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THE BAN OF KENILWORTH (DICTUM DE KENELWORTH).¹

By the Rev. JOHN RICHARD GREEN, M.A.

FROM the slaughter of Evesham, where liberty lay, it seemed, dead with De Montfort, to the Statutes of Marlborough, where the very spirit of the great Earl and of freedom is alive again, our modern historians pass quietly on without once pausing to ask the cause or nature of so great a revolution. And yet it is not the mere sharpness and vividness of the contrast which gives weight to these memorable years, they are of weight in themselves; they form the transition period between the two great sections of our history, the period which severs that age of formation, during which a succession of new peoples and customs and ideas were slowly mingling and fusing into fresh forms and combinations, from the six centuries of true national history which stretch thence to the England of to-day. It is in fact in the Dictum, the Award, or, to take the older English word,² the "Ban" of Kenilworth, that great national act which these historians in like intelligent fashion dwarf into a mere capitulation, that the key of this great question must be found.

For the history of the events which led to it, over which I must necessarily hurry, and of the Dictum itself, on which I shall venture to dwell at greater length, the authorities are unusually numerous and valuable. The chroniclers divide into two great classes: we have first the adherents of the National party, Rishanger in his chronicle (Camden Soc.

¹ Communicated to the Historical Section at the Annual Meeting of the Archaeological Institute held at War-

wick, July, 1864.

² Robert of Gloucester terms it thus, p. 568.

1840), and in the continuation of Matthew Paris (Wats, 1644), the annalist of Waverley (Gale, Script. in vol. ii.), Robert of Glocester (Lond. 1810), the chronicler of Melrose (Gale, vol. i.). On the other side are the Royalists, Wikes (Gale, vol. ii.), Westminster (Lond. 1570), the chronicler in the *Liber de Antiquis Legibus* (Camden Soc.). All these are contemporaries, some were eye-witnesses of the events which they relate, and, with the exception of the historian of Melrose on the one side and Matthew of Westminster on the other,³ are all, allowing for their strong party bias, thoroughly trustworthy. Nangis (Duchesne, Hist. Fr. Script. vol. v.) gives a very valuable French view of some of the transactions of the time; but the great supplement to and check upon the chroniclers must be found in our national records, which I have been enabled by the courtesy of Mr. Burt (though far too cursorily) to examine, the Patent and Close rolls and in the collection of royal letters.⁴ These not only furnish us with facts, but enable us often to form a decision amid the embarrassing discord of the chroniclers. To pass at once to the story.

On the morning of the 4th of August, 1265, Sir Simon de Montfort, marching through the night from Kenilworth to his father's relief, reached the little town of Alcester at the confluence of the Alne and the Arrow. The delay caused by Edward's masterly surprise of his army under the castle walls had been more than compensated by the opportunity afforded by his absence to the Earl of Leicester of breaking the line of the Severn. Severn crossed, the night-march of August 3rd had brought the Earl as far as Evesham; he was now only some ten miles distant from the relieving army down the Vale of Avon, and the junction of father and son seemed secure. The Earl however listened, reluctantly indeed, to King Henry's request, and halted at Evesham for mass and dinner: the army of Sir Simon halted for the same purpose at Alcester. "Those two dinners doleful were, alas!"⁵ for Prince Edward was hurrying through the night by country cross-lanes to seize the fatal gap which they had left. As the morning broke his army lay across the road

³ At least two different accounts are obviously confused together by Matt. of Westminster, and his chronology is even more erroneous than his facts. Lingard, however, follows it. Parry (Hist. of Parliaments) is equally misled.

⁴ Wherever these have been printed by Brady or Rymer, I have referred to their collections.

⁵ Robert of Glocester, p. 558. Ann. of Waverley, p. 219.

that led northward from Evesham to Alcester. Ere three hours had passed the corpse of the great Earl lay mangled amid a ring of faithful knights, and the "murder of Evesham, for battle none it was," was over.

Simon de Montfort's army, after finishing its meal, was again on its march to join the Earl when the news met it, heralded by that strange darkness that rising suddenly in the northwest and following as it were on Edward's track served to shroud the mutilations and horrors of the battle-field.⁶ The news was soon fatally confirmed. Simon himself could see from afar the noble head of that great father borne off on a spear-point to be mocked at Wigmore.⁷ His retreat was uninterrupted: the pursuit had streamed naturally away southward and westward, through the streets of Tewkesbury heaped with corpses of the panic-stricken Welchmen whom the townsmen had slaughtered without ruth or pity; and amid the darkness and the big thunder-drops the army fell despairingly back on Kenilworth. "I may hang up mine axe," are the bitter words attributed by the poet to their leader, "for feebly have I gone."⁸ Once within the castle he gave way to a wild sorrow, day after day tasting neither meat nor drink,⁹ till he was roused into action again by a great emergency. The news of the shameful indignities offered by Mautravers and the Marchers to the corpse of the great Earl before whom they had trembled so long, had at last reached the garrison at Kenilworth, and the knights broke out in a passionate burst of fury such as we see in the story of Becket's murder.¹ Richard of Cornwall, his son, and some of his knights were prisoners in the castle, and the garrison clamored for their blood. Simon had enough nobleness and self-restraint to interpose. "To God, and Him alone, was it owing," owned his uncle afterwards, "that I was snatched from death."²

It was noble, for no mercy could be looked for from the conquerors. Fresh from the butchery of the fugitives in the corn-fields and gardens of Evesham, the Royalists flung themselves on their foes with the wild licence of victory. The triumphant blare of trumpets which welcomed the

⁶ Rob. of Gloc. saw it, "and was well sore aferd," p. 560.

⁷ Wikes, p. 71.

⁸ Rob. Gloc., p. 561.

⁹ Wikes, p. 71.

¹ Rishanger, p. 50.

² Rishanger, p. 50.

delivered king into Evesham, "his men weeping for joy,"³ rang out in bitter contrast to the universal mourning.⁴ It was the inauguration of a reign of terror. The rights and laws for which men had toiled and fought so long seemed swept away in an hour. England, in the words of her anonymous poet,⁵ was—

"Nescia venturi ejus sit subdita juri,
Sub quo custode, sub Christo vel sub Herode."

Every town which had supported Earl Simon—and what town had not?—was held to be at the king's mercy, its franchises to be forfeited.⁶ The charter of Lynn was annulled, Oxford was heavily fined, London was marked out as the special object of the king's vengeance, and the farms and merchandise of its burghers seized as first fruits of its plunder. The darkness which on that fatal morning had hidden their books from the monks of Evesham as they sang in the choir, was but a presage of the gloom that was to fall on the religious houses.⁷ From Ramsey, from Evesham, from St. Albans, rose the same cry of havoc and rapine. But this was little to the sweeping sentence of confiscation which was assumed to have passed by the mere fact of rebellion on all the adherents of Earl Simon. To disinherit these was to seize the estates of half the landed gentry of England. "Exhæredati," says the anonymous poet, "si fiant connumerati, millia cum binis deca bis sunt acta ruinis."⁸ The Royalists, however, did not scruple to declare these twenty thousand disinherited, nor the king to lavish their lands away on favourites and foreigners. The very chronicles of their party recall the pillage with shame.⁹ But all thought of resistance lay hushed in the universal terror. Every prison, save those of Dover and Kenilworth, opened its gates to the prisoners of Lewes.¹ The wife of Hugh Despenser flung open the dungeons of the Tower, and fled weeping to the protection of her father, Philip Basset. Even at Kenilworth Simon "saw no other rede"² than to release his prisoners.

³ Wikes, p. 71.

⁴ Rishanger, p. 48.

⁵ Quoted by Halliwell. Notes to Rishanger's Chronicle, p. 144.

⁶ Contin. Matt. Paris, ad ann. 1266.

⁷ Rishanger, p. 47.

⁸ Rishanger, p. 145.

⁹ "Rex et sui complices non sicut decuerat cautiore effecti sed potius stultiore . . . non solum possessiones . . . indigenis sed et alienigenis sine personarum discretione concessit." Wikes, p. 74.

¹ Lib. Antiq. Leg., p. 76.

² Rob. Glouc., p. 561.

But other motives than mere panic influenced Simon in this release. His captives were set free on the 6th of September,³ two days before the date of convocation for the Parliament at Winchester. The mere assembly of a Parliament seemed to promise an end to the present reign of utter lawlessness. It was known too that in the Royalist camp itself a powerful party existed, headed by Prince Edward and Earl Gilbert de Clare, which, however hostile to De Montfort, shared his love for English liberties. By his release of the prisoners of Kenilworth Simon added to their ranks the wise and moderate Richard King of the Romans, and that prince returned the obligation by a promise, under his hand and seal, to exert his influence in favor of the Countess of Leicester, of Simon's brothers also, and of himself.

For the moment, however, all wise and moderate counsels were of little avail. The Parliament met in the usual temper of a Restoration Parliament, only to legalize the outrages of the past month. The embittered prisoners, fresh from the dungeons of the Barons, poured into Winchester to add fresh violence to the demands of the Marchers. The very wives of the captive loyalists and the widows of the slain were summoned to give fresh impulse to the reaction. Their place of meeting added fuel to the fiery passions thus heaped together, for Winchester yet bore the marks of its pillage by Simon on his way to Kenilworth, and its stubborn loyalty must have been fanned into a flame by the losses it had endured. In such an assembly no voice of moderation could find a hearing; the four prelates who favored the national cause, the Bishops of London and Lincoln, of Worcester and Chichester, were excluded; the heads of the religious houses were summoned for the mere purpose of extortion. The efforts of King Richard and Edward were met by those of Edmund, Henry's second son, who, unsated with the gift of the lands and honors of Earl Simon, placed himself with Mortimer and Giffard at the head of the ultra-loyalists.⁴ The four resolutions passed were but the legalization of their violence; all grants made during the King's captivity were revoked; the De Montforts were banished; the charter of London was annulled; the adherents of Earl Simon were

³ Rob. Gloc., p. 561.

⁴ Rishanger, p. 49.

disinherited, and seizin of their lands given to the King. Henry at once appointed commissioners⁵ to survey and take possession of his spoil, while he moved to Windsor to triumph in the humiliation of London. Its mayor and forty of the chief citizens waited in the castle-yard amid the jeers of squires and grooms, only in defiance of their safe-conduct to be thrown into prison, and Henry entered his capital in triumph, as into an enemy's city.⁶ The surrender of Dover came to fill the cup of victory ; it was by this port that the foreign auxiliaries whom Richard and Amaury de Montfort had sailed with the Earl's treasure to enlist, were designed to land ; while in itself it headed the formidable league of the Cinque Ports. "On the sea," writes Edward of them, in August, "they commit a thousand piracies and murders ; nor is any one suffered to land unless he be first conducted to Dover, and his arrival approved by its inhabitants."⁷ A rising of its prisoners compelled its surrender in October, and the success of the Royalists seemed complete.⁸

In fact, their difficulties were but beginning. Their triumph over Earl Simon had been a triumph over the religious sentiment of their time, and religion avenged itself in its own way. Everywhere the Earl's death was viewed as a martyrdom, and monk and friar, however they might quarrel on other points, united in praying for the souls of the dead as for "soldiers of Christ." Within a short time after Evesham⁹ it began to be whispered that Heaven had attested the sanctity of De Montfort by miracles at his tomb. How great was the effect of this belief may be seen in the request of the Arbitrators of Kenilworth to King and Pope for the suppression of these miracles ; in the efforts for their suppression throughout the reign of Edward the First ; in their continuance into the reign of his successor.¹ Their immediate result was a sudden revival of hope. "Sighs," breaks out Rishanger,² "are changed into songs of praise, and the greatness of our former joy has come to life again." Nor was it in

⁵ *Fœdera*, i. p. 462.

⁶ See the full account of the London Transactions in *Lib. Ant. Leg.*, p. 77, etc.

⁷ *Royal Letters*, Hen. III., p. 406.

⁸ *Wikes*, p. 72.

⁹ *Rishanger*, p. 48.

¹ An enquiry was made in this reign into the miracles worked at Henry de Montfort's tomb.

² *Rishanger*, p. 49.

miracles alone that the "faithful," as they proudly styled themselves, began to look for relief from "the oppression of the Malignants."³ The same Parliament which by its decrees of exile robbed Simon of any hope of accommodation provided him with an army by its decrees of disinherison. In the first moment of the reaction he had quitted Kenilworth and joined John d'Eyville and Baldwin Wake in the Isle of Axholme. So fast did foot and horse flow in to him, that Edward and his cousin Henry of Almaine hurried into Lincolnshire to hold him in check. But already the south and the west were backing the resistance in the north; the men of the Cinque Ports, putting on board their wives and children, swept the seas and harried the coast;⁴ while Llewellyn, whose raid upon Chester had caused the hasty dissolution of the Parliament of Winton, butchered without mercy the routed fragments of the host sent against him.⁵ Rishanger himself, penning his grand eulogy of Earl Simon quietly amongst all the uproar, saw the rise of the new spirit of resistance in the streets of St. Albans.⁶ The town (these details of the story light up the time) was diligently guarded and strongly closed with bolts and bars within and without, and in its dread of war refused entrance to all strangers wishing to pass through, above all to horsemen. The Constable of Hertford, Henry de Stok, was an old foe of the townsmen; he boasted that, in spite of bolts and bars, he would enter the place, and carry off four of their best villeins captive to Hertford. He contrived to make his way in, and loitered foolishly about. A butcher passing by overheard him ask his followers how the wind stood; and guessing his design to burn the town he knocked him down. The blow gave heart to the townsmen, they secured De Stok and his followers, struck off their heads, and fixed them at the four corners of the borough.

In this moment of reaction, the Legate Ottobuoni landed with the Queen,⁷ bringing with him the calm wise policy of Rome. In the hour of their triumph Pope Clement had been a bitter enemy of the Barons; immediately on his accession he had despatched Cardinal Ottobuoni to preach

³ "A pressura malignantium," Rishanger, p. 49.

⁴ Annals of Waverley, p. 221.

⁵ Ann. of Waverley, p. 220.

⁶ Cont. Matt. Par. ad ann. 1265.

⁷ Nov. 1, Ann. of Waverley, p. 221.

a crusade against them, to form a league of princes for the defence of "the common cause of kings," and to induce Louis of France to put himself at the head of it. But with their overthrow his tone changed. "*Tristia nobis et læta enarrastis*," he wrote in reply to the news of Evesham. Henceforth congratulations on the Royal successes⁸ merely serve as preludes for earnest exhortations to moderation and clemency. "Clemency," wrote the Pope to Henry, on October 25, "is the strength of a realm . . . Forgiveness will win more to love you and your son than punishment and harshness . . . If the heat of vengeance represses the hatred of a few, it goads that of the many." Clement had accompanied his letter of absolution to Earl Gilbert with like exhortations to assist the King and Prince Edward, but also anxiously to study the peace of the realm, and to exhort them to clemency. It was Edward's severity that Clement seemed most to fear, and to him he wrote in yet stronger appeal. "It is against yourself that you are cruel when you are cruel towards your people; it is your own power that you diminish . . . Rather knit their hearts to you by benefits; by these win over your foes, that so of traitors you may make liege men, and of enemies friends." Noble words, and destined to find in Edward one noble enough to understand them. In the first flush of victory Edward had stood alone in desiring the captivity of the Earl and his sons, against the cry of the Marchers for their blood.⁹ He had wept over the corpse of his old playfellow, Henry de Montfort, and had followed the Earl, his uncle, to the tomb. If his brother Edmund joined Mortimer and the other loyalists, Edward took his stand resolutely with the party of moderation and peace. He had marched, as we have seen, to stem the rising in the North. On his arrival at Axholme, he at once entered into negotiations with his cousin, and, adding the solicitations of the queen and the legate to his own, prevailed on him to quit the island and appear before the King.¹ There Richard of Cornwall welcomed him as the saviour of his life; he presented him to his brother, and Henry gave him the kiss of peace.² In spite of the opposition of the Marchers, conscious that

⁸ Rymer, i. p. 463.

⁹ Nangis, p. 372.

¹ Rishanger, p. 50.

² For the two sides of a contested story see Wikes, p. 73, and Annals of Waverley, p. 221.

however, from the blood-connection between them, the court might wish to save the De Montforts, yet that between Simon and the men who had sworn his father's death and mangled his father's corpse no terms were possible, success seemed on the point of crowning this bold stroke of the peace party, when Earl Gilbert interposed. His position was indeed most difficult. He had not fought against liberty, he had bound Edward by oath to preserve it, ere he entered with him on this campaign. He had wrested a like promise from Henry in the very hour of exultation after Evesham. So conscious was he that neither his love of liberty nor his past struggles for it could ever really be forgiven by the Royalists, that he had thought it wise to obtain a formal pardon for his share in the victory of Lewes from the King,³ and a release from his excommunication at the hands of the Pope. But, if distrusted by the conquerors, he was hated by the conquered.⁴ It was his treason to which they attributed the ruin of their cause. Above all, he, the pupil of De Montfort, had sworn the earl's death; the blood of the father lay between him and the sons; the safety of the one lay in the ruin of the other. In the face of the more pressing danger, Earl Gilbert threw his weight into the scale of the Marchers, and peace became impossible. The question was shelved by a reference to arbitrators; Simon, so his party complained, was detained in spite of his safe-conduct, and moved in the train of the royal army at Christmas from Northampton to witness the surrender of Kenilworth, which had been stipulated in the original terms of agreement as the price of his reconciliation with the King.

The castle was the one great obstacle that remained to a general peace. As early as August, 1265, Edward had enclosed, in a letter to Roger Leyburne, a list of the chiefs of its garrison and a summons to surrender. "*Et cum sint nonnulli in castro de Kenilleworth quos possumus et debemus nostros inimicos merito reputare, quorum nomina vobis mittimus præsentibus annotata, existimatur pariter expediens ipsis fore scribendum ex parte nostri domini supradicti ut, si nolint inimici publici reputari et exhæredari ac vitam perdere, prout meruerunt, dictum castrum committant sine morâ quâlibet nostro domino et assignent, nec ista littera alii*

³ *Fœd. i.*, p. 464.

⁴ *Rishanger*, p. 51.

quam religioso deferenda committatur.”⁵ But the garrison attracted no special attention till the departure of Simon for Axholme at the close of November. It seems to have been part of the plan of the campaign on which he entered that the castle should by increased activity draw down on itself the attention and efforts of the Royalists, and thus give the insurgents in the north time to take the field in arms. Immediately therefore on his departure, the garrison scoured the country, ravaging cruelly on all sides, and sweeping such a store of provisions into the castle as would suffice, they boasted, for seven years’ consumption. Every day brought new troops of the Disinherited to swell their numbers, and, pressing as was the danger from Simon at Axholme, the attitude of Kenilworth appeared so formidable to the Royalists that on the 10th of December the King despatched from Windsor a summons to his nobles to meet him at Northampton for a campaign against the castle, and from Northampton on the 26th he directed Osbert Giffard to raise the posse comitatus of Oxfordshire and Warwickshire “ad gravandum et expugnandum illos qui se tenent in castro de Kenelworth.”⁶ The sudden appearance of Simon in the Royal camp and his offer to surrender the castle promised to end the matter, but the opposition of Earl Gilbert had changed the face of affairs, and it was, in his own belief, as a man betrayed and a prisoner that Simon was led before the castle to perform his part of the contract. The reply of the garrison to the royal summons shows that they understood his situation, and freed him from the responsibility of their refusal. They had received ward of the castle, they answered, not from Simon but from the Countess, and to none living save to her, in her presence, would they surrender it.⁷ Adroitly as the refusal was framed it was not likely to make Simon’s position an easier one. Immediately on his arrival in London the award was announced, binding him to quit the realm, and not to return save with the assent of king and baronage when all was again at peace. No formal acceptance seems to have been given, and Simon remained in free custody at London ; but sinister rumours, probably the work of the ultra-royalists whose

⁵ Royal Letters, Hen. III., 406.

⁷ Rishanger, p. 51.

⁶ Rymer, i., p. 467.

great aim it was to get rid of him, reached his ears, and, warned at length that he was doomed to perpetual imprisonment,⁸ he resolved to escape. On the night of Ash Wednesday he stole cautiously out of London with his men and hastened to Winchelsea,⁹ where the citizens were expecting his arrival. His escape gave a new vigour to the war. Llewellyn wasted the Border; the Cinque Ports ravaged more mercilessly than ever; the garrison of Kenilworth pushed their invasions even to Oxford, and the Disinherited again rose in the north. It was spring-time, when, as Wikes expresses it,¹ the vast forests which then covered the country "clothed themselves in their covert of leaves," and it was easy for outlaws to live under the greenwood tree. Baldwin de Wake and John de Eyvil, both of them brothers of knights in garrison at Kenilworth, and the latter a prisoner at Evesham who had but recently escaped, threw themselves, with a numerous band of followers, into the wood of "Suffeld frith," and harried with fire and sword the counties of the north and the eastern coast; Sir Adam Gurdon, a knight of gigantic size and renowned prowess, wasted at the head of a smaller band the shires of the south. In almost every county of the kingdom bands of outlaws were seeking their very existence in rapine and devastation,² while the royal treasury was empty, and London's enormous fine had been only swept into the coffers of the French usurers.

But a strong hand was at the head of affairs, and Edward met his innumerable assailants with untiring energy. Henry of Almaine, son of the King of the Romans, was sent with a large force to the north; Mortimer to the defence of the Welsh border; three or four men were levied from every township in Oxfordshire and Berks to garrison Oxford. Edmund, the King's second son,³ was despatched to Warwick to hold the Kenilworth knights in check. Edward himself and Earl Gilbert hurried on Sir Simon's track to secure the sea-ports by which foreign auxiliaries could be introduced. Throwing out scouts in all directions, he fell, on the 7th of March, suddenly on Winchelsea.⁴ The surprise was complete. Many of the citizens were slain; many rushing in wild panic to their boats were drowned, and their leader, Henry Pedeu, fell into

⁸ Rob. Glocest., p. 564.

⁹ Waverley, p. 221.

¹ Wikes, p. 75.

² Wikes, p. 75.

³ Wikes, p. 76.

⁴ Wikes, p. 76.

Edward's hands.⁵ His life was spared by Earl Gilbert's advice, and Edward made use of him as an agent for the reconciliation of the Cinque Ports. The success of this policy of moderation was immediate. The most obstinate of Henry's opponents submitted in a week, for on the 15th of March the Cinque Ports accepted a peace whose terms were a presage of the coming Dictum.⁶ They were promised a complete oblivion of the past, freedom from all forfeiture, the confirmation of their charters and privileges. "For what reason these concessions were made I know not," growls the royalist scribe of the *Liber de Antiquis Legibus*, and the growl no doubt echoes the general sentiment of his party. Heeding nothing of their discontent Edward held on his way, scouring the south with the same mixture of caution and alacrity, clearing the woods of Berkshire, dispersing Adam Gurdon's band at Whitsuntide, and capturing their renowned leader. The day before this close of the insurrection in the south had seen the last blow given to the rising in the north. Henry of Almaine fell on the knights at Chesterfield while the bulk of them were hunting in the woods; of the two leaders who remained in the town, D'Eyvill cut his way out and escaped, Earl Ferrars, "sick with gout and other woes," was taken in his bed. The band dispersed, some keeping to the woods, others, amongst whom was Henry of Hastings, making their way to Kenilworth.⁷

All was now free for the great siege. Edmund Crouchback had held Warwick in the face of the garrison, but he had been able to do little to check its insolence. The news of Simon's escape to France had filled the knights with hope;⁸ they raised his standard,⁹ boasted of the letters they had received from him,¹ and awaited eagerly the foreign auxiliaries which the family of De Montfort were making strenuous efforts to raise.²

The countess had retired to the Dominican nunnery at Montargis, but her sons were actively employed in raising money and men. Guy de Montfort, their father's elder brother, had married Petronilla, countess of Bigorre in her own right, and this county their son, Eskivat, unable to

⁵ *Annals of Waverley*, p. 221.

⁶ *Lib. Ant. Leg.*, p. 83.

⁷ "Sir Henry of Hastings to Kening-worthe drew and found there fair company of good men inou." *Rob. Gloc.*

565.

⁸ *Wikes*, p. 76.

⁹ *Westminster*, p. 343.

¹ *Wikes*, p. 77.

² *Rishanger*, 53-4.

defend it against the Gascons, had granted in 1250 to his powerful uncle, Earl Simon. In October, 1265, the countess and her son Simon, as yet still in England, surrendered it to Thebault, King of Navarre and Count of Champagne, probably to provide means for the army which the brothers, now united in France, were endeavouring to raise. The King seems to have entertained considerable apprehension of their efforts: the grant made to Prince Edward in April, 1266, of "all foreigners and merchants from beyond sea desiring to come into and abide in this our realm," and the directions to suffer none such to travel or traffic without special licence were probably intended to provide against Sir Simon's spies;³ while in May the King's fears broke out in a writ from Northampton to all bailiffs and barons of his ports; "*Cum Symon de Monteforte et complices et fautores sui, inimici nostri, cum multitudine armatorum quos sibi jam colligunt in partibus Gallicanis regnum nostrum hostiliter ingredi proponant, ut accepimus, ad idem regnum nostrum perturbandum et iteratam guerram in eodem de novo suscitandam,*" they were to keep guard against invaders day and night.⁴

The bold attitude of the Kenilworth garrison, their hopes of foreign aid, and the universal outburst of the spring, had changed the temper of the royal camp. The exultation of Evesham had sunk into despondency. Ottobuono had applied for permission to abandon his hopeless mission, and the Pope, while reproving him for his cowardice, left it at his discretion to stay or to go.⁵ Henry himself gave the strongest sign of his wish to conciliate popular favor in the relaxation of his grasp upon London, and by despatching a writ from the camp enabling the citizens to elect their own sheriffs. The reception of the writ showed how, within the city, late so panic-stricken, the old spirit of freedom had revived; the popular party met the nomination of William Fitz-Richard by the King's friends with a tumultuous demand for the release of their leaders. "Nay, nay," they shouted, "we will have no mayor but Thomas Fitz-Thomas; him we will have freed from prison with his fellows that be at Windsor," and a popular rising against the magnates was only prevented by the armed interposition of

³ Rymer, i., p. 468.

⁴ Ibid.

⁵ Papal MS. in Brit. Mus., quoted Milman, *Lat. Christ.*, vol. v. 71, notes.

Roger Leyburne.⁶ The same new spirit showed itself in the royal army on its gathering at Oxford in the middle of April. Though the summons against Kenilworth had been specially proclaimed at every market cross,⁷ many refused to attend, alleging it to be contrary to law to be summoned thrice in a year;⁸ while those that came showed greater inclination for negotiation than war. It was in compliance⁹ with their counsel that the King and the Legate despatched the Archbishop of Edessa, an Englishman by birth, a man wary and eloquent, to exhort the garrison to surrender; but his exhortations, while giving them timely notice of the King's approach, succeeded only in quickening their activity in the collection of forage. Far from dreading, they had long been desirous of a siege, and as if to provoke the King to yet speedier attack, they seized a royal *cursor*, cut off his hand, and sent him thus mutilated, with ribald jests, to the royal camp.¹ But, bitterly as Henry resented the affront, the siege was still delayed. From Northampton, whither the royal army had marched from Oxford at the end of April, Edward was suddenly called away to check the bands of northern marauders, who had seized and pillaged Lincoln. The task proved an easy one, but it wasted two months, and an attempt of Edmund to invest the castle in the meantime, single-handed, was repulsed with loss.²

At last, on the 23rd of June,³ 1265, the royal army encamped around Kenilworth, and the siege was formed. But, in spite of the King's oath not to stir thence till the castle was his own,⁴ it was plain from the first that war was to be secondary to negotiation. Even after the rejection of the Archbishop's offers we find a safe conduct granted on June 14th, while the army was still at Northampton, to the Disinherited who wished to treat with the Legate; and, a few days only after the commencement of the siege the Legate, the Archbishop of Canterbury, and two of his suffragans, came with the purpose of arranging a peace.⁵ Fifteen days' fruitless efforts ended, however, in an equally fruitless excommunication of the obstinate garrison, and the siege commenced. It was no

⁶ Lib. Ant. Leg., p. 86.

⁷ Close Rolls, Brady, p. 656.

⁸ Rishanger, p. 54.

⁹ Ibid.

¹ Ibid. Close Rolls, Brady, p. 656.

² Annals of Waverley, p. 222.

³ Wikes, p. 76.

⁴ Annals of Waverley, p. 222.

⁵ Ibid.

light undertaking, and Henry had shown his sense of its magnitude by directing the citizens of Warwick to forward to the camp at Northampton . . . "Cementarios et omnes alios operarios de balliva tua, cam hachiis, pikasiis, et aliis utensilibus suis."⁶ The castle was so strong as to have been deemed impregnable. No fortress of the realm could rival it in its equipment of war. Its supplies would have sufficed an ordinary garrison for years.⁷ But the 1,200 milites who had gathered there formed rather an army than a garrison, and made the operations not so much a siege as a war. Sir William de la Cowe and Sir John de la Warre were the wardens of the castle.⁸ The names of some of its defenders are here given, as appended to Edward's letter from Chester, in August, 1265. "Joh. de Muzegros, Ingerramus de Bayllol, Rad. de Lymes', Hugo de Culeworth, Nich. de Bosco, Hugo Wake, Joh. Fitzwalter, Will. de la Cene, Philippus de Boyville, Hugo de Traham, . . . de Caudewelle, milites; Walterus de Barkesville, Nicholaus le Archer, Joh. de Bovy, Ric. de Havering', Joh. Page, Willielmus Camerarius; Walterus de London, clericus; Thomas de Wynton, clericus; Walterus de Glou, Galfridus de Crulefend, Joh. Luvel, Rob. Luvel, Thos. Luvel, Ricardo de Sancto Johanne, valletti." Besides the two chaplains given here, Robert of Gloucester tells us of Master Peris of Radnor, that was the "stalewardeste clerc on of al Engelande."⁹

All had hailed Henry of Hastings as their leader when, with Sir Nicole de Bois, he fled to Kenilworth, after the rout of Chesterfield. They saw without alarm the "tents and pavilions" rising in the meadows around, the lines drawn about them, and the erection of eleven petrariæ, which rained thenceforth night and day a shower of stones upon the castle.¹ Edward had made vigorous efforts to match its renowned armament. In the Close Rolls for the year we find mandates directed to the wardens of the city of London, John Walround and John de Luids, bidding them supply Conrad the balistarius with £12, "ad nervos et cordas emendos et ad balistas faciendas;" and on October 23rd an order to the constable of the castle to forward to Kenilworth quarrells and fourteen balistæ without delay. But throughout the

⁶ Close Rolls, 50 Hen. III., Westminster, Nov. 20.

⁷ Rishanger, p. 51.

⁸ Rob. Gloc., p. 565.

⁹ Ibid.

¹ Rishanger, p. 57.

royal engineers found themselves overmatched. A wooden tower of wondrous height and breadth, constructed by Edward at enormous cost, from whose floors more than 200 balistarii poured arrows and other missiles on the garrison, fell before the stones hurled perseveringly against it by a mangonel from within.² A machine, called the bear, which sheltered a number of archers, was levelled by one of the petrarie of the castle. Barges were brought at much expense from Cheshire, and an attempt was made to assail the walls from the water, but the attempt failed. Throughout the siege, in fact, the besiegers were thrown practically on the defensive.³ The gates of the castle stood defiantly open from morning till night, and the garrison made daily sallies of horse and foot, threatening the very herds which, gathered for the consumption of the Royal army, browsed in the meadows beneath. The besiegers, on the other hand, ventured on no general attack, but confined themselves to repulsing these desperate sallies. On one day only were they interrupted by an incident characteristic of the time. From the open gate descended a bier, surrounded with tapers, bearing the corpse of a brave knight of gentle blood, who had fallen wounded into the hands of the Disinherited, and was now borne forth for burial in accordance with his dying wish. The courtesy of the castellans may have aided the efforts of the peace party in the royal camp. Rejected as their first offer had been, the Legate and the King of the Romans had not ceased their attempts at mediation, and their spirit was shared by the Parliament that met before Kenilworth on St. Bartholomew's day, August 24th, 1266, and which a sense of the importance of the crisis caused to be numerously attended.⁴ Their first act showed their resolve that this strife should cease. The King's most pressing need was for money. The great expense of the siege had forced him to leave his Queen penniless at Windsor.⁵ The treasury he had brought with him was drained. His first demand, therefore, after a solemn confirmation of the charter, was for a tenth from the clergy for three years. The whole Parliament united in their reply. They would first establish peace, if peace were possible, and then answer the King on

² Rishanger, 56.

³ Rishanger, pp. 55-6.

⁴ "Magnum Parliamentum." Annals

of Waverley, p. 222.

⁵ Close Rolls, 50 Hen. III.

this matter. The Legate added his approval, and the King at once gave way. On the 26th of August (according to the original record in Norman-French on the Patent Roll, 50 Hen. III. *in dorso*), "it was agreed and granted by common assent, and by the common counsel of the bishops, abbots, priors, earls, barons, and all others," that six commissioners should be chosen, who in turn should elect other six, to provide for the state of the kingdom and of the Disinherited. The words of the record sufficiently indicate the national character of the act; the additional words of the Annals of Waverley, perhaps, only indicate the general impression which it conveyed. In that account, it is stated that the commissioners, bishops or barons, were specially to be men English-born and lovers of their country.⁶

The character of the commissioners chosen corresponded with the temper of the Parliament. All were of the party which, as distinct both from the ultra-Royalists and from the National cause, we may call "Constitutional Royalists." The Bishops of Exeter, Worcester, Bath and Wells, Robert Walround, Roger de Someri, and Alan de la Zouche formed the first six, and these associated with themselves the Bishop of St. Davids, the Earls of Gloucester and Hereford, John Baillol, Philip Basset, and Warin de Bassingbourne. With the exception of Earl Gilbert all had been staunch supporters of the Crown. De Bohun, Basset, De Someri, and De la Zouche had been captured at Lewes. Bassingbourne had headed the Royalist charge at Evesham. But the majority of them were well known as inclined to a policy of moderation. The peaceful inclinations of the court were notorious, and two of the bishops (Walter Giffard and Nicholas Ely) were, the one a Royal chancellor, the other an ex-chancellor. Walround, a man of great diplomatic experience, had in 1262 been joined on a like commission with Philip Basset and Walter de Merton to effect a compromise with the barons. Basset himself, one of the bravest of the King's supporters, was pledged to moderation by the fortunes of his house. His son-in-law, Hugh Despenser, and his cousin, Ralph Basset, had fallen by Earl Simon's side at Evesham; his daughter, Despenser's wife, had taken shelter with him after that fatal overthrow. The widow of Ralph Basset, again, was the daughter of Roger de Someri, and the father's loyalty alone

⁶ "Indigenas et terram diligentes." Ann. of Waverley, p. 223.

saved her manors from confiscation. Bassingbourne had been enriched by the forfeitures of the barons, but his son had served in their ranks, and was still unpardoned. Of the two earls, De Bohun, though ever on the King's side, was a staunch supporter of English liberties, and his son had been one of the rebel leaders at Lewes and a captive at Evesham. His colleague needs no comment—he was Earl Gilbert of Clare.

The Twelve⁷ were the first to make solemn oath, "*de utilibus ordinandis*;" and the King, the clergy, and the people in succession swore to the observance of their Ban. The Legate and Henry of Almaine were added as umpires in case of any division of opinion,⁸ and at the close of August their deliberations began. It is worth while to notice that on the first head submitted to them, the question "*De statu Regni*," whose importance we shall see presently, the twelve were perfectly in accord. On the second, of the state of the Disinherited, unanimity was impossible. Should any or none be excluded from the redemption of their lands—"fiat exhereditatio aut redemptio"—was the question that met them at the outset. Some contended that there might be cases of total confiscation, others that only a third of the lands should here and there be restored, others advised the restitution of a half. The matter was at last referred to the umpires, and it is to Henry and Ottobuoni that the final decision was owing, and liberty of redemption on one term or another left open to all.⁹

The decision was the signal for a storm of opposition. Liberty of redemption—in other words the rescinding of the confiscation—was the death-blow of the ultra-royalists. Mortimer and his fellow-marchers had the credit, they pushed to the utmost the claim of having "brought the King back." "*Quasi reges dicebantur, regale dominium sibi protectum usurpando eo quod Regem tanquam a carcere liberassent.*"¹ Theirs had been the profit of the pillage of the clergy, and of the confiscation of the Disinherited. Every motive of hatred and greed urged them to resist this proposal to disgorge their spoil. They broke out

⁷ Westminster, p. 344.

⁸ Rishanger, p. 57.

⁹ The questions and decisions of the umpires are appended to the Dictum,

and give us the inner history of the consultations of the Twelve.

¹ Rishanger, p. 48.

in mad violence, threatening the life of the Legate himself. But their power was over, the national resolve was not to be shaken by the threats of a faction, and the utter rout of Mortimer by Llewellyn at Brecknock,² the only defeat that had chequered the course of the Royalist success, in the spring, had damaged their leader's influence. Backed by Edward and Earl Gilbert the Legate met their threats boldly. He had received commission, he said, to excommunicate all disturbers of the peace, and the excommunication which they had solicited against De Montfort, he would, if need were, fulminate against them.³ Then they turned against Earl Gilbert of Gloucester. On him was now to fall the Nemesis of the one black deed that stains his life. The departure of the sons of De Montfort had left him free to break from his unnatural union with the Marchers, to stand forth again as the champion of English right and English justice. He earnestly supported the decision of the arbitrators, and the restoration of their lands to the Disinherited. By grant, or yet oftener by lawless seizure, the bulk of the spoils were in the hands of the fierce marauders with whom he had sworn against the earl's life, and now there were dark rumours of a league against his own.⁴ The struggle at last ended in secession, both parties quitted the royal camp, Mortimer ostensibly to protect his lands against the Disinherited, De Clare with the avowed design of crushing, by the decisive stroke which he afterwards executed, the last relics of the influence of the Marchers.

The strife did not interrupt the labours of the Twelve, while the Bishop of Ely brought tidings to the camp which quickened the anxiety of all for some speedy pacification.⁵ The whole face of the country, drained of its defenders by the concentration of the royal forces round Kenilworth, was scoured by the bands of the Disinherited, in spite of royal directions that castles and towns should be carefully guarded, and all depredators be at once pursued with the Hue and Cry (Close Roll, 50 Hen. III., Westm. March 15). By one of these bands the Isle of Ely, though jealously guarded by the bishop, was seized about Michaelmas, and the natural fortress at once filled with Disinherited.⁶ Prince Edward

² Ann. of Waverley, p. 222.

³ Rishanger, p. 57.

⁴ Rishanger, p. 59.

⁵ Rishanger, p. 58.

⁶ Wikes, p. 77.

was detached against this new danger, but the tide of popular courage was still rising. The king's brief, despatched to all the sheriffs of England, directing the observance of the Great Charter throughout the realm, had no sooner been read at Guildhall on the Eve of St. Michael, than the citizens claimed the free election of their own mayor and sheriffs which was provided in it. These envoys appeared now in the camp, and returned successful. William Fitz-Richard, the royal nominee, was removed, and the city made its own election of bailiffs.⁷ Amid all this the commissioners proceeded in their settlement of the details of redemption, continually referring their disputes to the Legate and Lord Henry, who as invariably decided in a sense favorable to the Disinherited. On the 7th of October, though still unproclaimed, the award must have been really completed, for on that day the king (*Pat. Roll*, 50 Hen. III.,) granted power to Philip Marmion, William de la Zouche, and William de St. Omer, "to treat for peace with those who hold out against us, and to grant them safe-conduct to the royal camp." But the formal announcement was reserved for the Parliament now summoned to meet at Northampton at the close of the month. The Legate, desirous of increasing the sanction to be given by it to the Dictum of the Twelve, had directed all archdeacons to forward lists of the abbots and priors within their provinces, and had threatened with excommunication all spiritual persons who neglected to attend.⁸

In the presence of the two Kings, the Legate, and this great assembly, the Twelve, on the 30th of September, the Wednesday before All Saints' Day, pronounced their award. Beside five copies of minor importance, the oldest and most valuable text of the Dictum is that preserved in the Cott. MS. Claudius D. ii. f. 119 b, a copy beautifully written and in complete preservation, and from which the text given in the Statutes of the Realm has been taken. It bears in the Chronicles and in the heading of the MS., the same title of the "Dictum" of Kenilworth; though sometimes in the course of the document styled "*ordinacio nostra*;" the words have commonly been rendered the "Award" of Kenilworth; it is, perhaps, too late to suggest a change, but I have

⁷ Lib. Ant. Leg., 86-8.

⁸ Rishanger, p. 67.

ventured to style it the "Ban of Kenilworth," partly as the rendering given by the only contemporary, Robert of Gloucester, who designates the *Dictum* by an English term, partly as restoring to the word the truer sense, which, save in the phrase "giving out the bans," it has almost wholly lost.

The *Dictum* is so long, so encumbered with details, and so easily accessible in the Statutes of the Realm, that I need not give more than a brief abstract of most of its later provisions. Its earlier are more important. It is easy, by passing them over, to regard the Ban as the mere capitulation of a beaten party, though even then, our common historians, who adopt this interpretation, forget to explain why it is claimed as a victory by the chroniclers, such as the Annalist of Waverley and Rishanger. But, in truth, the "Award concerning the State of the Realm," which they pass over, is the most important portion of the whole, while the details of the redemption are but temporary arrangements, passing away with the emergency which called them forth.

The Ban opens with words too solemn to be viewed as merely formal. "In the name of the Holy Trinity, to the honour of God, the Saints, and the Catholic Church ; for the honour, prosperity, and peace of the King, the whole realm, and Church of England, we, associated to make provision for the State of the Realm, and of the Disinherited, having from the King and others, barons, councillors of the realm, and nobles of England, full power, according to the form written in public letters sealed with the seals of the aforesaid King and others, make under God's favours those provisions which, according to law and right, we deem to be in accord with God's good pleasure and the peace of the realm, accepting no man's person in this matter, but having God alone before our eyes, and acting therefore as in the sight of God." After this solemn exordium, the Twelve proceed to the first great question laid before them, "*De Statu Regni.*" Their primary care is to restore the machinery of government to its full efficiency ; to render to the king all former rights and prerogatives ; to declare all amenable to his courts ; to annul all acts of his while in captivity. But from this they pass to a series of demands strangely neglected by historians, but constituting a solemn assertion of English liberty. First, they claim a real administration of justice.

"We beseech the King, and respectfully press on his piety, that he appoint such men to administer justice as, seeking not their own but what is of God and justice, may duly settle his subjects' business according to the laws and customs of the realm, and so render the throne of the King's majesty strengthened by justice." Thence they pass to like petition and request that "the King fully keep and observe those ecclesiastical liberties, charters of liberties and of forests, which he is expressly and by his own oath bound to preserve and keep." "Let the King," they add, "establish on a lasting foundation those concessions which he has hitherto made of his own will and not under compulsion, and those needful ordinances which have been devised by his subjects and by his own good pleasure." In the same way they demand the suppression of the abuse of purveyance, the restoration of the Church to its former condition, and the immediate restitution of its charters and privileges to the City of London.

In the opening of their second division, "*De Statu Exhæredatorum*," they lay down the broad principle that in this alone among civil wars confiscation was to be the fate of none. "*Non fiat exhæredatio sed redemptio*." For this purpose the commissioners divide the Disinherited into classes, according to the ransom due from each. The garrison of Northampton, the plunderers of Winchester, those who had fought against the King at Lewes, Evesham, and Chesterfield, who had sent their aids voluntarily against him, or committed ravage, murder, and arson on their neighbours, might redeem their lands on payment of five years' rental. Fines, gradually decreasing to half a year's rental, were assigned to lesser offenders, and elaborate directions given for the due execution of the redemption, on which it is needless to dwell. The difficult question of the De Montforts was evaded; Henry III. had referred it in the spring to the decision of the King of France, and the Court seems to have contemplated their return after all was settled and peaceful. The murder of the King of Almaine's son Henry by Simon and Guy de Montfort, in revenge of their father's death, alone prevented this by turning into fierce hatred the neutral dispositions of the Court. "*Disposuit Deus*," wrote some bitter Royalist exultingly under the picture of the murder on the wall of the church at Viterbo, "*Disposuit Deus ut*

per eos vir tantus obiret, ne, revocatis his, gens Anglica tota periret.”⁹ But the commissioners petitioned King and Pope alike against the popular canonization of Earl Simon and “the vain and silly miracles” reported to be wrought at his tomb. Henry was requested to satisfy as far as possible the disappointed grantees, lest their resentment should furnish occasion for fresh war; immediate restitution was promised to those innocent persons who had been disinherited on false charges, and punishment was denounced against their accusers. Finally, a complete indemnity for all wrongs done or endured throughout the troubles, and the full benefits of the Ban were assured to those who availed themselves of its terms within forty days after their publication, and the King was requested to appoint twelve commissioners to carry out equitably its details.

The Annalist of Waverley’s summary of it, “facta pronunciatione adjudicati sunt terris suis omnes exhæredati,”¹ marks the popular appreciation of the Ban as a victory for the national cause. Those only who had won the victory failed to recognise its value. With the exception of Henry of Hastings and the mutilator of the King’s *cursor*, on whom a fine of seven years was imposed, the defenders of Kenilworth fell within the general terms of the Dictum, and on its confirmation by King and baronage it was at once offered them. The exemption of their leader may have angered the garrison, or the rising at Ely roused fresh hope; that offer was at any rate refused. Then the Legate, in his red cope among a ring of bishops, pronounced against them the sentence of excommunication. They met it with defiance and mockery; innumerable pennons and standards fluttered out along the walls,² whence a puppet Legate, in cope of white, pronounced a jesting excommunication on Ottobuoni and the Royalists.³ In spite, however, of defiance and mockery, the inevitable end drew near. Louis of France, since the rejection of his award by the barons, had been the steady friend of the

⁹ Westminster, p. 350.

¹ Ann. of Waverley, p. 223.

² Rishanger, p. 58.

³ Rob. Gloucester, p. 566. It was the device of

“Master Philip Porpeis that was a quaint man,

Clerk and hardy of deeds, and their chirurgeon.

They made a white Legate in his cope of white

As the other red, as him in despite,
And he stood as a Legate upon the castle wall,

And cursed King and Legate and their men all.”

Crown. He had suffered the Count of S. Pol to conduct auxiliaries to the King, but his opposition had foiled⁴ the efforts of the sons of De Montfort to raise a similar force, and Simon and Guy had abandoned their enterprise and were following their cousin Philip de Montfort to the Italian campaign. Thinned as the royal army had been by the departure of Prince Edward, Earl Gilbert, and Mortimer, it still clung to the siege, and summoned carpenters for the erection of huts for winter quarters. Want and fever disabled the once enterprising garrison from taking advantage of their weakness. Provisions were failing ; there was no forage for the horses ; the want of water was ill compensated by abundance of wine ; there was no wood for fires, and the walls were so shattered by the constant attacks that the sufferings of the besieged from cold became intolerable. In the beginning of November they were forced to agree to a surrender if no aid came within forty days, and in the suspension of arms which followed they sent letters to Simon. No relief came or was expected, and in the middle of December the garrison marched out. They had to the last hidden their state from the besiegers, but there were now only two days' rations in the place, and their worn and emaciated frames, the pale and discoloured faces of the Disinherited, told the tale of sufferings gallantly borne. The stench within the castle which they left was so intolerable as nearly to suffocate the Royalists who entered it.⁵

This is no time to tell the story, which never has been told, of the events which followed the surrender of Kenilworth. It is enough to say that Ely accepted the Dictum, that Earl Gilbert's masterly seizure of London procured its definite acceptance as public law.

I cannot close this memoir without suggesting two thoughts which seem to spring from the history of this memorable year. It is perhaps the greatest instance in our annals of that resolve to struggle on when all seemed lost, to which so much of our freedom is owing. It is fortunate that in the battle of liberty, as in the battle of Waterloo, Englishmen never knew when they were beaten. Other peoples have wrested liberty from weak princes on the crash of thrones, but England alone has won hers in the hour of

⁴ Rishanger, p. 55.

Wikes, p. 77-8.

royal triumph, or from kings such as Edward the First. And then, with this Ban begins what has been a national characteristic ever since. We do not write *Væ Victis* as the motto of our revolutions, nor can party struggles cause us to forget our truer brotherhood as Englishmen. It is something that from the Dictum of Kenilworth we can look proudly along to the self-restraint of the Restoration, to the clemency of 1688, to the forbearance and mutual respect which restrain the bitterness of the political strifes of to-day.