this magnifying, so prodigiously, a common accident in London, there being seldom a winter without it; for when a common mist mixes with the coal-smoke it must be so; and out of town, where is no smoke, it is not half so much."* It was fortunate that the elections came to stir the people into real political action, instead of their yielding to vain delusions and idle fears. It seems, indeed, to have been a most stirring time. There is a striking picture of an election scene at Norwich, in sir Thomas Browne's letters. The return for the county of Norfolk was contested; and a new election took place: "I do not remember such a great poll. I could not but observe the great number of horses which were in the town; and conceive there might have been five or six thousand, which in time of need might serve for dragoon horses; besides a great number of coach-horses, and very good saddle-horses of the better sort. Wine we had none but sack and Rhenish, except some made provision thereof beforehand; but there was a strange consumption of beer, and bread, and cakes. Abundance of people slept in the market place, and lay like flocks of sheep in and about the cross."† Evelyn laments that so many from the country came in to vote for his brother as knight of

* "Examen," p. 504.

† Sir T. Browne's Works, 1836, vol. i. p. 241.

the shire for Surrey, "that I believe they ate and drank him out near to £2000, by a most abominable custom." Burnet says, "The elections were carried with great heat, and went almost everywhere against the Court."

The duke of York, two days before the Parliament met on the 6th of March, was persuaded to go abroad. His absence might allay the heat which was manifested against him in the last Parliament, when there was a violent debate upon the proviso of the Lords, in the Bill for excluding Catholics from both Houses, that the duke should be exempted.* But the duke of York, before he left the country for a temporary exile, required that his interests in the succession to the Crown should be protected against the pretended claims of the duke of Monmouth. This supposed eldest of the many illegitimate children of Charles II. was born at Rotterdam, in 1649. James II. in his "Advice to his Son" in the Stuart Papers, says, "All the knowing world, as well as myself, had many convincing reasons to think he was not the king's son, but Robert Sidney's." His mother, Lucy Waters, who was known as Mrs. Barlow, was a lady of somewhat disreputable life; but Charles seems to have clung to her with unusual fidelity. She lived on terms of friendly intercourse with the sister of Charles, the princess of Orange, who in writing to her brother says, "your wife desires me to present her humble duty to you." The term "wife" was probably used in jest by Charles's sister. Mrs. Barlow came to England with the boy in 1656; and is said to have been received by some Cavaliers with attentions paid to royalty. Cromwell had her, in the first place, apprehended, and then sent an order to the Lieutenant of the Tower to release "the lady of pleasure and the young heir." She went to Paris, and soon after died. The son was received with favour by the queen dowager, Henrietta Maria, and came with her to England in 1662. He was called Master Crofts, from having resided with lord Crofts, and is described by Evelyn as "a pretty spark." In 1663 he was created duke of Monmouth, and was ordered "to take place of all dukes." He was also married at the same time to the young countess of Buccleugh, a lady of immense fortune. Monmouth did not deserve "the finest lady in the three kingdoms," for he became an abandoned profligate. Charles appears to have been more constantly attached to him than to any other human being; and to this circumstance may be proba-

* Catholics had been excluded from the Lower House previous to the statute of 1678 excluding peers.

bly attributed the very general belief that the king had been married to his mother. The high offices bestowed upon Monmouth were far above his deserts or abilities; although he had exhibited bravery and judgment in the war of 1673, in which the English assisted Louis XIV. in his campaign. In 1677 he served on the other side, under the prince of Orange. The notion was either put into his head by the enemies of the duke of York, or he indulged in the delusion through some mysterious stories about documents in a black box, that he was the legitimate heir to the throne. The opinion was too general to be despised; and it is not surprising, therefore, that before the duke of York went abroad he should have required his brother to set the matter at rest by a solemn affirmation to the contrary. Charles, on the 3rd of March, declared to his Council, "in the presence of Almighty God, that he had never given or made any contract of marriage, nor was married to any woman whatsoever but his wife, queen Catherine, then living." James, with the duchess of York, then departed for Brussels.

The resumption of the impeachment against lord Danby, upon the meeting of Parliament involved two great constitutional questions. One was, whether an impeachment by the Commons in one Parliament could be continued in another Parliament. The Lords resolved that "the dissolution of the last Parliament did not alter the state of the impeachments brought up by the Commons in that Parliament."* The other question was on the right of the king to grant a pardon pending an impeachment. Danby, when he saw the proceedings revived against him, obtained a pardon under the great seal, which the king affixed without the knowledge of the Chancellor. The Commons declared that a pardon to set aside an impeachment could not be pleaded. After various contests, Danby was committed to the Tower, and when a prorogation took place, the impeachment fell to the ground.

After the fall of Danby, a great experiment in Administration was resolved upon, on the suggestion of sir William Temple. His notion was that any select body of ministers, such as was known then as a Cabal, and is now called a Cabinet, should not be the principal advisers of the king; that the Privy Council should be dissolved, and a Council smaller in number should be appointed, with which the management of affairs should be entrusted, the king pledging himself to submit all matters to their advice. This

* There were subsequent reversals of this decision; but in the impeachment of Warren Hastings, the resolution of 1679 was affirmed in 1791.

new Council was to consist of thirty members, fifteen being high officers of state, and fifteen noblemen and gentlemen of wealth and independence. The wealth was an essential condition in the notion of the projector. The thirty members were to possess estates or revenues amounting to £300,000, a sum equal to three-fourths of the income, as then estimated, of the whole House of Commons. The principle was evidently to interpose some great authority in the State between the king and the representatives of the people—something that would be a counterpoise to the vast development of the power of the Lower House.* As an administrative body it is evident that Temple's Council would prove a failure. It could not essentially differ from the old Privy Council; for thirty members would be as unfit for the united action of an executive as fifty. The Privy Council of Elizabeth and of James I., as in earlier times, gave orders and signed dispatches. When sovereigns were their own ministers, the inconvenience of a large executive body would interfere little with the rapid and secret conduct of affairs. There was a natural jealousy of Cabal or Cabinets; but they had become indispensable in the time of Charles II. The opinions of the Lord Keeper Guilford upon the Cabinet Council, are illustrative of this gradual change in the functions of Administration. Roger North says that his relative intended to describe the transactions of the Court, and the state of the empire, during his ministry as Lord Keeper: "He begins with the state of the Cabinet Council, that consisted of those great officers, and courtiers, whom the king relied upon for the interior dispatch of his affairs. . . . This council was derived from the Privy Council, which, originally, was the same thing, and derived out of the *magnum concilium*. . . . Assemblies at first reasonably constituted of a due number and temper for dispatch of affairs committed to them, by improvident increase came to be formal and troublesome, the certain consequence of multitude; and thereby a new institution becomes necessary; whereupon it is found easier and safer to substitute than to dissolve. Thus the Cabinet Council, which at first was but in the nature of a private conversation, came to be a formal Council, and had the direction of most transactions of the government foreign and domestic."† This opinion of Lord Guilford was formed subsequent to the experiment of 1679, and had no reference to the newly constituted advisers of the Crown. But it is clear that

* The design of Temple is most ably elucidated in Lord Macaulay's "Essays," vol. iii. † "Lives," vol. ii. p. 50.

Temple's Council would have been as unmanageable as an executive body as the Privy Council, which had become unfit for dispatch of affairs "by improvident increase." Some of the popular leaders were of this new Council, such as Russell. Shaftesbury was proposed by the king, and was nominated president. There was great rejoicing at the formation of this Council. The people thought they should be better governed. The Parliament looked coldly upon the project. The ministers very soon formed into juntos. There was a Cabinet of four members within the Council. None of the hostility of the Commons to the duke of York was disarmed by this nominal union of men of conflicting opinions. The thirty had violent contentions; and in a short time Shaftesbury appeared in the anomalous character of President of the Council, and leader of the parliamentary Opposition. The conduct of the king in this Council is recorded by the great eulogist of the Court, with singular admiration of the royal cleverness. The rolls of justices were laid before the Council, in order to be reformed. "It was pleasant to see with how much wit and good humour the king ordered affairs, to disappoint these reformers. He would not suffer the roll, that was begun with, to be out of his own hand, but pretended to mark the alterations upon it himself. Then, as many of the Council moved for alterations upon the account of good or bad men (terms of art, which for brevity, they used to signify such as the party liked, or would have put out, or not), if the king was content a man should out, he made a mark at his name; but, if he would not part with him, he found some jocular reason to let him stand; as that he was a good cocker, understood hunting, kept a good house, had good chines of beef, kept good fox-hounds, or some such indifferent matter, which it was ridiculous to contradict or dispute upon. And, in this manner, he frustrated all their intent as to removes."* With such a Council and such a sovereign, it is manifest there could be no abatement of a violent temper in Parliament. The confirmed hostility to the duke of York was manifested in a Bill for his exclusion from the succession to the throne. To prevent this passing, the Parliament was prorogued on the 26th of May to the 14th of August. The king took this step without communicating with his Council. The Exclusion Bill had passed a second reading of the Commons, and its clauses were being discussed in Committee. But there was a measure of greater importance to the real and permanent interests of the country than this

* "Examens," p. 77.

premature attempt to disturb the Succession. A great legal reform had been carried through both Houses, and waited the Royal Assent. On that 26th of May Charles, however reluctantly, sanctioned the utterance of the three old words which make legislation law, when the Bill was presented to him, which now stands in our Statute Books as "An Act for the better securing the Liberty of the Subject, and for Preventing of Imprisonments beyond Seas."* This is the Habeas Corpus Act, the noble enactment which made that clause of the Great Charter which secures the personal liberty of every Englishman a living principle instead of a dead letter. By the Common Law no subject could be illegally imprisoned, for he might sue for the writ of Habeas Corpus, and be heard in open court. But judges, sheriffs, gaolers, used every art to refuse and to evade the writ. The Privy Council would cause men to be confined beyond seas, in the king's foreign dominions, out of the jurisdiction of the Courts of Justice. Political offences, real or pretended, were thus punished more severely than the laws could punish. Suspicion stood in the place of evidence. Unhappy men lingered out years in distant prisons; and their wrongs were never known except to their oppressors. The strictness and promptitude of the proceedings under the Habeas Corpus Act struck the old weapon of tyranny out of the hands of the powerful. To Shaftesbury, whatever may have been his demerits, we mainly owe the triumph of this great measure. On the same morning that the king gave his assent to the Habeas Corpus Act, he knocked off, perhaps unconsciously, the shackles of the Press. The Licensing Act of 1662 was to continue till the end of the next session of Parliament. All books had been under the control of the Licenser for seventeen years. By the prorogation of the 27th of May, that system came to a temporary close. There was many a struggle yet to be made before Englishmen could point to their own condition, and exultingly say,

"This is true Liberty, when free-born men
Having to advise the public, may speak free." †

The Parliament was dissolved by proclamation before the 14th of August, to which day it had been prorogued. The fourth Parliament of Charles II. met on the 7th of October, 1679, but it was prorogued, again and again, for more than a year. During the summer of 1679 the trials for the Popish Plot went forward, with no abatement of the

* 31 Car. II. c. 2.

† Milton's motto to "Liberty of Unlicensed Printing," from Euripides.

popular outcry against the unhappy Roman Catholics. In June, two Jesuits, Whitbread and Fenwick, who had previously stood at the bar, and had been illegally remanded to prison in defect of evidence, were again indicted, with three others. The cross-swearing on these trials was astounding. The evidence of Oates went to prove a conspiracy of which he became cognizant in London in April 1678. Sixteen of the inmates of St. Omer's came over to the trial, and swore that Oates resided amongst them, uninterruptedly, from January to June. On the other side, eight persons swore that they had seen him in England at the beginning of May. The accused were all found guilty. Langhorne, a Catholic lawyer, was also tried and condemned. The six were executed on the 20th of June. The grossest partiality was manifested from the judgment seat in these trials. Scroggs, the Chief-Justice, kept no bounds of decency in urging the jury to convict. The other judges sat by his side, and interposed no opinion as to the credibility of the evidence. Roger North offers this excuse for his relative, and the rest of the ermined tools: "Nothing can qualify the silence, but the inconceivable fury and rage of the community, gentle and simple, at that time, and the consequences of an open opposition to the Chief, whose part it was to act, as he did, demanding no assistance of any of them; which opposition might have been fatal in many respects: for the credit of the witnesses must have been impeached, which the time would not bear; and it was not in their office to intermeddle; for, as to the fact, the jury is to answer. When it is so done by the co-assessors, it is for discretion, and not duty; the most cogent reason was, that the prejudice was so universal, and strong; that if an apostle had spoken against, no impression had taken place, nor had it done the prisoners any service; but on the other side, not only the rabble, but even the parliament itself, had flounced at it; which consideration turned the scales of the discretion, and made those judges rather let a vessel drive, which they could not stop, and reserve themselves for fairer opportunities, when such might happen, for them to do some good, without pretending to remove mountains."*

There was a stop at last to these disgraceful exhibitions. The English "rabble" are violent, but they are not blood-thirsty; and the executions of men who maintained their innocence to the last wrought pity and disgust even amongst the most prejudiced. The trial of sir George Wakeman, the queen's physician, came on in

* "Life of Lord Keeper Guilford," vol. i. p. 327.

July. Oates and Bedloe were as positive in their testimony, as on former trials where they easily obtained convictions. But now, to their great astonishment, the bench allowed their assertions to be questioned; and thus, after Oates had gone through his course of bold accusations against Wakeman, the Clerk of the Privy Council came forward, and testified that when the confident witness was asked by the Lord Chancellor if he knew anything personally of the queen's physician, he lifted up his hands to heaven, and protested he did not. Three Benedictine monks were indicted as accomplices with Wakeman in the design to poison the king. After a trial of nine hours the whole were acquitted. The believers in the plot gradually diminished. "The witnesses," says Burnet, "saw they were blasted; and they were enraged on it, which they vented with much spite against Scroggs." The trials of common men were now laid aside. But Stafford and the four other lords were still in the Tower, waiting to be tried by their peers. The dissolution and repeated prorogations left their fate doubtful. In the meanwhile Oates and Bedloe were in comfortable quarters, and were receiving handsome gratuities, as well as Dugdale, another of their tribe. There are records of many payments to these worthies, under the heads of "free gift and royal bounty;" "for diet;" for "charges about several witnesses;" for "expenses about the plot;" for "maintaining witnesses in town about the plot;" for "a further discovery of the plot;" for "expenses in prosecuting;" for "discovering a Jesuit;" for "journeys;" for "discovering Papists harboured in Court;" for "lodgings in Whitehall;" extending over a period from March 30, 1679, to March 4, 1683. Of the previous payments to the "witnesses" during half a year, we have no record. We have made a careful analysis of about a hundred and twenty entries of payment to Oates, Bedloe, Tonge, and Dugdale as they appear in the accounts of moneys paid for Secret Services; and we find that up to the 7th of September, 1681, Oates received 166*l.* 8*s.* 10*d.*; Bedloe, to July 1680, received 80*l.*; Tonge, who died in January, 1681, received 344*l.*, and for his funeral was also paid 50*l.*; and Dugdale, who kept drawing the wages of iniquity to the 4th of March, 1683, received 1138*l.* 15*s.** After April, 1681, Oates and Dugdale, instead of being allowed to "sit at ten pounds a-week" like Falstaff, were reduced to a very ignoble two pounds for allowance. Dugdale seems to have held on, and received large sums, long after the supposed instiga-

* "Moneys for Secret Services," Camden Society, pp. 3 to 67.

tors of a pretended Plot—Shaftesbury and his friends—had lost power or parliamentary influence.

Whilst these fearful exhibitions of the dire effects of religious animosity were passing in England, there were even more signal displays of the same spirit, though in an entirely opposite direction, manifested in Scotland. We turn with equal loathing from the corrupt judgments of Scroggs, to the brutal slaughters of Claverhouse. And yet these events must be recorded for instruction and for warning. Religious hatreds have not so entirely died out amongst us, that we can be quite sure that disputes about candles and flowers, about the Judaical observance of the Lord's day, about Jews in Parliament, about Maynooth, might be wholly settled by furious orators and writers, without the sword and the halter, unless the darkness which surrounds such controversies were somewhat dispersed by the light of History. Men can only effectually learn to be tolerant and loving, by seeing what monsters bigotry has made of their forefathers.

After the suppression of the insurrection of Covenanters, in 1666,* Scotland continued in an unquiet state; not openly resisting the government, but nourishing many elements of future disturbance. Archbishop Sharp was especially feared and hated by the stricter Presbyterians. The most fanatical believed him to be the enemy of God, and that his destruction would be an acceptable service. In July, 1668, as the archbishop was getting into his coach, he was shot at; and his companion, the bishop of Orkney, was wounded. No one attempted to seize the offender; but the archbishop had noted his features and general appearance. He wandered about the country for a long time, and then returned to Edinburgh. Six years afterwards, Sharp fancied that a shopkeeper who lived near him was the man who fired at him. His name was Mitchell. He was brought before the Council, and after a solemn promise that his life should be spared, he confessed his guilt. The Council doomed him to perpetual imprisonment on the Bass Rock, after having subjected him to the torture of the boot. Mitchell had been confined here three or four years when it was determined to bring him to trial, for his crime committed in 1668. Upon the duke of Lauderdale's becoming supreme in Scotland, in connexion with the Cabal ministry, he attempted to carry out the same policy of a compromise with non-conformists as was being attempted in England. Many Presbyterian ministers con-

* *Ante*, p. 189.

formed under the Declaration of Indulgence. Burnet says that it was part of the plan to put "all the ousted ministers by couples in parishes;" but that Lauderdale, who governed by fits, "passing from hot to cold ones," neglected this precaution, and that many of the deprived ministers went about, holding conventicles. Very soon the principles of severity trampled down any disposition to moderate courses. Indeed the more violent of the Covenanters utterly despised any measure which would stop short of re-instating their church in triumphant domination. The Black Indulgence, as they termed the healing declaration, was denounced as a bait for the worldly-minded and ungodly. There were large assemblies in wild and solitary places, to which many came armed. The government went about the repression of these meetings with a frantic violence. To strike terror into the Covenanters they removed Mitchell from his wave-beaten rock in the Frith, and brought him to Edinburgh for trial. His own confession was urged against him. The promise upon which that confession was extorted was suppressed. The archbishop, who had first employed an agent to obtain this confession, denied any promise. The lords Lauderdale, Rothes and Halton, swore that no such promise had been made by the Council. The Council books were not allowed to be produced; and the man was convicted. The distinct record of the promise was found in the Council books immediately after the conviction; and yet the man was executed. "This action," says Burnet, "with all concerned in it, was looked at by all people with horror; and it was such a complication of treachery, perjury, and cruelty, as the like had not perhaps been known." The Covenanters were not deterred by this manifestation of vindictiveness, but continued to assemble, particularly in the western counties. Lauderdale determined to act as if the whole district were in rebellion. He required all the land-owners to execute bonds, not only for their own conformity in attending the church service and avoiding conventicles, but for their servants, tenants, and residents on their property. They refused, and Lauderdale asked for authority to reduce them to submission by military force. Charles consented. The Highlanders were brought from their mountains to live at free quarters, and to plunder, in the devoted district. The inhabitants were disarmed. Lauderdale's excesses became at last too much even for the government of Charles to bear. The king could not wholly justify the acts of his minister. "But when May, the master of the privy purse, asked him in his