

THE LIVES
OF
THE CHIEF JUSTICES
OF
ENGLAND.

FROM THE NORMAN CONQUEST TILL THE DEATH
OF LORD TENTERDEN.

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'THE LIVES OF THE LORD CHANCELLORS OF ENGLAND.'

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LIVES

OF THE

CHIEF JUSTICES OF ENGLAND.

CHAPTER XL.

CONCLUSION OF THE LIFE OF LORD MANSFIELD.

LORD MANSFIELD lived nearly five years after his resignation, in the full enjoyment of all his mental faculties, memory included,—although his strength gradually declined. Since his house in Bloomsbury Square was burnt down, Kenwood had been his only residence; and here he remained, without being absent from it for a single night, till he breathed his last. He was much attached to the place: the great extent of the grounds gave ample scope for a display of his taste; he still went on planting and improving; he had great delight in showing the points from which the landscape appeared to most advantage; and he was gratified by the assurances which were truthfully poured out by his admiring friends, that there was nothing more charming to be seen within fifty miles of the metropolis.*

A.D. 1788–
1793.

Lord Mans-
field in
retirement.

* A few years ago, the fashionable world had an opportunity of appreciating
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He resumed his study of the writings of Cicero, and, above all, he now prized his treatise *DE SENECTUTE*, conforming himself much to the precepts there inculcated for giving a relish to this portion of human existence.

Amidst the literary recreations and rural employments which made his days glide on delightfully, we might wish that he could have said with old Cato, "*Causarum illustrium, quascunque defendi, nunc quam maxime conficio orationes;*" but although he had taken pains in correcting his judgments, he seems to have been quite indifferent about his oratorical fame, and he never had any ambition to be an author.

In the year 1784 he had lost his wife, after a happy union with her of half a century. His domestic establishment was now regulated, and his home made cheerful, by two accomplished and affectionate nieces, daughters of Viscount Stormont.

The sudden cessation of professional occupation and political excitement is dangerous only to a man whose mind has not received early culture, and who is destitute of literary resources. Lord Mansfield in his retirement was never oppressed by *ennui* for a moment; and he found novelty and freshness in the calm, eventless life which he led. It should be mentioned, that his serenity was completed by a firm belief in the truths of religion, and the habitual observance of the pious rites which it prescribes.

As a striking proof of the powers of mind and felicity of expression which still distinguished him, I am enabled to lay before the reader a few sentences dictated

the taste of the great Lord Mansfield in the formation of this place, and seeing the trees which, in his old age, he had planted with his own hand, a most splendid *fête champêtre* being given there by his great-grand-nephew and repre-

sentative the present noble Earl;—from whose splendid success on that occasion the worshippers of the illustrious Chief Justice hoped that the *fête* would be annual.

by him (which might be expanded into a folio volume) on a subject very interesting to his native country. Lord Swinton, a judge of the Court of Session, in the year 1787 published a pamphlet recommending the introduction of jury trial into Scotland in certain specified civil actions, and requested that he might have the opinion upon the subject of the individual best qualified to consider it from his unprecedented experience of juries and his familiar knowledge of the law both of Scotland and England. This request was conveyed through Lord Henderland, another judge of the Court of Session, who was related to Lord Mansfield by blood, and was married to his niece. The great jurist, thus consulted as an oracle, was then disabled from writing by rheumatism in his hand, and, on the score of indisposition, civilly declined giving any opinion to Lord Swinton; but his niece, Lady Anne, acting as his amanuensis, wrote a note to Lord Henderland, which thus concludes:—"L^d H^d will be so good to say so much, and no more, to L^d Swinton; but the moment L^d M^d heard the papers read, he dictated the inclosed mem^d for L^d H^d's private use. He thinks the proposed introduction of juries is a very rash innovation, and will be attended with many consequences which no man alive can foresee."

His opinion upon the introduction of jury trial in civil cases in Scotland.

Here follows the memorandum which was inclosed, every line of which is worth a subsidy:—

"Great alterations in the course of the administration of justice ought to be sparingly made, and by degrees, and rather by the Court than by the Legislature. The partial introduction of trials by jury seems to me big with infinite mischief, and will produce much litigation.

"Under the words proposed, it may be extended almost to anything,—*reduction, restitution, fraud, injury*. It is curious that fraud, which is always a complicated proposition of law and fact, was held in England as one of the reasons for a court of

equity, to control the inconveniences of a jury trying it. The giving it to the desire of both parties might be plausible; but where one only desires that mode of trial it is a reason against granting it, because many causes and persons have popular prejudices attending them which influence juries.

"A great deal of law and equity in England has arisen to regulate the course and obviate the inconveniences which attend this mode of trial. It has introduced a court of equity distinct from a court of law, which never existed in any other country, ancient or modern; it has formed a practice by the courts of law themselves and by acts of parliament, bills of exceptions, special verdicts, attainments, challenges, new trials, &c.

"Will you extend by a general reference all the law and equity now in use in England relative to trials by jury? The objections are infinite and obvious. On the other hand will you specify particularly what their system should be? The Court of Session and the judges of England, added together, would find that a very difficult task."

These principles were unfortunately overlooked in the year 1807, when jury trial, exactly according to the English model, with its unanimity, special verdicts, and bills of exceptions, was introduced into Scotland. The experiment, I am afraid, has proved a failure, and Lord Mansfield's predictions have been fatally verified.

An amiable trait in his character, which distinguished him to the last, was, that he took a lively interest in the welfare of all connected with him. By his advice, two sons of Lord Henderland (the present Mr. Murray of Henderland, and Lord Murray, first Lord Advocate, afterwards a judge of the court of session) were sent to be educated at Westminster School.* The aged ex-Chief Justice was exceedingly kind to the boys, had them at Kenwood during the holidays, and sought to inspire them with a love of literature.

In a letter from Mr. Murray, not written for publica-

* It would appear that Lord Henderland was likewise influenced by the opinion of Dr. Johnson, with whom he had discussed the merits of English public schools, in a party at "The Mitre." See Boswell's *Life of Johnson*, iii. 9.

tion, but from which I hope I may, without impropriety, make a few extracts, he says—

“I first saw Lord Mansfield when I went to Westminster School in 1787, and used occasionally to spend part of my holidays at Kenwood. He was very kind, treating me familiarly as a boy, and always called me *schoolfellow*. He took a great interest in all that was going on in Westminster School, used to talk of his boyish days, and relate anecdotes of what occurred when he was there. I remember one, of his having made a plum-pudding, and, there being no other apparatus for the purpose, it was boiled in his nightcap: he told this with great glee. He always drank claret, and had a small decanter containing a few glasses placed by him at dinner, which he finished.

Recollections
of Lord
Mansfield by
his grand-
nephew.

“He still took pleasure in ornamenting his grounds. Some cedars in the wood opposite the house were planted by his own hand.

“He was a great admirer of Pope, and occasionally selected passages from his poems which he taught me to recite. His voice and modulation were beautiful.

“He told me he had conversed with a man who was present at the execution of the Blessed Martyr. How wonderful it seems that there should only be one person between me and him who saw Charles’s head cut off!”

He used to have parties of King’s Bench lawyers to spend a day with him, and I have myself heard some of those who were present describe how agreeable he was. On one occasion they found him reading under a spreading beech-tree, when a young gentleman said to him rather flippantly, “Instead of listening to the wrangling of Westminster Hall, how much better for your Lordship to be ‘*recubans sub tegmine fagi*.’” He good-humoredly replied,—

His amuse-
ments.

“O Mellibœe, DEUS nobis hæc otia fecit.”

A great amusement for him was, to hear what was going on in the court of King’s Bench. With this view his countryman, James Allan Park, who became famous by compiling his decisions on the law of mari-

time insurance, used to visit him almost every evening during Term, and to read to him what Lord Kenyon had been ruling in the morning. He bore with much composure the sneers at "the equitable doctrines which had lately been introduced into that court;" and he revenged himself by laughing at his successor's false quantities and misapplied quotations, which induced George III., at last, to advise the new Chief Justice "to give up his bad Latin, and stick to his good law."

Lord Mansfield's contemporaries being all swept from the stage, he wisely consoled himself by making acquaintance with the rising generation; and he rejoiced that he could still converse with the illustrious masters of wisdom to be found in his library. He justly thought contemptuously of the low state into which literature had fallen when Hayley was considered the successor of Pope; and he used to give as a toast, "YOUNG FRIENDS AND OLD BOOKS."

He never was considered avaricious; his establishment was upon a footing which became a wealthy nobleman, and he would sometimes give away money generously; yet he certainly had considerable pleasure in watching the enormous accumulation of his fortune. He neither invested it in the funds nor bought land with it, but had it all secured on mortgage, saying, "The funds give interest without principal, and land principal without interest, but mortgages both principal and interest." *

After his retirement, he took no part whatever in politics: like the gods of Epicurus, he looked down upon the events that were passing in the world without in any degree seeking to influence them. The last time he ever attended in the House of Lords was on the 22d of May, 1788, when his presence was required in con-

* It is said that, at the time of his death, the annual interest on his mortgages amounted to 30,000*l*.

sequence of some proceedings connected with a writ of error from the Court of King's Bench; and he assisted neither the Government nor the Opposition by his proxy.* It seems most wonderful that he should not have interfered in the unprecedented crisis which immediately followed, when the kingly office was for some months suspended by the insanity of George III. One would have supposed that the ex-Lord Chief Justice of England, who had been familiarly acquainted with the leaders of the Revolution effected exactly a century before, would, like his great rival, have been led to his seat, if unable to walk without support, and, at the risk of dying in the effort, would have proclaimed to his countrymen how, in his opinion, anarchy was to be warded off and the constitution was to be preserved. He once more showed that want of boldness which always prevented him from reaching the first rank of statesmen. As a sound constitutional lawyer, I think he must have come to the conclusion that the right of electing a regent arrogated to themselves by the two Houses of Parliament was wholly inconsistent with the principles of hereditary monarchy; and that the heir apparent was entitled to exercise the prerogatives of the Crown during the King's incapacity, as upon his natural demise. But he was probably afraid of avowing a doctrine which, though truly conservative, was most distasteful to all connected with the Government, on account of the transfer of power from one party to another which it was likely to produce; and he might have been reluctant to ally himself with Loughborough, who we now know, and he might then have discovered, had formed the desperate scheme of at once placing the

He abstains from giving any opinion upon the Regency question.

* I have ascertained these facts by searching the Lords' Journals; which give the names of all the peers present at every meeting of the House, and all the proxies entered, every session.