

on the scaffold, whether guilty or not. His judges would have been selected by the king; "his subsequent trial would have been mere matter of form, as much as after sentence the warrant to behead him." * During the five months of his imprisonment, Shaftesbury, through his counsel, repeatedly applied for the protection of his own Habeas Corpus Act. The judges evaded the application. His character was to be blasted, so that the indictment should come before a jury sufficiently prejudiced against the accused. Every weapon of abuse was employed against him. He was denounced from the pulpits as "the Apostle of Schism;" he was characterised, in doggerel verse which preceded Dryden's immortal satire, as Machiavel, as the devil's foster-brother, as Achitophel; the hint was taken, and a week before the indictment was presented at the Old Bailey, came out "Absalom and Achitophel." The king at this time "was more than usually serious, and seemingly under a greater weight of thought than had been observed of him on account of the most important business." Reresby, who notices this unusual demeanour of the king, says that Halifax maintained that it would be prudent to set Shaftesbury at liberty, upon terms; but that "the king was resolved to prosecute him to the utmost" was the information of one of the secretaries. On the 24th of November the indictment was presented to the Grand Jury at the Old Bailey. North and Pemberton sat on the Bench; and, contrary to all precedent, it was resolved that the examination of the witnesses should be in open court. The foreman of the jury contended that they were sworn to keep the king's counsel, their fellows' counsel, and their own, secret. North maintained that the king could dispense with the secrecy. The object of these tools of power was to help out the witnesses in their contradictions, and to awe the jury. The evidence of the charge "for compassing and imagining the death of the king" was attempted to be supported by a paper, "containing no less than matter of high treason, which was sworn to have been found amongst the papers in his closet." † It was a plan of an association, not in his handwriting, and without a signature. "The witnesses," says Burnet, "swore many incredible things against him, mixed with other things that looked very like his extravagant way of talking." The jury retired for a short time, and brought back the indictment, with "*Ignoramus*" written on the back. A shout of joy went up in the hall, and was re-echoed through the streets. Bonfires were

* "Lives of Chancellors," vol. ii, p. 362.

† Reresby, p. 251.

lighted. A medal was struck to celebrate the triumph. The king discoursed to the foreign ambassadors "on the subject of the hard measure dealt to *him* by Lord Shaftesbury's jury;" and, in a more sensible spirit, gave Dryden the hint for his poem of "The Medal." The poem made the Medal more popular; and men proclaimed their opinions by wearing it hanging at the button-hole.

The refusal of the Grand Jury to find a true bill against Shaftesbury was imputed to the selection of jurymen by the Whig sheriffs. To obtain obedient sheriffs who would summon pliant jurymen was now the great aim of the Court. This scheme was carried into effect in a very remarkable manner. The Lord Mayor of 1682, sir John Moor, was a more than average example of the weakness and vanity that sometimes clings to civic dignitaries. There was an old custom of the city which is thus described by Roger North. "At the Bridgehouse feast which is sometime before the 24th of June, the day of the election at Guildhall, the Lord Mayor takes his time, and, out of a large gilt cup, drinks to some person he names by the title of Sheriff of London and Middlesex, for the year ensuing. If the person be present, the cup is immediately borne to him, and he pledges my Lord Mayor: if he be not present then the cup is conveyed in the great coach, with the sword-bearer and officers, openly, and in state, to the house of the person drunk to, and the officer declaring the matter, presents the cup to him; and then he is called my Lord Mayor's Sheriff, and not long after he is summoned to the court of the Lord Mayor and Aldermen, and there, if he holds, he enters into bond to take upon him the office at the time; and if he fines off, then, in a like method, the cup is sent to another, till the person is pitched upon that will hold: and this way of drinking and fining off is of great use to the city, for it brings money into the chamber; and it is called going a birding for sheriffs. At Midsummer-day, when the Common Hall meets for the election of sheriffs, and the Lord Mayor and Court of Aldermen are come upon the Suggestum, called the Hustings, the common serjeant, by the common crier, puts to the hall the question for confirming the Lord Mayor's sheriff, which used to pass affirmatively of course. After that, the Lord Mayor and Aldermen rise and go up into the room they call the court of aldermen, leaving the floor or body of the livery men below to choose another sheriff by themselves, without their interposing or being concerned in the choice." This is, in part, a misrepresentation. For forty years the custom of nominating one of

the sheriffs by the cup had been laid aside, and both sheriffs had been elected, without such nomination, by the Common Hall. The Lord Mayor had been sent for by king Charles; and "the king himself encouraged him, with expressions not only of protection but command; and at last, after much hesitation, he determined roundly to conform, and all at once promised the king to send his cup to any citizen his majesty should nominate to him. He was slow, but sure."* Jeffrey, the recorder, suggested that there was a rich Turkey merchant recently arrived from Constantinople, who was the very man. Dudley North, the brother of the Chief Justice, was a person of eminent ability, who had sounder notions of commerce and finance than most men of his time; and it is painful to find one of such talent and knowledge listening to these arguments of his cunning and servile brother: "He was made to understand what an advantage such an opportunity was to oblige a king who had power to gratify by employment any fit persons, such as he was."† And so the cup was sent, "in full parade and form" to Mr. Dudley North. Midsummer Day, June 24, witnessed a tremendous uproar in Guildhall. The refusal of the Lord Mayor's cup-sheriff was unmistakable. The Lord Mayor retired. He came again and again to put the question, but with the same result. He then adjourned the Common Hall. It was contended that the adjournment was illegal. Counsel were brought on a subsequent day to argue the point, amidst the uproar of contending factions; "This was midsummer work indeed, extreme hot and dusty; and the partisans strongly disordered every way, with crowding, bawling, sweating and dust; all full of anger, zeal, and filth in their faces. They ran about up and down stairs, so that any one, not better informed, would have thought the place rather an huge Bedlam than a meeting for civil business. And yet, under such an awkward face of affairs as this was, the fate of the English government and monarchy depended but too much on the event of so decent an assembly."‡ Roger North, the encomiast of every measure that tended to convert the English monarchy into a pure despotism, has no hesitation in acknowledging that the fate of the existing government depended upon having a sheriff who would return corrupt jurymen. He says of the Court party, "If one good sheriff were gained, they did not fear what hurt the other alone could do; for both sheriffs made but one officer." The contest went on for several months. The city

* "Examen," p. 600.

† *Ibid.*, p. 601.

‡ "Examen," p. 606.

was in a continued fever. The Lord Mayor opened a poll at which North and another Court candidate were elected; the sheriffs opened a poll at which two popular candidates were elected. The Chief Justice and his tool Jeffrey bullied and intrigued: and in the end Dudley North and a fit coadjutor were sworn into office. It was clear that if another indictment had been presented against Shaftesbury, he would have had small chance of saving his head. He fled to Holland, accompanied by his constant friend, the famous John Locke. He died in the following year.

The duke of York, as High Commissioner in Scotland, had been manifesting the spirit in which he purposed to govern the two countries when the power should fall into his hands. He had put down an outburst of the puritan spirit in the followers of two ministers, Cargill and Cameron, known as Cameronians. The excess of fanaticism was met by the excess of tyranny; and women, refusing to cry "God bless the king," went to their deaths as martyrs. A Parliament was called. It voted that the succession to the Crown was indefeasible; it enacted a test, which, as altered by a compromise of opposite parties, asserted the king's supremacy, renounced the Covenant, inculcated the doctrine of passive obedience, and disclaimed any attempt to change the civil or religious establishments; but at the same time it expressed the adherence to the Protestant religion of the person taking the test. The courtiers proposed that all princes of the blood should be exempted from the oath. The earl of Argyle opposed this, and he was consequently marked for destruction. In taking the test himself, as a privy counsellor, he said that he did not mean to bind himself, in a lawful way, from wishing and endeavouring any alteration which he might think to the advantage of Church or State, and not repugnant to the Protestant religion and his own loyalty. A few days after he was arrested; was indicted for high treason; and was found guilty of treason and leasing-making. He contrived to escape to Holland. His estate was confiscated. Scotland was wholly under the feet of the tyrant. Judicial murders were committed in every district of the southern and western counties. Hundreds were outlawed. A seditious declaration was published by the maddened Presbyterians, renouncing allegiance to Charles Stuart. To compel suspected persons to abjure the declaration was now the business of a lawless soldiery and slavish magistrates. The Scottish administration of the duke of York is thus complacently recorded: "He stifled at its first birth a commotion of the fanatical party

which then happened to break out, whereof some were taken and made examples of, but many more were won over by the great esteem his presence had gained amongst them."* In his own Memoirs of this period, he wonders how men could apprehend danger from Popery, "while they overlooked the imminent danger of being swallowed up by Presbytery and Fanaticism." †

Congenial as his pursuits in Scotland were to the duke of York, he desired to return to England. He accomplished this object by enlisting the duchess of Portsmouth in his interest, by some secret arrangement for settling a pension upon her out of the income which he derived from the Post Office, upon which annuity she might raise a hundred thousand pounds. The affair could not be managed; but Charles gave the duchess 10,000*l.* quarterly out of his French pension, and she went abroad. The duke came to England for a short time, and then returned to Scotland, having narrowly escaped shipwreck in his passage. He again came to give that impulse to the schemes for arbitrary power which Charles had not resolution himself to carry out. Halifax and Seymour, two of the king's ministers, opposed the duke's return to London. Charles wanted his brother to fortify his resolves to take "those vigorous councils and resolute methods the duke had long pressed him to." ‡ The prince of Orange had been in England in 1681; and Charles then said to him that "he was confident, whenever the duke should come to reign, he would be so restless and violent that he could not hold it four years to an end." § Charles permitted the duke to try his hand in government before he "should come to reign." The duke's biographer says, "He shewed by his management in Scotland a good example of the doctrine he preached, which, when his majesty followed, it set him at rest for the remainder of his days." ||

* "Life of James II.," vol. i. p. 644.

† *Ibid.*, p. 656.

‡ *Ibid.*, p. 799.

§ Burnet.

|| "Life of James II.," p. 734.

CHAPTER XIV.

The army establishment.—Quo Warranto Information against the Corporation of London.—Surrenders of the Charters of other Corporations.—The Rye-House Plot.—Arrests of Russell, Essex, and Sidney.—Trial of Russell.—Russell's Execution.—Trial of Sidney.—Scottish persecution.—The duke of York's power in England.—Decree of the University of Oxford.—Repeal of the Test Act.—Death of Charles the Second in the faith of the Romish Church.—William Penn.—Settlement of Pennsylvania.—Penn's Treaty with the Indians.

THE "rest for the remainder of his days" which Charles secured, through following the doctrine which the duke of York preached, was something very different from the ease which he enjoyed in the early years of the Restoration. There were to come, two years of a desperate struggle against the liberties of the people, the termination of which struggle was to be left to the greater energy of his successor. All the real power seemed now to lie in the hands of the Crown. London had lost its popular sheriffs; the choice of other sheriffs throughout the land was chiefly directed by the Court; the sheriffs could pack the jury men upon state-trials; the jury men would be duly exhorted from every pulpit to believe, upon the authority of the Scriptures, that, as all resistance to authority was a sin, the support of authority in all its desires was a virtue. When a subject stood at the bar, indicted for treason or misdemeanor at king's command, it was necessary for the country's peace that the Crown should have its wished-for verdict. A trial was a ceremony at which good men should assist, by their unanimity of opinion with the king's judges and the king's attorney, to place the throne upon the solid foundation of the people's implicit obedience. There was now an army sufficient to make men understand the danger of insurrection. It was something more than two regiments of horse-guards, as in the recent days when the Parliament was jealous of a royal force, and relied for defence against external enemies upon a national militia. In addition to two regiments of household cavalry, there were two regiments of foot guards, a regiment of dragoons, and five other regiments of foot. There was no war to give employment to this