

CHAPTER VI.

WITH the death of Stephen and the accession of Henry II., a more decided change occurred than had happened when Stephen himself mounted the throne. Stephen caused ruin and desolation, lawlessness and disorder. Henry succeeded to this, and he had a deal of trouble on his hands to repair. But he despaired not at a rehabilitation. He was a young man, just twenty-one, of tireless energy, stout, short, well built and as strong of mind and courage as he was of muscle and heart. He assumed charge of things in a masterly manner and immediately commenced to restore order. This he saw was the first thing to be done, as the country was practically infested with bandits and robbers. His coronation took place December 19, 1134, amid much joy and enthusiasm. He was recognized as the rightful king and looked to by all to help

them pacify the country. He at once started out with his army and seized all the castles in the land. Such of them as had existed prior to the reign of his predecessor Stephen, he allowed to stand, unmolested and unharmed. Such of the balance of them as had been built while Stephen was king, he destroyed and razed to the ground.¹ This he did with good reason. They had been built in rebellion to the king, by plunderers and adventurers, and had become the hiding places and strongholds of thieves and robbers, and the best way to get rid of these terrors and torments to the community was to destroy their places of refuge. Consequently Henry destroyed them, and he later made it the duty of his justices to see that such of them as he had destroyed, were completely demolished and razed, and to so report to him. Henry was a lover of law. His whole reign, while unfortunate in some respects, showed a marked advance and improvement upon any of his predecessors. Of

¹ Hovenden, 1-255.

course the times themselves were changing, and the people's ideas were advancing with those times, but Henry's acts of justice were in advance even of the ideas of the people. Certainly far in advance of the ideas of the Church with which he did such long and bitter struggling.

William I. had severed pretty completely ecclesiastical and civil matters. He had attempted, and to an extent, carried out his designs for complete severance. He did not, however, work the severance as completely nor as thoroughly as he might, for from his death on, the Church gained in power and strength until in the reign of Henry II. it became the great question of the times as to which would survive the struggle—the king or the Church. Very unfortunately Henry II. strengthened the cause of the Church and made his own fight the harder by the appointment of Thomas a'Becket to the Archbishopric of Canterbury. He did this for his friend, the friend with whom he had roved and dined and supped—a man of keen

attainments and much brilliancy—and one upon whose counsel Henry had placed implicit reliance. It was this strength of will, this power of personal magnetism which first, having enraptured and then controlled a king as strong in mind as Henry, drew to him the support and aid of the whole Church in a defiance to the will of that king. This strength of will, in his case, was close akin to pure stubbornness, and it was that which caused him years of mortifying exile, and was the ultimate cause of his assassination. In a measure the results ensuing Becket's appointment are blamable to no one but Henry. He was plenteously advised not to make it. Henry's mother especially warned him of the probable consequences, and what she said would happen did occur in all the strength of her prophecy.

Becket, forgetting all those acts of kindness and deeds of favor which Henry had showered upon him, immediately upon his consecration as Archbishop assumed a different character, and espoused with all his

mighty strength of mind and body, the causes and liberties of the Church. He resigned all civil offices which he had held, and devoted himself entirely to the duties and pleasures connected with his new office. William I. had in his time taken from the See of Canterbury some of its lands. He also had given some of them to a few of his barons. This had happened now nearly a hundred years past, yet Becket knew of it, and demanded that the lands be given back, even that land which Henry II. himself now held.¹ This was so early as 1153. Canterbury did not as a matter of course get back those lands, nor in fact anything in lieu of them; for the king did not himself return that which he held, nor did he compel his barons to do so with theirs; so Becket's demand came to nought, excepting in so far as it gave an indication to Henry of his disposition and tendency to act, now that he was Archbishop. Henry was very busy just now in his kingdom trying to establish per-

¹ Hovenden, 1-258.

fect order and tranquillity. It required on his part rare vigor and moderation in his new form of government to placate some, without giving offence to many others, and many a stronger character than Henry's, would have failed in the attempt. He had, notwithstanding even this, a greater territory to defend and to pacify than any of his predecessors. This in itself would have been sufficient to have occupied him busily for some years; but he had in addition, to meet the opposition of the Church, or rather Becket, for in Becket's time, Becket was the Church, and he ruled it to suit himself. The contest that arose between Henry and Becket, became a contest later to maintain the supremacy of the civil over the ecclesiastical power. While it lasted it was very bitter, but it is only out of such bitterness as was thus engendered that the fruits of good could ripen. Posterity to-day should be very thankful for the issue then raised and decided, and too much credit cannot be accorded to Henry for his mastery of the sub-

ject. Becket clamored loudly for the supremacy of the Church, not only in ecclesiastical matters, but also extending it to all persons in any manner connected with the Church. He desired and claimed that the Church alone should have jurisdiction over those persons who had offended either against the laws of the Church, or the laws of the land. This could not be. It made the Church a very serious obstacle to the just and equitable enforcement of the law. Those connected with the Church were not so few in number as in our day, for then they were legion. Many, very many people connected themselves with the Church, only that they might claim its protection, although unworthily, and thus defeat the ends of justice. Murder and robbery were punished with death if committed by the laity; but if committed by the clergy, the offender escaped very lightly, never worse than a degradation from his holy office, and sometimes a pecuniary fine in addition.¹ No wonder the ranks of

¹ Hovenden, 1-258.

the Church were full, and that they clamored for exemption from secular jurisdiction.

It is said that in the first year of Henry II.'s reign, no less than one hundred homicides were committed in England by people connected with the Church,¹ yet all these men were punished only to the extent I have said. To a man like Henry, who loved order and law, this was very galling, and he determined to stop it; but the only way to do so, was to curb the rights of the Church, and notwithstanding he had to fight Becket to accomplish his ends, he went at the matter determined to win. A crisis came at last. A priest of Worcester, who had a mistress, murdered her father so that he might not be disturbed in his intercourse with her,² the father proving a hindrance to him in some manner, as under such circumstances might be but natural. Henry demanded that this priest be delivered up to the civil court for trial for this offence. Becket here

¹ Knight, Vol. I., 318.

² Knight, 1-318.

saw the king's chance to gain his point, and he determined to frustrate him; so before the king could obtain the offender he degraded him from his priestly office and then sent word to the king, that he had punished him by degradation, that having been once tried and punished he could not in justice be twice tried for the same offence, and positively declined and refused to surrender him. This enraged Henry to such an extent that he called a convention of the bishops at Westminster and desired to know of them, if they sanctioned such conduct. He also wanted to know of them if they were not willing to submit to the civil laws and customs of the kingdom, and particularly those laws of Henry I.¹ The bishops, who were of course highly influenced by Becket, answered that they would obey all those laws and customs "saving the privileges of their order." This qualification was most too much for Henry to stand. It enraged him to such an extent that he at once deprived

¹ Knight, 1-318; Hovenden, 1-259.

Becket of the right to make temporal appointments. He also in many other ways made Becket feel the strength of his displeasure. The issue now between Becket and Henry was becoming so strong that the bishops and foreign cardinals besought Becket to yield and withdraw his qualification, lest his refusal would precipitate bloodshed. Through their persuasion alone he was induced to do so. Henry, however, did not trust Becket now, and he wanted no doubts as to the motives that had caused his acquiescence. Accordingly he called another convention to write out these customs and to specify succinctly what they were. This convention was composed of the Archbishops, Bishops, Chief Priests, Earls, Barons, and nobles generally, and in a measure, partook of the nature of a parliament.¹ In fact, it is called by many the beginning of the English parliament. It met at Clarendon, and deliberated three days, and the articles which they reduced to writing are supposed to em-

¹ Wendover, 1-539.

brace what they thought to be the laws of Henry I. These articles were passed with all the solemnity due to a regular parliament and had the effect of a law and statute.¹ They are known as the "Constitutions of Clarendon." They embrace sixteen parts in all, and are here appended in their entirety as they are too explicit in their meaning to make any abridgment advisable.

1. Of the advowsons and presentation to churches: If any dispute shall arise between laics, or between clerks and laics, or between clerks, let it be tried and decided in the court of our lord the king.

2. Churches of the king's fee shall not be given in perpetuity without his consent and license.

3. Clerks accused of any crime shall be summoned by the king's justice into the king's court, to answer there for whatever the king's court shall determine they ought to answer there, and in the ecclesiastical court for whatever it shall be determined

¹ Hoveden, 1-260.

that they ought to answer there; yet so that the king's justice shall send into the court of Holy Church to see in what way the matter shall there be handled; and if the clerk shall confess or be convicted, the church for the future shall not protect him.

4. No Archbishop, Bishop or other exalted person, shall leave the kingdom without the king's license; and if they wish to leave it, the king shall be empowered, if he pleases, to take security from them, that they will do no harm to the king, or kingdom, either in going or remaining or in returning.

5. Persons excommunicated are not to give bail, *ad remanens* not to take oath, but only to give bail and pledge that they will stand by the judgment of the Church where they are absolved.

6. Laics shall not be accused save by certain legal accusers and witnesses in presence of the Bishop, so that the Archdeacon may not lose his rights or anything which accrues to him therefrom. And if those who are arraigned are such as no one is will-

ing or dares to accuse them, the Sheriff, on demand from the Bishop, shall cause twelve loyal men of the village to swear before the Bishop that they will declare the truth in that matter according to their conscience.

7. No one who holds of the king in chief, nor any of his domestic servants, shall be excommunicated, nor their lands be put under an interdict, until the king shall be consulted if he is in the kingdom; or, if he is abroad, his justiciary, that he may do what is right in that matter: and so that whatever belongs to the king's court may therein be settled, and the same on the other hand of the ecclesiastical court.

8. Appeals, if they arise, must be made from the Archdeacon to the Bishop, and from the Bishop to the Archbishop; and if the Archbishop shall fail in administering justice the parties shall come before our lord the king, that by his precept the controversy may be terminated in the Archbishop's court, so that it may not proceed further without the consent of our lord the king.

9. If a dispute shall arise between a clerk and a laic, or between a laic and a clerk, about a tenement, which the clerk wishes to claim as eleemosynary, but the laic claims as lay fee, it shall be settled by the declaration of twelve loyal men, through the agency of the king's capitol justice, whether the tenement is eleemosynary or lay fee, in presence of the king's justice. And if it shall be declared that it is eleemosynary, it shall be pleaded in the ecclesiastical court; but if a lay fee unless both shall claim the tenement of the same Bishop or baron, it shall be pleaded in the king's court; but if both shall claim of that fee from the same Bishop or baron it shall be pleaded in his court, yet so that the declaration above named, shall not deprive of seizing him who before was seized, until he shall be divested by the pleadings.

10. If any man belonging to a city, castle, borough, or king's royal manor, shall be summoned by the Archdeacon or Bishop to answer for a crime, and shall not comply

with the summons, it shall be lawful to place him under an interdict, but not to excommunicate him until the king's principal officer of that place be informed thereof that he may justify his appearing to the summons; and if the king's officer shall fail in that matter, he shall be at the king's mercy, and the Bishop shall forthwith coerce the party accused with ecclesiastical discipline.

11. The Archbishops, Bishops, and all other persons of the kingdom who hold of the king in chief, shall hold their possessions of the king as barony, and answer for the same to the king's justices and officers; and follow and observe all the king's customs and rectitudes, like other barons, until the judgment is carried to the loss of members or death.

12. When an archbishopric, bishopric, abbacy, or priory of the king's domain shall be vacant, it shall be in his hands, and he shall receive from it all the revenues and proceeds, as of domain. And when the time shall come, for providing for that church, our lord the king shall recommend the best persons

to that church, and the election shall be made in the king's chapel with the king's consent, and the advice of the person of the kingdom whom he shall have summoned for that purpose. And the person elected shall there do homage and fealty to our lord the king as to his liege lord, of life and limb, and of his earthly honors, saving his orders before he is consecrated.

13. If any of the king's nobles shall have refused to render justice to an archbishop, or bishop, or archdeacon, for himself or any of his men, our lord the king shall justice them. And if by chance any one shall have deforced our lord the king of his rights, the archbishops, bishops, or archdeacons, shall justice him that he may render satisfaction to the king.

14. The cattle of those who are in forfeiture to the king shall not be detained by the church or the cemetery in opposition to the king's justice; for they belong to the king, whether they are found in the church or without.

15. Pleas for debts which are due, whether with the interposition of a pledge of faith or not, belong to the king's court.

16. The sons of rustics shall not be ordained without the consent of their lord, in whose land they are known to have been born.¹

Becket at first refused to sanction this statute, but later agreed to it, and again later, upon hearing that the Pope refused it his sanction, withdrew his oath of fealty to it, and did himself severe penance for accepting it in the first instance.

Thus were matters started. The battle between Becket and Henry continuing nearly all the time, until the date of Becket's assassination. All this while Henry was engaged in establishing order and law. It required just about ten years for him to accomplish this; but in that time it was satisfactorily done. It was he who brought into general use the trial by jury. Trial by jury in those times was, of course, a very different institution from that now in vogue.

¹ Wendover, i-539.

The mistaken idea that the jury system in England was a creation of the Magna Charta of John should be corrected. It was embodied in the Magna Charta, but was not a creation of it, nor in fact did it become any better established by reason of that instrument. Jurors in those times were always selected from among those who had a knowledge of the facts about to be tried; and the more they knew of the case at issue, the more valuable as jurors they were. To-day the condition is exactly reversed, for any knowledge of the cause is sufficient to disqualify one from becoming a juror. "It appears from Olaus Wormius that trial by twelve men was first introduced into Denmark by Regnerus, surnamed Lodbrog, who began to reign in the year 820; from whom Ethelred is said to have borrowed this institution."¹

In 1176 the king was at Nottingham, and there he held, according to Hovenden,²

¹"Observations on the More Ancient Statutes," Hon. Daines Barrington.

²1-406.

a great council on the statutes of the realm, and in the presence of his son, the archbishops, bishops, earls and barons, by the common consent of them all, he divided the kingdom into six parts. To each part he appointed three justices with jurisdiction for that section whose duty it was to see that the laws were enforced and to report to him the need and necessity for new or better ones.

Henry, however, did not even rest here. He personally saw that these justices whom he had appointed fulfilled their duties. He himself went the rounds of the kingdom, and in one of his divisions changed the justices with whom he was dissatisfied. Among these eighteen justices was Ranulph de Glanville, afterwards chief justiciary, and a lawyer of very great ability, whose writings are read to this day by every lawyer who wishes himself to be well informed upon the growth of the common law. Glanville himself says that in his time "there was not a judge who dared swerve from the course of justice." From this time on for

the next six or seven years, England was tranquil. There was absolute peace. Henry devoted himself almost exclusively to the discharge of his civil duties, and in perfecting his courts. Nothing occurred to disturb him in this occupation until 1183, when he had the commencement of his troubles and wars with his sons. Henry was very unfortunate with them. He had four of them, was a good father to them, yet they fought him, and in the end broke his heart. They all turned against him, even his favorite John, the one he loved and trusted most.

John's character began even at this early stage to show its despicable and contemptible nature. It was his act of treachery to his father that ultimately hastened the latter's death.

In summing up Henry's long reign of nearly thirty-five years, we must credit him with the great desire to establish and create law and justice. To make good laws and to see them properly enforced. To see that the people had the liberties and the privileges

which they should have, and that they should become firmly established. There was no cruelty, no brutality, and none of those acts and crimes of horror and bloodshed marking too prominently the reign of the Conqueror. Yet with it all Henry administered more law and better law, and had more peace in the kingdom than William I. ever had. He assumed charge of the government when it was in a worse state than it was in when William I. took it, and he kept a better peace and was more loved by his subjects. He was not an imitator. He originated and created, and in such manner that his creations lived, and live to this day. He killed the power of the Church over the State, and so firmly established the jury system that its eradication was impossible. Too much praise, and too much credit and glory cannot be given to Henry II. He was one of the best and wisest and noblest kings England has ever had. For his small acts were few and soon forgotten; but his great acts live to this day, and we are benefiting from them.