

CHAP. II.
 From the
 Reformation to the
 Union.

necessity of the said league, and how the same may be na langer protracted nor without peril deferred to a more solemn convention of the hail Estates in Parliament." One section of the document allowed the Scots to maintain the ancient alliance with France by "providing always that the said league be without infringing or prejudice in any sort to any former league or alliance betwixt this realm and any other auld friends and confederates thereof, except only in matters of religion, whereanent we do fully consent the league be offensive and defensive." The meaning of this authorisation to James is plain. The Estates, even though not sitting, were resolved upon adhering tenaciously to the privilege of deciding all questions of peace and war, including the negotiation of treaties.¹

*Changes in
 the repre-
 sentation.*

The principle of representation was further elaborated in the session of 1585. An act was passed which, after reciting how necessary it was that the King and Estates should be well informed of the needs of all subjects, especially the Commons of the realm, directed that all freeholders of the King under the degree of prelates and lords of Parliament should elect commissioners to Parliament annually for each shire, but that none have votes save such as had forty shillings in land in free tenantry held of the King, and had their usual dwelling within the shire. Other important legislation was effected in 1587, when the King ratified in full Parliament the preceding acts, and ordained commissioners to be elected at the first head court after Michaelmas yearly, their names to be notified to the director of the chancellery by the commissioners of the preceding year. The act also declared that the commissioners, authorised with sufficient commissions, which must be sealed and subscribed by at least six of the barons and freeholders of the shire, should be equal in number to the commissioners of burghs on the articles, and have votes in Parliaments and General Councils in time coming. "From the period

¹ *Scots Acts of Parliament and Burton's History.*

of this last act at least, the representatives of the small barons or freeholders formed a considerable proportion of every Parliament, where they were classed and entered as a separate estate," though by the theory of the Constitution as received by the old lawyers they formed a portion of the baronage.¹

CHAP. II.
From the
Reformation to the
Union.

Before the execution of Mary at Fotheringay on February 8th, 1587, certain members of the Estates held a meeting to encourage and instruct the ambassadors sent to intercede with the Queen of England; but it was not a regular Parliament, and no account of the proceedings appears in the acts. There was no other public movement in favour of the hapless Queen. The Parliament which met in the succeeding July passed an act entitled "The King's Majesty's General Revocation." This statute was a very comprehensive revocation of all grants to the prejudice of the Crown made either by the King's "umwhile dearest mother" before his coronation, or by himself in his minority, excepting those conferred by act of Parliament.

Execution
of Mary.

The triumph of Presbyterianism in Scotland was complete in 1592, when Parliament legislated in its favour with clearness and decision. But although Episcopacy was abolished, and the Presbyterian system legally established, it was but formal legislation. Scots acts of Parliament generally followed the popular sentiment, and, unlike the English acts, which resemble the laws of the Medes and Persians so long as the letter of them remains on the statute-book, they often fell into desuetude. In England a statute can be acted upon after the lapse of centuries, and until it is expressly repealed; but in Scotland it was frequently virtually repealed by falling into oblivion. "An act of the Estates had in a great measure the character of a vote or resolution by a popular assembly, which might be forgotten when the popular feeling that had carried it was weakened."² This dis-

Triumph
of Presby-
terianism.

¹ *Scots Acts and Innes's Legal Antiquities.*

² *Burton's History.*

CHAP. II. tinction accounts for the slightness of the real change
 From the Reformation to the Union. produced by the otherwise very important act of 1592. The act of 1584 authorising the Episcopal hierarchy was repealed, and the Church was to consist of a General Assembly, provincial assemblies or synods, presbyteries, and the Kirk Sessions attached to individual spiritual charges. The King or his commissioner was to be present at the deliberations of the General Assembly—a provision which in later times was strongly protested against; and before the dissolution of the Assembly, the King was to “nominate and appoint time and place when and where the next General Assembly shall be holden.” A subsequent statute, of brief but stringent character, gave the Church powers of severe punishment over obstinate and disobedient persons.

*Ecclesiastical re-
 action.*

The legislative supremacy of the Presbyterian polity and discipline was not, however, of long duration. In the course of a few years the General Assembly was scandalised by “the common corruption of all estates within this land,” and the Episcopalians began to wax bold. Symptoms of the ecclesiastical reaction were strongly apparent in 1597, when the Estates passed a significant act, giving such as might be appointed to prelaties votes in Parliament. But while a prelate was to be a lord of the secular Parliament, the act gave him no spiritual jurisdiction over the clergy. The proposal to admit the prelates to Parliament had the advocacy of the able Secretary John Lindsay, of Balcarres, who hoped thereby to counterbalance to a certain extent the votes of the heads of the great feudal houses. The idea was that Parliament should “step in some degree into the place that was occupied by the body which bore the same name in England, so as to give full play to all the social forces which existed in the country, and to support the Crown in its efforts to mediate between the nobility and the clergy.”¹ The Assembly came to a compromise with the King on the matter. At its meeting at Dundee in

¹ Gardiner's *History of England*, 1603—1642.

198, it decided by a small majority that fifty-one representatives of the Church should vote in Parliament ; and the election of these was to pertain in part to the King and in part to the Church. But what the King really wanted was an episcopacy which should keep the clergy in order and support his own authority, and not a body of men in Parliament which should act as a check upon the temporal lords. There was at last an open breach between James and the Presbyterian clergy, and the differences were embittered by the publication of the King's work *The Basilicon Doron*, in which were asserted the Divine right of the sovereign and his uncontrolled authority over all orders of men. Another step towards Episcopacy was taken on October 14th, 1600, when James summoned a convention of commissioners from the various synods, whose consent he obtained to the appointment of three bishops in addition to the few surviving from amongst those formerly nominated. These new bishops took their seats and voted in the ensuing Parliament, but as they had not been nominated by the General Assembly, but by a convention, they had no right to act in the name of the Church ; their rank could only be equivalent to that derived from a civil appointment by the Crown.

James's difficulties were no doubt great, and he was anxious to discover a *modus vivendi* between the conflicting parties and interests. The mysterious plot against the King, known as the Gowrie conspiracy, was the chief incident of the year 1600. In March, 1603, James succeeded Elizabeth as sovereign of England, being crowned king at Westminster in July of the following year. James VI. of Scotland thus became James I. of England, and united the two countries under one monarch.

In 1606 James resolved upon the restoration of Episcopacy in Scotland, and the Estates met at Perth and proceeded forthwith to legalise his plans. An act was passed for the restoration of the order of bishops "to their ancient and accustomed honours, dignities

CHAP. II.
From the
Reformation to the
Union.

James
becomes
King of
England.

Epis-
copacy re-
stored in
Scotland.

CHAP. II.
From the
Reformation to the
Union.

prerogatives, privileges, livings, lands, etc." In February, 1610, two courts of high commission were erected by an act of the prerogative, one for each province, to consist of bishops, the archbishop presiding. They were afterwards united into one, whose duty it was to deal with questions of discipline and correction; but its activity was short-lived, and its judgments were subject to revision by the Court of Session, the supreme civil tribunal of the realm. With regard to the acts dealing with the dignities and temporalities of the bishops as lords of Parliament, it was deemed desirable that legislation dealing directly with spiritual functions should come before the General Assembly for sanction. This was done at Glasgow in 1610, when various important decisions were arrived at. The collective ecclesiastical bodies moulded on the Presbyterian system were not abolished; the General Assembly was to hold its meetings as authorised by the Crown; the bishops were to be permanent moderators of the provincial synods; though presbyteries were not expressly abolished, no place was left for them in the new hierarchy; and no acts of discipline, etc., affecting ecclesiastical rights were to be valid without the sanction of the bishop. Parliament ratified all these adjustments in 1612, but ignored the resolution of the Assembly that the bishops should be liable for their public and private acts to the censure of General Assemblies.

*Parliament of
1617.*

The Parliament of 1617, which met at Edinburgh, passed further important acts re-establishing Episcopacy. One statute passed for perfecting the structure of the new hierarchy by the restoration of the dean and chapter of each see had really a much wider scope than this. The election of the bishop by the Crown presenting and the chapter electing was affirmed, but the most important part of the measure was the restoration of the temporalities of the deaneries, canonries, and prebends' stalls, so far as they could be recovered. Another act, "little noticed in history," says Burton, effected a great change in the condition of the clergy. Described as an

act "anent the plantation of kirks," it set forth that there were many kirks without ministers and many others with ministers, but no provision or maintenance, and it therefore appointed an independent Parliamentary commission of thirty-two persons, being eight out of each estate—prelates, nobles, lesser barons, and burgesses. Out of the teinds or tithes they were to assign a stipend to the minister of each church, the minimum allowance being of the value of £27 15s. 6d., and the maximum £44 9s.¹ From this time forward the complaints of the clergy respecting their incomes were much less frequent. An attempt was made in this Parliament to assert the King's prerogative over the Church, but the proposal excited so much opposition that it was withdrawn.

James's religious innovations became more daring, however, and the Parliament of 1621 passed "The Five Articles of Perth," which had been adopted by the General Assembly. These articles enjoined kneeling at the Sacrament and the keeping of saints' days and holy days, permitted communion in private houses in case of sickness, allowed private baptism on necessary cause, and ordered confirmation by the bishop of children eight years old. These Popish observances were distinctly at variance with the spirit of the Reformation, and the bitter religious struggle between the Stuarts and the Scottish nation may be said to date from their imposition. There was great excitement during the meeting of the Estates, and as a terrible storm broke forth just as the grand commissioner was giving the royal sanction to the acts, a well-known historian of the period observed that "God appeared angry at the concluding of the articles."² The act of the Estates authorising the Five Articles is "the only statute on the face of the records of the Scots Parliament which either authorises or dictates on matters of religious ceremonial." It was superseded by various laws passed during the Civil War, but it was never

CHAP. II.
From the
Reformation to the
Union.

*The Five
Articles
of Perth.*

¹ *Scots Acts*, vol. iv., and *Burton's History*, vol. vi.

² *Calderwood's History of the Church of Scotland*.

CHAP. II. expressly repealed; and it is further remarkable that, while the statute was most express in its injunctions, there was no penalty or punishment laid upon offenders.

From the
Reformation to the
Union.

*Policy of
Charles I.*

After James's death in 1625, the work of restoring Episcopacy and asserting the King's supremacy was continued with vigour. As soon as he came to the throne, Charles I. revoked all grants by the Crown and all acquisitions to the prejudice of the Crown, whether before or after his father's Act of Annexation of 1587. This sweeping proclamation affected the vast ecclesiastical estates which had passed into the hands of the territorial magnates from the Reformation downwards, and included those grants which had been fortified by a Parliamentary title in being confirmed by acts of the Estates. It was the beginning of that foolish and oppressive policy which ultimately cost Charles his crown and his life. The Scots Parliament of 1633, at which the King was present, ratified the arrangements respecting Church property, and continued an impost of the nature of an income-tax which had been temporarily granted some years before in aid of the King's brother-in-law, the Prince Palatine.

*The Lords
of the
Articles.*

A struggle arose in this Parliament between the King and the Estates on the constitution of the Lords of the Articles. There being no representative body in Scotland like the English House of Commons, which could meet in its own place without being overawed by the presence of the King, business, as we have seen, devolved upon the committee called the Lords of the Articles, who settled all the details of legislation. As the Estates were compelled to accept or reject the bills prepared by the Lords in their entirety, and as the Lords of the Articles were so constituted as to represent as far as possible the wishes of the King, it is obvious that the real legislative powers of the Estates were very small indeed. At this time the Lords of the Articles were thirty-two in number, and the election was so manipulated on behalf of the Crown that the majority in the Estates had practically no voice. Eight bishops were first elected, who went with the Crown, and these chose eight barons,

who of course would also support the King. The bishops and nobles combined then chose eight of the untitled gentry and eight of the commissioners for burghs. If all these sixteen had opposed the Crown they would not have turned the scale; but, besides the fact that many of them were no doubt on the King's side, the sovereign had the further right of adding eight officers of state to the committee thus constituted and of appointing his chancellor as president. Further, he might himself attend the deliberations of the Lords of the Articles. Parliament asserted that each Estate had the right to elect its own delegates; but while this was the common-sense view, and indeed the only fair one, precedent was hazy upon the matter, so that it was impossible to withstand the innovation.¹

CHAP. II.
From the
Reformation to the
Union.

When the bills came before Parliament, there was one which not only confirmed an act made in 1606 acknowledging the royal prerogative, but also gave power to the King to determine the apparel in which judges, magistrates, and the clergy were to appear in public. This provision was very obnoxious to many in the Estates, and complaint was made that it compelled them either to vote undutifully on the point of prerogative, or unconscionably on Church innovations. Charles refused to receive a petition condemning the acts and a proposed new tax which weighed upon all landowners in Scotland. During the crucial debate in the Estates, the Earl of Loudoun rose and questioned the propriety of joining the confirmation of two acts in one bill, but the King angrily told him that "the orders of the House" were "not to dispute there, but to vote." The division was taken amid great excitement and solicitude, and a majority appeared on the King's side, though there is every reason to believe it was a small one. Charles himself took down the names of the members, and it was said afterwards that there was a majority against him, which he concealed; but this story has been shown to be erroneous.² "Of

*Obnoxious
legislation.*

¹ *Scots Acts and Burton and Gardiner's Histories.*

² *Napier, Montrose and the Covenanters, and Burton and Gardiner.*

CHAP. II.

From the
Reforma-
tion to the
Union.

thirty-one acts and statutes concluded in this Parliament," said a contemporary writer, "not three of them but were most hurtful to the liberty of the subject, and, as it were, as many partitions to separate the King from his people. This Parliament was led on by the Episcopal and Court faction, which thereafter proved to be that stone which afterwards crushed them in pieces, and the fuel of that flame which set all Britain afire not long thereafter."¹

Renewal
of the
Covenant.

This was no exaggeration; the Parliament of 1633 marked a critical epoch. Henceforth there was hostility between the Scots nation and Estates and the King. In 1637 Charles's attempt to displace the liturgy of John Knox by that of England drove his northern subjects into rebellion. The Covenant was renewed and signed all over Scotland, and it soon became the Protestant war-cry. It was amid circumstances of grave national anxiety that the Estates met in 1639, not in the old and dingy apartments of the Tolbooth, but in a new great hall, with fine roofwork of oaken beams, which became one of the most admired structures of Edinburgh. The Parliament first met on May 15th, but it was twice adjourned by the King, and ultimately it reassembled for the transaction of business in August. Its earliest act was to protest against the election of the Lords of the Articles by the first Estate, and for the present Parliament a compromise was arrived at by which the Earl of Traquair, the King's High Commissioner, selected eight members of the nobility, the majority of whom were supporters of the Covenant. These eight then selected eight from the lesser barons or country gentlemen, and eight burgesses. Disputes next arose on an Act of Indemnity and other matters, and Traquair sent to London for instructions, meanwhile adjourning the Estates. Charles perceived that there must be some remodelling of the Lords of the Articles; but he wrote to Traquair, with regard to the general situation, that, while he consented to the abolition

¹ Sir James Balfour's *Annals*.

of Episcopacy, he would not consent to any act rescinding the existing laws by which Episcopacy had been established. This was equivalent to declaring that he would show no favour to the Presbyterians.

The Marquis of Montrose conceived a scheme for abandoning Episcopacy and relying upon the royal power, but this failed, and laid him open to suspicion. The Earl of Argyle then stepped in with a policy for conciliating the middle classes. He saw that the constitution of the Lords of the Articles must be made to harmonise with the prevailing Presbyterian sentiment ; and with great difficulty, and by a majority of one only, he carried a vote at a sitting of the Lords of the Articles, that henceforth each Estate should choose its own representatives in that body. By this decision the barons and burgesses would be represented by sixteen votes, the nobility by eight only, and the King by none at all. Thus the business of the Estates would pass into the hands of a body really representative of Parliament itself. This reform was submitted to the King, together with other legislative changes by which Episcopacy was to be abolished, bishops were to be deprived of their votes in Parliament, a general taxation, to include Royalists, was to be levied for the expenses of the late war, and the command of the castles of Edinburgh, Stirling, and Dumbarton was to be given to Scottish subjects only, nominated by the King, but sanctioned by the Estates. These suggestions made it clear that Parliament claimed the supreme authority in Scotland, and Charles determined to resist.

The Estates reassembled on June 2nd, 1640. Charles sent instructions to adjourn or prorogue the meeting, but as no one appeared on his behalf, and there was no royal command formally and officially before the House, the Estates proceeded to business. The King's Commissioner was not present, and Robert, Lord Burleigh, was elected president, his functions combining those of the Lord Chancellor and the Speaker in England. The Covenanting lawyers and divines gave it as their opinion that Parliament might lawfully sit without the presence

CHAP. II.

From the
Reformation
to the
Union.

*Struggle
between
the King
and the
Estates.*

*The
Estates
recon-
stituted.*

CHAP. II.
From the
Reforma-
tion to the
Union.

either of the King or of his Commissioner. They even affirmed that "a king who sold his country to a stranger, who deserted it for a foreign land, or who attacked it with an invading force, might lawfully be deposed." The Estates then initiated their war with the King. Charles, in the Large Declaration, written in justification of his Scotch policy, had spoken strongly of the practical difficulty which must beset a Parliament without bishops, but the Estates at once brushed this difficulty aside. They rearranged themselves into three chambers: the greater barons were called the nobility; those who represented the smaller freeholders, and who were equivalent to the English knights of the shire, were styled the barons; and the burgesses formed the third Estate. This reorganisation was accomplished under "an act anent the constitution of this Parliament and all subsequent Parliaments." The Estates, in the absence of the bishops, pronounced "this present Parliament, holden by the nobility, barons, and burgesses, and their commissioners—the true Estates of the kingdom—to be a complete and perfect Parliament, and to have the same power, authority, and jurisdiction as any Parliament formerly hath had within this kingdom in time bygone."

*They defy
the Crown,*

The Estates, indignant at the attempt of the King to forcibly close the sittings of 1639, and further incensed by the refusal of the Court to receive their deputed commissioners, Lords Loudoun and Dunfermline, proceeded to defy the Crown. Seeing that all their efforts to come to an understanding with the King had been met with contumely, they resolved, for the prevention of the utter ruin and desolation of the Kirk and kingdom, to abide together until the business before Parliament was completed. The King's Large Declaration was stigmatised as "dishonourable to God and His true religion, to this Kirk and kingdom, to the King's Majesty, and to the Marquis of Hamilton, then his Majesty's Commissioner, and divers other persons therein, and to be full of lies." It was directed that the authors and spreaders thereof should be severely punished. The Estates then confirmed the proceedings of the General

Assembly, and adopted the Covenant as an act to which all citizens were to subscribe under penalties against defaulters, members of Parliament themselves leading the way by accepting the test. Legislative work proceeded with vigour. Triennial Parliaments were voted; the importation of arms was facilitated; a system of taxation was organised under which defaulters were to be treated as non-Covenanters; arrangements were made for the distribution of the vacated revenues of the bishops; and a Puritan spirit was infused into legislation generally. But the most important statute passed by the Estates was one appointing a permanent "Committee of Estates" to act when Parliament was not sitting. It consisted of representatives of the Three Estates as newly constituted, and this important body was empowered to perform its functions in the camp as well as at the seat of government.

Charles proceeded to Scotland in August, 1641, for, in view of his English difficulties, he was anxious to conciliate the Scots. Visiting Parliament, which was then in session, "he offered to touch with the sceptre, and so convert into law, all the acts which he had so long resisted," but the Estates claimed more consideration than this. The King duly made a pacific speech from the throne, and Burleigh, the president, in the name of the House, "made a pretty speech to his Majesty of thanks for all the former demonstrations of his goodness." There was thus outward agreement, but the Estates went on their own way, and promoted Leslie, who had openly opposed Charles, to the dignity of Earl of Leven. Argyle was created a marquis, and the erstwhile imprisoned Loudoun was made Chancellor. The Court of Session was reconstituted to admit staunch Covenanters like Johnston of Warriston.

In September Charles was still very hopeful of Scotland from his own point of view. On the 16th an act was passed according to which the King was to choose his officers "subject to the advice of Parliament." He named his councillors, but was deeply chagrined to find that Argyle not only objected to one of the most important of them, Morton, but was himself determined to be master

CHAP. II.

From the
Reformation to the
Union.and adopt
the Cove-
nant.*Charles in
Scotland.**The
"Incident."*

CHAP. II.
From the
Reforma-
tion to the
Union.

of Scotland.¹ Supported by the nation, Parliament not only claimed the right to reject the King's nominee, but to name its own; and the barons further demanded that their votes should be taken by ballot, and that no one who had taken the King's part in the late war should be admitted to any office in the State. Under these circumstances occurred what is known as the "Incident." Argyle and Hamilton were to be seized; and this coming to the knowledge of Parliament, an investigation was opened into the whole affair. Charles went down to the Parliament House in October, and after speaking of his friend Hamilton with tears in his eyes, demanded that justice should be done between himself and his enemies. The Estates were not so deeply concerned about the King as about the threatened seizure of two of their most prominent members, and a secret committee of investigation was appointed. The committee was unable to clear up all the points involved; but many rumours were afloat respecting the King's high-handed policy of governing Scotland on the same principles which he had endeavoured to apply in England, with the result of precipitating a civil war.

*Acts of the
Estates.*

The rebellion in Ireland overshadowed the proceedings of the committee, and the Scots Parliament was asked to vote a thousand men to assist in the suppression of the insurrection. The Scots promised aid, and an auxiliary force went over to Ireland. The Estates then wound up their business, and concluding the session on November 7th, appointed their next meeting for the first Tuesday of the month of June, 1644. During this one session, from May 13th to November 7th, the Parliament had passed no fewer than three hundred and sixty-five Acts. But with regard to this portentous display of industry, it must be borne in mind that many of these statutes were merely executive and judicial deliverances, in respect to which the Scots Estates claimed a very comprehensive right of action.

¹ Gardiner's *History*.

The Parliament of 1644 condemned to the scaffold Sir John Gordon, of Haddo—fore-runner of the Earls of Aberdeen—for conspiring against the Estates. His death was followed by that of Sir Robert Spottiswood, who had been a leader in the struggle with Argyle. Amongst the charges against him was one of signing the commission to the Earl of Montrose to raise forces against the people and the Estates. Others also suffered for their hostility to the Parliament. In April, 1646, Charles took refuge with the Scottish army, but he proved a source of great embarrassment, and when the Scots withdrew from England, they surrendered the King into the power of the English Parliament. That step has been discussed in a preceding chapter of this work.

CHAP. II.

From the Reformation to the Union.

Progress of events.

While at Newport, in the Isle of Wight, in 1647, Charles made a compact with the Scots Commissioners, known as "The Engagement," by which he agreed to support the Covenant and the Presbyterian party; whilst the Covenanters, on the other hand, agreed to assist him against the English Parliament. But when the Scots Estates met in January, 1649, the predominant party repudiated the transaction. The Engagement element was weeded out of the new Parliament, which proceeded to support Cromwell, and to exclude from public office all who had been concerned in the Engagement. Their disqualification was confirmed by statute, and much of the business transacted by recent Parliaments and the Committee of Estates was reversed. This important legislation was chiefly effected by a measure called the Act of Classes. Four classes of men were disqualified for holding office or sitting in Parliament, including supporters of the Engagement, enemies of the Covenant, and profane and non-worshipping persons. Many eminent individuals were fain to sit upon the stool of repentance, including the Lord Chancellor, Loudoun, who did so "with abundance of tears."

*"The Engagement."**Important legislation.*

The most important constitutional change which had occurred in Scotland for a lengthened period was completed in the time of Cromwell. The Protector was the first

Cromwell and the imperial representation.

CHAP. II.
From the
Reformation to the
Union.

statesman who brought forward a well-considered scheme for the Parliamentary representation of the three nations ; and he also fixed the proportion between the county and the burgh representation of Scotland. Under his direction the whole number of members who were to represent Scotland in the united Parliament was thirty : for the counties twenty, and for the burghs ten. The shires and burghs of Scotland were also for the first time grouped in Cromwell's second Parliament of the three nations, which met July 27th, 1654. To that Parliament four hundred members were summoned from England, thirty from Scotland, and thirty from Ireland. Twenty members were sent from Scotland to represent the shires, of which the smaller and less populous were grouped, and ten members were elected to represent the burghs. Edinburgh was the only constituency returning two members.

*Members
from
Scotland.*

During the Commonwealth there was but one Imperial House of Parliament, of which peers were sometimes members. A large proportion of the members sent to represent Scotland were either officers of the English army or officials of Cromwell's Scotch Government.

*The clergy
in Parlia-
ment.*

The bishops, and also the heads of the regular religious houses, were long required to attend Parliament, as belonging to the spiritual estate ; but clergy of an inferior station and income also appear in the lists of sederunts of Parliament. The bishops disappeared from Parliament after the Glasgow Assembly of 1638, and did not appear again until the Restoration, from which time till the Revolution the bishops alone filled the place of the first Estate.

*The royal
burghs.*

Originally each of the royal burghs was required to send at least two representatives to Parliament, and it was not till 1619 that they were relieved of part of the burden. From that time, by an act of the Convention of Burghs—passed, however, without the sanction of Parliament—one member only was to be returned for each burgh except Edinburgh, which was still required to send two.

*Settlement
of Parlia-
mentary
forms.*

The forms of Parliament were fixed by an act dated May 13th, 1662. It prescribed fines for absence and for late attendance, and enacted that none be admitted but

the "ordinar" members of Parliament, that is, the archbishops and bishops, noblemen, officers of state, commissioners from shires and burghs, the Clerk Register, and the deutes and servants employed by him to serve in the House. Admittance, however, without vote or voice, was allowed to the eldest sons of noblemen, to the senators of the College of Justice, to the Marischal, to the Lyon's ushers, to the justice deutes, to the King's agent, to one servant of the Lord Chancellor, two of the Constable, two of the Marischal, and one of the Advocate. It was ordered that in all debates no member was to interrupt another, or to direct his discourse to any but the Lord Chancellor or President; that all reflections should be forborne; that no man should offer at one diet and in one business to speak oftener than twice; and that no member of Parliament should leave the House until the meeting were dissolved. The *riding* of Parliament from Holyrood to the Tolbooth was the great solemnity and show of the season in the Scottish capital. From the time of James VI. downwards there were frequent disputes and protests concerning precedency and right of place and vote in Parliament; indeed, for a century or two this subject occupied the attention of the nobility and the lawyers more than any other.¹

CHAP. II.

From the
Reformation to the
Union.

After the restoration of Charles II., application was made by the Scots Estates to the King's Council for the return of a considerable mass of national records which had been removed to London during the Protectorate. "It is said that the reason for detaining the records was to discover and destroy the covenant signed by the King, if it could be found. They were shipped for Scotland before the end of the year 1661, but were lost on the way by shipwreck." But the Estates recovered the regalia, and it was with some pomp that the Parliament of 1661 opened, with John, Earl of Middleton, a self-made man, as the new Lord High Commissioner.

*The Res-
toration.*

¹ *Acts of Parliament*, vols. vi. and vii., and Innes's *Scotch Legal Antiquities*.

CHAP. II.

From the
Reformation to the
Union.

*Sweeping
Acts of
the Par-
liament of
1661.*

The Estates effected an enormous amount of legisla-
tion. By the principal measure passed, the Act Rescis-
sory, there were cut off from the body of the law all the
statutes passed in the Parliament of 1640 and subse-
quently. This actually abolished all legislation after the
year 1633, as the Parliament of 1639 passed no statutes.
No act of the Scots Estates, says Burton, had ever
accomplished so much as this. There were certain acts
which ought to have been preserved, of a civil and
ecclesiastical character, "but it was thought well to seize
the opportunity and cast away the whole, leaving it to
the diligence of succeeding Parliaments to restore all
that related to the administration of civil and criminal
justice, to commercial legislation, taxation, coinage, social
institutions, and all the complex elements of the legisla-
tion of the seventeenth century." This abolition act was
badly drawn, for it spoke of the rescinded statutes as
invalid, and yet repealed them. During Charles II.'s reign
measures were left to the Lord Clerk Register to be put
into shape after their substance had been adopted; and
Middleton hurried through the Rescissory Act in order
to "dash bustling oppositions" and hostile petitions. It
was followed by "an act concerning religion and Church
government," which was really an act restoring Epis-
copacy. The settlement of the future government of the
Church was put into the hands of the King, although
existing arrangements were permitted temporarily to
continue. The basis of the permanent Church system
was to be that existing in 1633. Then on May 27th
a statute was passed for the restitution and re-estab-
lishment of the ancient government of the Church by
archbishops and bishops. The oppression of the Pres-
byterian clergy at once began, and it was decreed that
they should be incapable of holding any benefice in the
Church.¹

*Reaction-
ary legis-
lation.*

The Covenant was publicly burned in London, and a
Privy Council was erected for Scotland, which was to

¹ *Scots Acts and Grub's Ecclesiastical History of Scotland.*

exercise the supreme powers of the Estates during the intervals between the sessions. While the indemnity question was agitating England, Argyle was arrested on a charge of high treason, but the real reason for his seizure was that he was too powerful a subject to be at large. He was tried before the Estates, condemned, and executed.

CHAP. II.
From the
Reformation to the
Union.
Execution
of Argyle.

In the session of 1662 an act was passed demanding a declaration of conformity from all persons in public trust. They were required to abjure the Covenant and the National League and Covenant as unlawful oaths. Clergymen who had become ministers since 1649 were ordered to obtain a presentation from the lawful patron, with collation from the bishop of the diocese. Those who complied were forsaken by their flocks, who began to gather in conventicles.

Act of Con-
formity.

What is called "The Drunken Parliament"—because there was only one sober man in the Council when it met on October. 1st, 1662, at Glasgow—passed an act requiring the recusant and non-conforming ministers to remove themselves and their families out of their parishes within a month from the date of the act. Further time was subsequently granted for conforming, however, but ultimately three hundred and fifty ministers abandoned their benefices, drawing the greater part of their congregations with them. Penalties were then laid upon absentees by a supplementary statute known as "the bishops' drag-net." Another act of Council was "The Mile Act," which, like the English "Five Mile Act," was directed against the non-juring ministers. It was very stringent, and amounted to a sentence of banishment from their old parishes. No recusant minister was permitted to reside within twenty miles of his old parish, or within six miles of Edinburgh or any cathedral town, or within three miles of any royal burgh.

The
"Drunken
Parlia-
ment."

Oppressive
religious
statutes.

The High Commission Court, which was alike obnoxious to Englishmen and Scotsmen, was restored; and although, as Scotch historians have remarked, it was ostensibly constituted, as if by a cynical pleasantry, to assail the Papists,

The High
Commis-
sion Court
restored.

CHAP. II.
From the
Reformation to the
Union.

its real purpose was to attack the Covenanters. This was speedily shown by its comprehensive powers. The court was not only authorised to proceed against "all Popish traffickers," but all obstinate contemners of the discipline of the Church; all keepers of conventicles; all proscribed ministers who remained in or near their parishes; all unlicensed preachers in private houses; all writers or speakers against the Establishment; all "busybodies" who should go about "corrupting and disaffecting people from their allegiance"; and in general all who showed themselves disaffected towards his Majesty's authority by contravening acts of Parliament or Council in relation to Church affairs.¹

*Decline in
Parliamentary
method.*

The Parliament of 1662 passed the Billeting Act under peculiar circumstances. A vote of the Estates was to be taken for disqualifying for public office persons specifically named as not to be trusted on account of their previous political history; but on this occasion it was proposed to take the vote by ballot, to secure immunity from corrupting or intimidating influences. By this action Middleton hoped to crush the rising statesman Lauderdale. The ballot was taken, and the names of such as were billeted were to be concealed upon oath; only the Lord Clerk Register, "having a rooted quarrel against Southesk, did mark his billet with a nip when he received it, and thereby discovered his vote." Parliamentary method was at a low ebb at this time, and the Clerk Register was even recommended to the court for preferment because he had drawn up the acts of the session very advantageously to his Majesty's interest. On Middleton's own showing, the Parliamentary arrangements were ludicrously imperfect. The Scots Parliaments continued only eight days, the first of which was taken up in constituting the House and choosing the Lords of the Articles; the Lords of the Articles then consumed nearly all the remaining time in preparing the acts to be passed; and Parliament had its second and last meeting on the

¹ Wodrow's *Sufferings of the Church*.

eighth day, when all acts were read, debated, voted, and passed. This appears now as the very burlesque of national legislation.

Commissioner Middleton went to London in high glee after the session of 1662, for he had procured a condemnation of Lauderdale. But the latter had already obtained the King's ear, and shown him various defects in Middleton's administration. The balloting was represented as a tyrannical act, and an interference with the royal prerogative; while the Commissioner had committed the still more serious offence of giving his assent to measures without receiving the King's special authority to do so. He had also set aside Charles's order deferring the exaction of the fines imposed on recusants, expecting that he would receive an indemnity for their enforcement. Further, the Billeting Act itself was new and unusual. When this act was given to the King with the other statutes, he threw it into his cabinet, stating that he would not act upon it. He subsequently sent a message to the Estates with a "commission for trying of the contrivance and carrying on of the Act of Billeting." The measure was spoken of as "that strange act for incapacitating twelve, transmitted to his Majesty sealed, and which his Majesty has so ordered that it shall nevermore come to light."¹ Middleton had dealt in an underhand manner, playing the King off against the Parliament, and Parliament against the King. The Estates therefore suppressed their acts of ostracism, declaring them to be "now and in all time coming void and null," and ordaining that they "be expunged and rased out of the records, like as, accordingly, the said principal acts, being called for and presented in Parliament, were publicly rased and destroyed." The quarrel between Middleton and Lauderdale led to the supersession of the former and the appointment of the latter as Commissioner.

Upon the accession of James II. in 1685, the Scots Estates re-enacted the Test Act and the act against conventicles, but rejected a bill drawn up by the Lords

CHAP. II.

From the Reformation to the Union.

Charles and his Commissioner.

The Billeting Act.

The Estates depose James II.

¹ Scots Acts of Parliament.

CHAP. II.

From the
Reformation to the
Union.

of the Articles in favour of the Papists. It was, however, forced upon them by the royal prerogative, and Popery was restored with great ceremony at Holyrood. A period of mixed indulgences and persecution followed. When the Revolution in favour of the Prince of Orange was announced from England, the Estates passed an act approving of the good service thus done to the nation. On March 14th, 1689, a convention of the Estates was opened at Edinburgh. It deposed James, and declared the throne of Scotland vacant. The King's misdeeds against the people having been recited, the Vote went on to affirm that "the Estates of the kingdom of Scotland find and declare that King James the Seventh, being a professed Papist, did assume the regal power and acted as king without taking the oath required by law, and hath, by the advice of evil and wicked councillors, invaded the fundamental constitution of this kingdom, and altered it from a legal limited monarchy to an arbitrary despotic power, and hath exercised the same to the subversion of the Protestant religion and the violation of the laws and liberties of the nation, inverting all the ends of government, whereby he hath forefaulted the right to the crown, and the throne is become vacant."

*The Claim
of Right.*

Having by this vote asserted their right to depose the sovereign, the Estates next assumed the power to elect his successor, and appointed a committee to prepare an act for settling the crown upon William and Mary. These courageous steps were taken under conditions involving personal danger; for, notwithstanding the strength of the Protestant revolutionary feeling, violence was expected in the streets of Edinburgh and even on the floor of the Parliament House itself. Claverhouse, who was at the head of the Opposition, assumed a threatening attitude, and endeavoured to interrupt the work of the Convention, but the Estates caused the doors of the Parliament House to be locked, thus preventing communication with or from the outside. On April 11th, the Claim of Right was adopted. This declaration asserted the fundamental liberties of the kingdom of

Scotland, affirmed that no Papist could be King of Scotland, that the Scottish Church was Presbyterian, and that William and Mary were now King and Queen of Scotland. A number of resolutions were next voted called the Articles of Grievances, which set forth various acts done under the authority of bad laws that the Estates desired to have repealed, and certain reforms in regard to which they craved the new King's co-operation.

Until the settlement of the crown had been finally completed by the acceptance of William III., the Convention exercised the executive authority in Scotland, and then it became a Parliament, all its acts henceforth belonging to the statute law of Scotland. The offer of the crown was made to William by three commissioners—the Earl of Argyle, Sir James Montgomery, of Skelmorlie, and Sir John Dalrymple—representing the three estates of peers, barons, and burgesses. The King received the Declaration of Right and the list of grievances, but demurred to the condition that he should “root out all heretics” in upholding the true Church. Nevertheless, on his being assured that the words were a mere form, he accepted the oath, and promised for himself and his wife, with God's assistance, religiously to observe it.

The Estates, which now looked forward to a new and more popular constitution as well as a complete change in their relations with the Crown, elected the Duke of Hamilton—not a man of strong purpose—President of the Convention. When the Convention was turned into a Parliament (June 5th, 1689), he was appointed by William Lord High Commissioner, and the Earl of Craufurd succeeded him in the presidency of the Estates. Parliament soon found itself in conflict with the Crown. It resented the nomination of a president by the Lord High Commissioner, but passed this by to enter upon a more serious contest for the establishment of a free debating Parliament in Scotland. The Lords of the Articles stood in the way of this reform, and the Estates called for their abolition. William, however, hoped to modify the

CHAP. II.

From the
Reformation to the
Union.

The
Estates
offer the
crown to
William.

Parliament and
the Crown.

The Lords
of the
Articles.

CHAP. II.
From the
Reformation to the
Union.

offensive system and to render it more acceptable by making the Lords of the Articles elective, and increasing their number to thirty-three. But the Estates were firm in demanding their abolition, stating also that there ought to be no committees of Parliament but such as were chosen freely by the Estates to prepare motions and overtures. Hamilton then bluntly announced, on June 17th, the King's pleasure that there should henceforth be twenty-four Lords of the Articles, eight chosen from each Estate, but that their power of rejecting absolutely any motion laid before them was to cease, remedy being provided by motion in full Parliament. The Estates met this by passing a resolution that a fixed committee was a grievance; and shortly afterwards a bill was brought in for regulating committees according to their views. This plan was modified so far as that each Estate was to elect its own representatives upon the committees. Hamilton withheld his consent until he had communicated with the King. Meanwhile the Church settlement was postponed, and angry debates ensued about the Crown, proceedings being threatened against the Earl of Argyle and the other Commissioners, who were held to have betrayed their country if they had suffered the King to believe that he had the power to restrain the action of Parliament by fixed committees. The two Dalrymples, as the advisers of William in his anti-Scotch policy, were also denounced.

*Their
abolition
demanded.*

It was at this juncture that William's proposal to enlarge the Lords of the Articles to thirty-three arrived; but the Estates remained obdurate. Abolition was their only policy, and it was in vain that Hamilton devised expedients for drawing away their attention from this one great object. The Commissioner even offered to restore all forfeitures carried out since the year 1665; and when that and all other efforts at distraction failed, he announced that he had discovered a formidable conspiracy against the Government and the Estates of Parliament at their very doors. The Duke of Gordon and thirty-seven other persons were arrested, but the whole

thing turned out to be only some minor matter affecting the hostile force of Claverhouse.¹ The session of the Estates closed on August 2nd, many questions remaining undecided. But Parliament had asserted its rights so freely that "something which Sir John Dalrymple called a 'prerogative' was sacrificed every day." Six important measures had passed the Estates, but they had not received the magic touch of the royal sceptre.

CHAP. II.
From the
Reformation to the
Union.

Before the Estates again met there occurred the Jacobite plot, in which Sir James Montgomery, one of the original Commissioners to William, was implicated, and this, in conjunction with the rising in the north of Scotland and the war in Ireland, predisposed the King to an amicable settlement with the Scots. He now gave his sanction to the acts passed during the late session, and surrendered the main points of difference with regard to the mode of Parliamentary proceedings. Hamilton had already been dismissed and succeeded by Lord Melville, who was empowered to deal with leading opponents in a spirit of bribery—a spirit which was neither creditable nor successful. The Lords of the Articles were abolished, this being a great triumph for Parliament, and in future the Estates were to appoint at pleasure committees to digest measures submitted to their consideration. In every committee there was to be an equal number of representatives from each Estate, but the King reserved for the officers of state the right to attend such committees, with the privilege of moving and debating, though not of voting.² The representation of the larger counties was augmented during this session, twenty-six representatives being added to the Estates. By special acts reversing their forfeitures in preceding reigns, such men as Fletcher of Saltoun, Melville, and Carstares were restored to their former positions; and a general act of reversal of forfeitures and condemnations on religious grounds from the year 1665 was also passed.

*The King
gives way.*

*Legisla-
tive re-
forms.*

¹ *Burton's History.*

² *Minutes of the Estates.*