THE LIVES

OF

THE CHIEF JUSTICES

OF

ENGLAND.

FROM THE NORMAN CONQUEST TILL THE DEATH OF LORD TENTERDEN.

By JOHN LORD CAMPBELL, LL.D. F.R.S.E.,

AUTHOR OF

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LIVES

OF THE

CHIEF JUSTICES OF ENGLAND.

CHAPTER XI.—*continued.*

We must now go back to Sir Nicholas Hyde, elevated to the bench that he might remand to prison Sir Thomas Darnel and the patriots who resisted the illegal tax imposed under the name of "loan," in the commencement of the reign of Charles I. He was the uncle of the great Lord Clarendon. They were sprung from the ancient family of "*Hyde of that ilk*," in the county palatine of Chester; and their branch of it had migrated, in the 16th century, into the west of England. The Chief Justice was the fourth son of Lawrence Hyde, of Gussage St. Michael, in the county of Dorset.

Sir Nicholas Hyde.

Before being selected as a fit tool of an arbitrary government, he had held no office whatever; but he had gained the reputation of a sound lawyer, and he was a man of unexceptionable character in private life. He was known to be always a staunch stickler for prerogative; but this was supposed to arise rather from the sincere opinion he formed of what the English constitution was, or ought to be, than from a desire to recommend himself for promotion. He is thus goodnaturedly introduced by Rushworth:—

A.D. 1626. His reputation as a lawyer.

"Sir Randolf Crewe, showing no zeal for the advancement of the loan, was removed from his place of Lord Chief Justice, and Sir Nicholas Hyde succeeded in his room:—a person who, for his parts and abilities, was thought worthy of that preferment; yet, nevertheless, came to the same with a prejudice,—coming in the place of one so well-beloved, and so suddenly removed." *

A.D. 1627. His conduct as Chief Justice of the King's Bench.

Whether he was actuated by mistaken principle or by profligate ambition, he fully justified the confidence reposed in him by his employers. Soon after he took his seat in the Court of King's Bench, Sir Thomas Darnel, and several others committed under the same circumstances, were brought up before him on a writ of *habeas corpus;* and the question arose whether the King of England, by *lettre de cachet*, had the power of perpetual imprisonment without assigning any cause? The return of the gaoler, being read, was found to set out, as the only reason for Sir Thomas Darnel's detention, a warrant, signed by two privy councillors, in these words:—

Sir Thomas Darnel's Case.

"Whereas, heretofore, the body of Sir Thomas Darnel hath been committed to your custody, these are to require you still to detain him, and to let you know that he was and is committed BY THE SPECIAL COMMAND OF HIS MAJESTY."

Lord Chief Justice Hyde proceeded, with great temper and seeming respect for the law, observing, "Whether the commitment be by the King or others, this Court is a place where the King doth sit in person, and we have power to examine it; and if any man hath injury or wrong by his imprisonment, we have power to deliver and discharge him; if otherwise, he is to be remanded by us to prison again."

Selden, Noy, and the other counsel for the prisoners, encouraged by this intimation, argued boldly that the warrant was bad on the face of it, *per speciale mandatum*

* 1 Rushw. 420.

Domini Regis being too general, without specifying an offence for which a person was liable to be detained without bail; that the warrant should not only state the authority to imprison, but the cause of the imprisonment; and that if this return were held good, there would be a power of shutting up, till a liberation by death, any subject of the King without trial and without accusation. After going over all the common law cases and the acts of parliament upon the subject, from MAGNA CHARTA downwards, they concluded with the *dictum* of Paul the Apostle, "It is against reason to send a man to prison without showing a cause."

Hyde, C. J.: "This is a case of very great weight and great expectation. I am sure you look for justice from hence, and God forbid we should sit here but to do justice to all men, according to our best skill and knowledge; for it is our oaths and duties so to do. We are sworn to maintain all prerogatives of the King; that is one branch of our oath,—but there is another—to administer justice equally to all people. That which is now to be judged by us is this: 'Whether, where one is committed by the King's authority, and by cause declared of his commitment, we ought to deliver him by bail, or to remand him?'"

From such a fair beginning there must have been a general anticipation of a just judgment; but, alas! his Lordship, without combating the arguments, statutes, or texts of Scripture relied upon, said, "the Court must be governed by precedents," and then, going over all the precedents which had been cited, he declared that there was not one where, there being a warrant *per speciale mandatum Domini Regis*, the judges had interfered and held it insufficient. He said he had found a resolution of all the judges in the reign of Queen Elizabeth, that if a man be committed by the commandment of the King, he is not to be delivered by a *habeas corpus* in this court, "for we know not the cause of the commitment." Thus he concluded:—

"What can we do but walk in the steps of our forefathers? Mr. Attorney hath told you the King has done it for cause

sufficient, and we trust him in great matters. He is bound by law, and he bids us proceed by law; we are sworn so to do, and so is the King. We make no doubt the King, he knowing the cause why you are imprisoned, will have mercy. On these grounds we cannot deliver you, but you must be remanded." *

This judgment was violently attacked in both Houses of parliament. In the House of Lords the Judges were summoned, and required to give their reasons for it. Sir Nicholas Hyde endeavoured to excuse himself and his brethren from this task by representing it as a thing they ought not to do without warrant from the King. Lord Say observed, "If the Judges will not declare themselves, we must take into consideration the point of our privilege." To soothe the dangerous spirit which disclosed itself, Buckingham obtained leave from the King that the Judges should give their reasons, and Sir Nicholas Hyde again went over all the authorities which had been cited in the King's Bench in support of the prerogative. These were not considered by any means satisfactory; but, as the Chief Justice could no longer be deemed contumacious, he escaped the commitment with which he had been threatened.

A.D. 1628. Sir Edward Coke, and the patriots in the House of Commons, were not so easily appeased, and they for some time threatened Lord Chief Justice Hyde and his brethren with an impeachment; but it was hoped that all danger to liberty would be effectually guarded against for the future by compelling the reluctant King to agree to the PETITION OF RIGHT. Before Charles would give the royal assent to it,—meaning not to be bound by it himself, but afraid that the Judges would afterwards put limits to his power of arbitrary imprisonment,—he sent for Chief Justice Hyde and Chief Justice Richardson to Whitehall, and directed them to return to him the answer of themselves and their brethren to this question, "Whether in no case

* 3 St. Tr. 1.