BOOK I.

CONSTITUTION, POWERS, AND PRIVILEGES OF PARLIAMENT.

CHAPTER I.

PRELIMINARY VIEW OF THE CONSTITUENT PARTS OF PARLIAMENT: THE CROWN, THE LORDS SPIRITUAL AND TEMPORAL, AND THE KNIGHTS, CITIZENS, AND BURGESSES; WITH INCIDENTAL REFERENCE TO THEIR ANCIENT HISTORY AND CONSTITUTION.

Introductory Remarks.

THE present constitution of Parliament has been the growth of many centuries. Its origin and early history, though obscured by the remoteness of the times and the imperfect records of a dark period in the annals of Europe, have been traced back to the free councils of our Saxon ancestors. The popular character of these institutions was subverted, for a time, by the Norman Conquest; but the people of England were still Saxons by birth, in language, and in spirit, and gradually recovered their ancient share in the councils of the state. Step by step the legislature has assumed its present form and character; and after many changes its constitution is now defined by—

> "The clear and written law,—the deep-trod footmarks
> "Of ancient custom."

No historical inquiry has greater attractions than that which follows the progress of the British Constitution from the earliest times, and notes its successive changes and development; but the immediate object of this work is to

display Parliament in its present form, and to describe its various operations under existing laws and custom. For this purpose, the history of the past will often be adverted to; but more for the explanation of modern usage than on account of the interest of the inquiry itself. Apart from the immediate functions of Parliament, the general constitution of the British government is not within the design of this Treatise; and however great the temptation may be to digress upon topics which are suggested by the proceedings of Parliament, such digressions will rarely be admitted. Within these bounds an outline of each of the constituent parts of Parliament, with incidental reference to their ancient history and constitution, will properly introduce the consideration of the various attributes and proceedings of the legislature.

Constituent parts of Parliament.

The Imperial Parliament of the United Kingdom of Great Britain and Ireland, is composed of the King or Queen, and the three estates of the realm, viz. the Lords Spiritual, the Lords Temporal, and the Commons. These several powers collectively make laws that are binding upon the subjects of the British empire; and, as distinct members of the supreme legislature, enjoy privileges and exercise functions peculiar to each.

I. The King or Queen.

I. The Crown of these realms is hereditary, and the kings or queens have ever enjoyed various prerogatives, by prescription, custom, and law; which assign to them the chief place in Parliament, and the sole executive power. But as the collective Parliament is the supreme legislature, the right of succession and the prerogatives of the Crown itself, are subject to limitations and change, by the consent and authority of the king or queen for the time being, and the three estates of the realm in Parliament assembled. To the changes that have been effected, at different times, in the legal succession to the Crown, it is needless to refer, as the Revolution of 1688 is a sufficient example. The power of Parliament over the Crown is

distinctly affirmed by the statute law, and recognised as an important principle of the constitution.

Coronation oath.

All the kings and queens since the Revolution have taken an oath at their coronation, by which they have "promised and sworn to govern the people of this kingdom, and the dominions thereto belonging, according to the statutes in Parliament agreed on, and the laws and customs of the same."[1] The Act 12 & 13 Will. 3, c. 2, affirms "that the laws of England are the birthright of the people thereof; and all the kings and queens who shall ascend the throne of this realm ought to administer the government of the same according to the said laws; and all their officers and ministers ought to serve them respectively according to the same." And the statute 6 Anne, c. 7, declares it high treason for any one to maintain and affirm by writing, printing, or preaching, "that the kings or queens of this realm, by and with the authority of Parliament, are not able to make laws and statutes of sufficient force and validity to limit and bind the Crown, and the descent, limitation, inheritance, and government thereof."

Limitations of prerogative.

Nor was this a modern principle of constitutional law established by the Revolution of 1688. If not admitted in its whole force so far back as the great charter of King John, it has been affirmed by Parliament in very ancient times. In the 40th Edw. 3, the pope had demanded homage of that monarch for the kingdom of England and land of Ireland, and the arrears of 1,000 marks a year that had been granted by King John to Innocent the 3d and his successors. The king laid these demands before his Parliament, and it is recorded that

"The prelates, dukes, counts, barons, and commons, thereupon, after full deliberation, answered and said with one accord, that neither the said King John, nor any other, could put himself or his kingdom, or people, in such subjection without their assent; and, as it appears by several evidences, that if this was done at all, it was done without their assent, and against his own oath on his coronation," they resolved to resist the demands of the pope with all their power.[2]

[1] 1 Gul. & Mar. c. 6.

[2] 2 Rot. Parl. 290.

From the words of this record it would appear, that whether the charter of King John submitted the royal prerogatives to Parliament or not, it was the opinion of the Parliament of Edward 3, that even King John had been bound by the same laws which subsisted in their own time.

The same principle had been laid down by the most venerable authorities of the English law, before the limits of the constitution had become defined. Bracton, a judge in the reign of Henry 3d, declared that "the king must not be subject to any man; but to God and the law, because the law makes him king."[1] At a later period, the learned Fortescue, the lord chancellor of Henry 6 in his banishment, thus explained the king's prerogative to the king's son: "A king of England cannot, at his pleasure, make any alterations in the laws of the land, for the nature of his government is not only regal but political." "He can neither make any alteration or change in the laws of the realm without the consent of the subject, nor burthen them, against their wills, with strange impositions."[2] Later still, during the reign of Elizabeth, who did not suffer the royal prerogative to be impaired in her time, Sir Thomas Smyth affirmed that "the most high and absolute power of the realm of England consisteth in the Parliament;"[3] and then proceeded to assign to the Crown, exactly the same place in Parliament as that acknowledged, by statute, since the Revolution.

Not to multiply authorities, enough has been said to prove that the Revolution only defined the constitutional prerogatives of the king, and that the Bill of Rights[4] was but a declaration of the ancient law of England.

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[1] Bracton, lib. 1, c. 8. [2] De Laudibus, Leg. Ang. c. 9.

[3] De re-publicâ Anglorum, book 2, c. 1, by Sir Thomas Smyth, knt.

[4] "That the pretended power of suspending or dispensing with laws, or the execution of laws, without consent of Parliament, is illegal." "That levying money for or to the use of the Crown, by pretence of prerogative, without grant of Parliament, for longer time or in other manner than the same is or shall be granted, is illegal."—1st, 2d, and 4th articles of the Bill of Rights.

The prerogatives of the Crown, in connexion with the legislature, are of paramount importance and dignity. The legal existence of Parliament results from the exercise of royal prerogative. As the head of the church, the Crown virtually appoints all archbishops and bishops, who form one of the three estates of the realm, and, as "lords spiritual," hold the highest rank, after princes of the blood royal, in the House of Lords. All titles of honour are the gift of the Crown, and thus the "lords temporal" also, who form the remainder of the upper house, have been created by royal prerogative, and their number may be increased at pleasure. In early times the summons of peers to attend Parliament depended entirely on the royal will; but their hereditary titles have long since been held to confer a right to sit in Parliament. To a Queen's writ, also, even the House of Commons owe their election, as the representatives of the people. To these fundamental powers are added others of scarcely less importance, which will be noticed in their proper place.

II. The House of Lords.

II. The Lords Spiritual and Temporal sit together and jointly constitute the House of Lords, which is the second branch of the legislature in rank and dignity.

1. Lords spiritual.

1. The lords spiritual are the archbishops and bishops of the Protestant Established Church of England and four representative bishops of the Church of Ireland. Before the Conquest the lords spiritual held a prominent place in the great Saxon councils, which they retained in the councils of the Norman kings; but the right by which they have always held a place in Parliament, has not been agreed upon by the constitutional writers. In the Saxon times there is no doubt that they sat, as bishops, by virtue of their ecclesiastical office; but according to Selden, William the Conqueror, in the fourth year of his reign, first brought the bishops and abbots under the tenure by barony;[1] and Blackstone, adopting the same view, states that "William

[1] Tit. of Hon. part 2, s. 20.

the Conqueror thought proper to change the spiritual tenure of frank-almoign, or free alms, under which the bishops held their lands under the Saxon government, into the feudal or Norman tenure by barony; and in right of succession to those baronies, which were unalienable from their respective dignities, the bishops and abbots were allowed their seats in the House of Lords."[1] Lord Hale was of opinion that the bishops sit by usage; and Mr. Hallam maintains that the bishops of William the Conqueror were entitled to sit in his councils by the general custom of Europe, which invited the superior ecclesiastics to such offices, and by the common law of England, which the Conquest did not overturn.[2] Another view of the question is, that before the dissolution of the monasteries, the mitred abbots had a seat in Parliament solely by virtue of their tenures as barons; but that the bishops sat in a double capacity, as bishops and as barons.[3] Their presence in Parliament, however, has been uninterrupted, whatever changes may have been effected in the nature of their tenure.

There are two archbishops (of York and Canterbury) and twenty four bishops of the Church of England, who have seats in Parliament.[4] To these were added four bishops of the Church of Ireland, on the union of that country with Great Britain, who sit by rotation of sessions, and represent the whole episcopal body of Ireland in Parliament.[5] Of these four lords spiritual, an archbishop of the Church of Ireland is always one.

2. Lords temporal.

2. The lords temporal are divided into dukes, marquesses, earls, viscounts, and barons, whose titles are of different degrees of antiquity and honour. The title of duke, though first in rank, is by no means the most ancient in this country. It was a feudal title of high dignity

Dukes.

[1] 1 Comm. p. 156. [2] Middle Ages, vol. iii. pp. 6, 7.
[3] Hody's Treatise on Convocations, p. 126.
[4] The Bishop of Sodor and Man has no seat in Parliament.
[5] 39 & 40 Geo. 3, c. 67 (Act of Union, art. 4); 40 Geo. 3 (Irish), c. 29; 3 & 4 Will. 4, c. 37, s. 51, 52.

in all parts of Europe, in very early times, and among the Saxons, *duces* (or leaders) are frequently mentioned; but the title was first conferred after the Conquest by Edward 3, upon his son Edward the Black Prince, whom he created Duke of Cornwall.[1] Before that time the title had often been used as synonimous with that of count.

Marquesses. Marquesses were originally lords of the marches or borders, and derived their title from the offices held by them. In the German empire, the counts or *graves* of those provinces which were on the frontiers had the titles of *marchio* and *marggravius* in Latin; of *markgraf* in German, and *marchese* in Italian. In England similar offices and titles were anciently enjoyed without being attached to any distinct dignity in the peerage. The noblemen who governed the provinces on the borders of Wales and Scotland were called *marchiones*, and claimed certain privileges by virtue of their office; but the earliest creation of marquess as a title of honour, was in the ninth year of Richard 2. Robert de Vere, Earl of Oxford, was then created Marquess of Dublin, for life, and the rank assigned to him in Parliament by right of this new dignity, was immediately after the dukes, and before the earls.[2] In the same reign John Earl of Somerset was created Marquess of Dorset, but was deprived of the title by Henry 4. In the fourth year of the latter reign the Parliament prayed the king to restore this dignity, but the Earl begged to decline its acceptance, because the name was so strange in this kingdom.[3]

Earls. The title of Earl in England is equivalent to that of *comes* or count in other countries of Europe. Amongst the Saxons there were *ealdormen*, to whom the government of provinces was committed, but whose titles were official and not hereditary.[4] That title was often used by writers indifferently with *comes*, on account of the simi-

[1] Seld. Tit. of Hon. part 2, s. 9. 29, &c. [2] Ib. s. 47. [3] 3 Rot. Parl. 488.
[4] Spelman, on Feuds and Tenures, p. 13. Rep. on Dignity of the Peerage, 1820, p. 17.

larity of character and dignity denoted by those names. When the Danes had gained ascendancy in England, the ancient Danish title of *eorle*, which indicated a similar dignity, was gradually substituted for that of *ealdorman*. At the Norman Conquest the title of eorle or earl was in universal use, and was so high a dignity that in the earliest charters of William the Conqueror he styles himself in Latin, "Princeps Normannorum," and in Saxon, Eorle or Earl of Normandy.[1] After the Conquest the Norman name of count distinguished the noblemen who enjoyed this dignity; from whence the shires committed to their charge have ever since been called counties.[2] In the course of time the original title of earl was revived, but their wives and peeresses of that rank in their own right, have always retained the French name of countesses.

Viscounts.

Between the dignities of earl and baron no rank intervened, in England, until the reign of Henry 6; but in France the title of viscount, as subordinate to that of count, was very ancient. The great counts of that kingdom holding large territories in feudal sovereignty, appointed governors of parts of their possessions, who were called viscounts, or *vicecomites*. These, either by feudal gift, or by usurpation, often obtained an inheritance in the districts confided to them, and transmitted the lands and dignity to their posterity.[3] In England, the title of viscount was first conferred upon John Beaumont, Viscount Beaumont, by Henry 6, in the eighteenth year of his reign; and a place was assigned to him in Parliament, the council, and other assemblies, above all the barons.[4] The French origin of this dignity was exemplified immediately afterwards by the grant of the viscounty of Beaumont, in France, to the same person, by King Henry, who then styled himself king of France and England. The rank and precedence of a viscount were more distinctly defined by

[1] Seld. Tit. Hon. part 2, s. 2. [2] 3 Rep. on Dignity of the Peerage, 86.
[3] Seld. Tit. of Hon. part 2, s. 19. [4] Seld. Tit. of Hon. part 2, s. 30.

patent, in the 23d of Henry 6, to be above the heirs and sons of earls, and immediately after the earls themselves.

Barons. Barons are often mentioned in the councils of the Saxon kings, and in the laws of Edward the Confessor were classed with the archbishops, bishops, and earls; but the name bore different significations, and no distinct dignity was annexed to it, as in later times. After the Conquest every dignity was attached to the possession of lands, which were held immediately of the king, subject to feudal services. The lands which were granted by William the Conqueror to his followers descended to their posterity, who, by virtue of the baronies held by them, were ennobled by the dignity of baron. By the feudal system, every tenant was bound to attend the court of his immediate superior, and hence the barons, being tenants *in capite* of the king, were entitled to attend the king's court or council; but, although their presence at the king's council was part of the conditions of their tenure, they received writs of summons from the king, when their attendance was required. At length, when the lands became subdivided, and the king's tenants were consequently more numerous and poor, they were separated into greater and lesser barons; of whom the former continued to receive particular writs of summons from the king, and the latter only a general summons through the sheriffs. The feudal tenure of the baronies afterwards became unnecessary to create the dignity of a baron, and the king's writ or patent alone conferred the dignity and the seat in Parliament. The condition of the lesser barons, after their separation from their more powerful brethren, will be presently explained.

Representative peers of Scotland. On the union of Scotland, in 1707, the Scottish peers were not admitted, as a class, to seats in the British Parliament; but they elect, for each Parliament, sixteen representatives from their own body; who must be descended from ancestors who were peers at the time of the union.

And Ireland.

Under the Act for the legislative union with Ireland, which came into operation in 1801, the Irish peers elect twenty-eight representatives for life from the peerage of Ireland. The power of the queen to add to the number of Irish peers is subject to limitation: she may make promotions in the peerage at all times; but she can only create a new Irish peer whenever three of the peerages of Ireland, which were in existence, at the time of the union, have become extinct. But if it should happen that the number of Irish peers—exclusive of those holding any peerage of the United Kingdom, which entitles them to an hereditary seat in the House of Lords—should be reduced to one hundred; then one new Irish peerage may be created as often as one becomes extinct, or whenever an Irish peer becomes entitled, by descent or creation, to an hereditary seat in the Imperial Parliament; the true intent and meaning of that article of union being to keep up the Irish peerage to the number of one hundred.[1]

These, then, are the component parts of the House of Lords, of whom all peers and lords of Parliament, whatever may be their title, have equal voice in Parliament; but none are permitted to sit in the house until they are twenty-one years of age.[2]

Lords spiritual and temporal form one body.

The two estates of lords spiritual and lords temporal, thus constituted, may originally have had an equal voice in all matters deliberated upon, and had separate places for their discussion; but at a very early period they are found to constitute one assembly; and, for many centuries past, though retaining their distinct character and denominations, they have been, practically, but one estate of the realm. Thus the Act of Uniformity, 1st Elizabeth, c. 2, was passed by the queen, the lords temporal, and the commons; for all the lords spiritual dissented, and their names were omitted from the Act. The lords temporal are the

[1] Fourth art. of Union.

[2] Lords' S. O. No. 93.