Erskine May, Vol. III, Chapter XIII, pp. 172-187

Results of Catholic Emancipation

The Irish Franchise

The third measure of the government still remains to be noticed,—the regulation of the elective franchise in Ireland. The abuses of the 40s. freehold franchise had already been exposed; and were closely connected with Catholic emancipation.(1) The Protestant landlords had encouraged the multiplication of small freeholds, being, in fact, leases held of middlemen, —in order to increase the number of dependent voters, and extend their own political influence. Such an abuse would, at any time, have demanded correction: but now these voters had transferred their allegiance from the landlord to the Catholic priest. 'That [173] weapon,' said Mr. Peel, 'which the landlord has forged with so much care, and has heretofore wielded with such success, has broke short in his hand.' To leave such a franchise without regulation, was to place the county representation at the mercy of priests and agitators. It was therefore proposed to raise the qualification of a freeholder, from 40s. to £10, to require due proof of such qualification, and to introduce a system of registration.

So large a measure of disfranchisement was, in itself, open to many objections. It swept away existing rights without proof of misconduct or corruption, on the part of the voters. So long as they had served the purposes of Protestant landlords, they were encouraged and protected: but when they asserted their independence, they were to be deprived of their franchise. Strong opinions were pronounced that the measure should not be retrospective; and that the bona fide 40s. freeholders, at least, should be protected:(2) but the connection between this and the greater measure, then in progress, saved it from any effective opposition; and it was passed rapidly through both Houses. By one party, it was hailed as a necessary protection against the Catholic priests and leaders: and by the other, it was reluctantly accepted as the price of Catholic emancipation.

Catholics in the Lords

On the 28th April, the Duke of Norfolk, Lord [174] Clifford, and Lord Dormer came to the House of Lords, and claimed their hereditary seats among the peers, from which they had been so long excluded; and were followed, a few days afterwards, by Lord Stafford, Lord Petre, and Lord Stourton. Respectable in the antiquity of their titles, and their own character, they were an honourable addition to the Upper House; and no one could affirm that their number was such as to impair the Protestant character of that assembly.

And in the Commons

Mr. O'Connell, as already stated, had been returned in the previous year for the county of Clare: but the privilege of the new oath was restricted to members returned after the passing of the Act. That Mr. O'Connell would be excluded from its immediate benefit, had been noticed while the bill was in progress; and there can be little doubt that its language had been framed for that express purpose. So personal an exclusion was a petty accompaniment of this great remedial measure. By Mr. O'Connell it was termed 'an outlawry' against himself. He contended ably, at the bar, for his right of admission; but the Act was too distinct to allow of an interpretation in his favour. Not being permitted to take the new oath, and refusing, of course, to take the oath of supremacy,—a new writ was issued for the county of Clare. Though returned again without opposition, Mr. O'Connell [175] made his exclusion the subject of

unmeasured invective; and he entered the House of Commons, embittered against those by whom he had been enfranchised.

At length this great measure of toleration and justice was accomplished. But the concession came too late. Accompanied by one measure of repression, and another of disfranchisement, it was wrung by violence from reluctant and unfriendly rulers. Had the counsels of wiser statesmen prevailed, their political foresight would have averted the dangers before which the government, at length, had quailed. By rendering timely justice, in a spirit of conciliation and equity, they would have spared their country the bitterness, the evil passions, and turbulence of this protracted struggle. But thirty years of hope deferred, of rights withheld, of discontents and agitation, had exasperated the Catholic population of Ireland against the English government. They had overcome their rulers; and owing them no gratitude, were ripe for new disorders.(3)

Catholic emancipation, like other great measures, fell short of the anticipations, alike of supporters and opponents. The former were disappointed to observe the continued distractions of Ireland,—the fierce contentions between Catholics and Orangemen,—the coarse and truculent agitation by which the ill-will of the people was excited against their rulers—the perverse spirit in which every effort for the improvement of Ireland [176] was received,—and the unmanageable elements of Irish representation. But a just and wise policy had been initiated; and henceforth statesmen strove to correct those social ills which had arrested the prosperity of that hopeful country. With the Catholic Relief Act commenced the regeneration of Ireland.

On the other hand, the fears of the anti-Catholic party for the safety of the church and constitution were faintly realised. They dreaded the introduction of a dangerous proportion of Catholic members into the House of Commons. The result, however, fairly corresponded with the natural representation of the three countries. No more than six Catholics have sat, in any parliament, for English constituencies. Not one has ever been returned for Scotland. The largest number representing Catholic Ireland, in any parliament, amounted to fifty-one,—or less than one-half the representation of that country,—and the average, in the last seven parliaments, to no more than thirty-seven.(4) In these parliaments [177] again, the total number of Roman Catholic members may be computed at about one-sixteenth of the House of Commons. The Protestant character of that assembly was unchanged.

Footnotes.

1. Supra, p. 155, and Reports of Committees in Lords and Cornmons, 1825.
2. See especially the speeches of Mr. Huskisson, Viscount Palmerston, and the Marquess of Lansdowne, Hans. Deb., 2nd Ser., xx.1373, 1468, xxi.407, 574.
3. See supra, Vol. II. 374.
4. Number of Roman Catholic Members returned for England and Ireland since the year 1835: from the Test Rolls of the House of Commons; the earlier Test Rolls having been destroyed by fire, in 1834.

	ENGLAND	IRELAND
New Parliament 1835	2	38
Do. 1837	2	27
Do. l841	6	33
Do. 1847	5	44
Do. 1852	3	51
Do. 1857 to 1858	1 (Arundel)	34
Do. 1859	1 (Arundel)	34

These numbers, including members returned for vacancies, are sometimes slightly in excess of the Catholics sitting at the same time.

Quakers and Jews

To complete the civil enfranchisement of dissenters, a few supplementary measures were still required. They could only claim their rights on taking an oath; and some sects entertained conscientious objections to an oath, in any form. Numerous statutes had been passed to enable Quakers to make affirmations instead of oaths;(1) and in 1833, the House of Commons, giving a wide interpretation to these statutes, permitted Mr. Pease,—the first Quaker who had been elected for 140 years,—to take his seat on making an affirmation. In the same year, Acts were passed to enable Quakers, Moravians, and Separatists, in all cases, to substitute an affirmation for an oath.(2) The same privilege was conceded, a few years later, to dissenters of more dubious denomination, who, having been Quakers or Moravians, had severed their connection with those sects, but retained their scruples concerning the taking of an oath.(3) Nor have these been barren concessions; for several members of these sects have since been admitted to Parliament; and one, at least, has taken a distinguished part in its debates.

Relief to dissenters and Roman Catholics had been [178] claimed on the broad ground that, as British subjects, they were entitled to their civil rights, without the condition of professing the religion of the state. And in 1830, Mr. Robert Grant endeavoured to extend this principle to the Jews. The cruel persecutions of that race form a popular episode in the early history of this country: but at this time they merely suffered, in an aggravated form, the disabilities from which Christians had recently been liberated. They were unable to take the oath of allegiance, as it was required to be sworn upon the Evangelists. Neither could they take the oath of abjuration, which contained the words, 'on the true faith of a Christian.' Before the repeal of the Corporation and Test Acts, they had been admitted to corporate offices, in common with dissenters, under cover of the annual indemnity Acts: but that measure, in setting dissenters free, had forged new bonds for the Jew. The new declaration was required to be made 'on the true faith of a Christian.' The oaths of allegiance and abjuration had not been designed, directly or indirectly, to affect the legal position of the Jews. The declaration had, indeed, been sanctioned with a forecast of its consequences: it was one of several amendments which the Commons were constrained to accept from the Lords, secure the passing of an important measure.(4) The operation of the law was fatal to nearly all the rights of a citizen. A Jew could not hold any office, civil, military, or corporate. He could not follow [179] the profession of the law, as barrister or attorney, or attorney's clerk: he could not be a schoolmaster, or usher at a school. He could not sit as a member of either House of Parliament; nor even exercise the elective franchise, if called upon to take the electors' oath.

Mr. Grant advocated the removal of these oppressive disabilities in an admirable speech, embracing nearly every argument which was afterwards repeated, again and again, in support of the same cause. He was brilliantly supported, in a maiden speech, by Mr. Macaulay, who already gave promise of his future eminence. In the hands of his opponents, the question of religious liberty now assumed a new aspect. Those who had resisted, to the last, every concession to Catholics, had rarely ventured to justify their exclusion from civil rights, on the ground of their religious faith. They had professed themselves favourable to toleration; and defended a policy of exclusion, on political grounds alone. The Catholics were said to be dangerous to the state,—their numbers, their organisation, their allegiance to a foreign power, the ascendency of their priesthood, their peculiar political doctrines, their past history,—all testified to the political dangers of Catholic emancipation. But nothing of the kind could be alleged against the Jews. They were few in number, being computed at less than 30,000, in the United Kingdom. They were harmless and inactive in their relations to the state; and without

any distinctive political character. It was, indeed, difficult to conceive any [180] political objections to their enjoyment of civil privileges,—yet some were found. They were so rich, that, like the nabobs of the last century, they would buy seats in Parliament,—an argument, as it was well replied, in favour of a reform in Parliament, rather than against the admission of Jews. If of any value, it applied with equal force to all rich men, whether Jews or Christians. Again, they were of no country,—they were strangers in the land, and had no sympathies with its people. Relying upon the spiritual promises of restoration to their own Holy Land, they were not citizens, but sojourners, in any other. But if this were so, would they value the rights of citizenship, which they were denied? Would they desire to serve a country, in which they were aliens? And was it the fact that they were indifferent to any of those interests, by which other men were moved? Were they less earnest in business, less alive to the wars, policy, and finances of the state; less open to the refining influences of art, literature, and society? How did they differ from their Christian fellow-citizens, 'save these bonds'? Political objections to the Jews were, indeed, felt to be untenable; and their claims were therefore resisted on religious grounds. The exclusion of Christian subjects from their civil rights, had formerly been justified because they were not members of the established church. Now that the law had recognised a wider toleration, it was said that the state, its laws and institutions being Christian, the Jews, who denied Christ, could not be suffered to share, with Christians, the government of the state. [181] Especially was it urged, that to admit them to Parliament would unchristianise the legislature.

Jewish Relief Rejected

The House of Commons, which twelve months before had passed the Catholic Relief Bill by vast majorities, permitted Mr. Grant to bring in his bill by a majority of eighteen only; and afterwards refused it a second reading by a majority of sixty-three. The arguments by which it was opposed were founded upon a denial of the broad principle of religious liberty; and mainly on that ground were the claims of the Jews for many years resisted. But the history of this long and tedious controversy must be briefly told. To pursue it through its weary annals were a profitless toil.

In 1833, Mr. Grant renewed his measure; and succeeded in passing it through the Commons: but the Lords rejected it by a large majority. In the next year, the measure met a similar fate. The determination of the Lords was clearly not to be shaken; and, for some years, no further attempts were made to press upon them the re-consideration of similar measures. The Jews were, politically, powerless: their race was unpopular, and exposed to strongly-rooted prejudice; and [182] their cause,—however firmly supported on the ground of religious liberty,—had not been generally espoused by the people, as a popular right.

But while vainly seeking admission to the legislature, the Jews were relieved from other disabilities. In 1839, by a clause in Lord Denman's Act for amending the laws of evidence all persons were entitled to be sworn in the form most binding on their conscience.(5) Henceforth the Jews could swear upon the Old Testament the oath of allegiance, and every other oath not containing the words 'on the true faith of a Christian.' These words, however, still excluded them from corporate offices, and from Parliament. In 1841, Mr. Divett succeeded in passing through the Commons a bill for the admission of Jews to corporations: but it was rejected by the Lords. In 1846, however, the Lords, who had rejected this bill, accepted another, to the same effect, from the hands of Lord Lyndhurst.(6)

Parliament alone was now closed against the Jews. In 1848, efforts to obtain this privilege were renewed without effect. The Lords were still inexorable. Enfranchisement by legislative authority appeared as remote as ever; and attempts were therefore made to bring the claims of Jewish subjects to an issue, in another form.

Baron de Rothschild's Case

In 1847, Baron Lionel Nathan de Rothschild was [183] returned as one of the members for the city of London. The choice of a Jew to represent such a constituency attested the state of public opinion, upon the question in dispute between the two Houses of Parliament. It may be compared to the election of Mr. O'Connell, twenty years before, by the county of Clare. It gave a more definite and practical character to the controversy. The grievance was no longer theoretical: there now sat below the bar a member legally returned by the wealthiest and most important constituency in the kingdom: yet he looked on as a stranger. None could question his return: no law affirmed his incapacity; then how was he excluded? By an oath designed for Roman Catholics, whose disabilities had been removed. He sat there, for four sessions, in expectation of relief from the legislature: but being again disappointed, he resolved to try his rights under the existing law. Accordingly, in 1850, he presented himself, at the table, for the purpose of taking the oaths. Having been allowed, after discussion, to be sworn upon the Old Testament,—the form most binding upon his conscience,—he proceeded to take the oaths. The oaths of allegiance and supremacy were taken in the accustomed form: but from the oath of abjuration he omitted the words 'on the true faith of a Christian,' as not binding on his conscience. He was immediately directed to withdraw: when, after many learned arguments, it was resolved that he was not entitled to sit or vote until he had taken [184] the oath of abjuration in the form appointed by law.

In 1851, a more resolute effort was made to overcome the obstacle offered by the oath of abjuration. Mr. Alderman Salomons, a Jew, having been returned for the borough of Greenwich, omitted from the oath the words which were the Jews' stumbling block. Treating these words as immaterial, he took the entire substance of the oath, with the proper solemnities. He was directed to withdraw: but on a later day, while his case was under discussion, he came into the House, and took his seat within the bar, whence he declined to withdraw, until he was removed by the Sergeant at Arms. The House agreed to a resolution, in the same form as in the case of Baron de Rothschild. In the meantime, however, he had not only sat in the House, but had voted in three divisions; and if the House had done him an injustice, there was now an opportunity for obtaining a judicial construction of the statutes, by the courts of law. By the judgment of the Court of Exchequer, affirmed by the Court of Exchequer Chamber, it was soon placed beyond further doubt, that no authority short of a statute, was competent to dispense with those words which Mr. Salomons had omitted from the oath of abjuration.

There was now no hope for the Jews, but in overcoming the steady repugnance of the Lords; and this was vainly attempted, year after [185] year. Recent concessions, however, had greatly strengthened the position of the Jews. When the Christian character of our laws and constitution were again urged as conclusive against their full participation in the rights of British subjects, Lord John Russell and other friends of religious liberty were able to reply:—Let us admit to the fullest extent that our country is Christian,—as it is: that our laws are Christian,—as they are; that our government, as representing a Christian country, is Christian,—as it is,—what then? Will the removal of civil disabilities from the Jews, unchristianise our country, our laws, and our government? They will all continue the same, unless you can argue that because there are Jews in England, therefore the English people are not Christian; and that because the laws permit Jews to hold land and houses, to vote at elections, and to enjoy municipal offices, therefore our laws are not Christian. W e are dealing with civil rights; and if it be unchristian. to allow a Jew to sit in Parliament,—not as a Jew, but as a citizen,—it is equally unchristian to allow a Jew to enjoy any of the rights of citizenship. Make him once more all alien, or cast him out from among you altogether.

Baron de Rothschild continued to be returned again and again for the city of London,—a testimony to the settled purpose of his [186] constituents;(7) but there appeared no prospect of relief. In 1857, however, another loophole of the law was discovered, through which a Jew

might possibly find his way into the House of Commons. The annual bill for the removal of Jewish disabilities had recently been lost, as usual, in the House of Lords, when Lord John Russell called attention to the provisions of a statute,(8) by which it was contended that the Commons were empowered to substitute a new form of declaration, for the abjuration oath. If this were so, the words 'on the true faith of a Christian,' might be omitted; and the Jew would take his seat, without waiting longer for the concurrence of the Lords. But a committee, to whom the matter was referred, did not support this ingenious construction of the law; and again the case of the Jews was remitted to legislation.

The Jews Admitted to the Commons

In the following year, however, this tedious controversy was nearly brought to a close. The Lords, yielding to the persuasion of the Conservative premier, Lord Derby, agreed to a concession. The bill, as passed by the Commons, at once removed the only legal obstacle to the admission of the Jews to Parliament. To this general enfranchisement the Lords declined to assent: but they allowed either House, by resolution, to omit the excluding words from the oath of abjuration. The Commons would thus be able to admit a Jewish [187] member,—the Lords to exclude a Jewish peer. The immediate object of the law was secured: but what was the principle of this compromise? Other British subjects held their rights under the law: the Jews were to hold them at the pleasure of either House of Parliament. The Commons might admit them to-day, and capriciously exclude them to-morrow. If the crown should be advised to create a Jewish peer, assuredly the Lords would deny him a place amongst them. On these grounds, the Lords' amendments found little favour with the Commons: but they were accepted, under protest, and the bill was passed.(9) The evils of the compromise were soon apparent. The House of Commons was, indeed, open to the Jew: but he came as a suppliant. Whenever a resolution was proposed, under the recent Act,(10) invidious discussions were renewed,—the old sores were probed. In claiming his new franchise, the Jew might still be reviled and insulted. Two years later, this scandal was corrected; and the Jew, though still holding his title by a standing order of the Commons, and not under the law, acquired a permanent settlement.(11) Few of the ancient race have yet profited by their enfranchisement: but their wealth, station, abilities, and character have amply attested their claims to a place in the legislature.

Footnotes.

1. 6 Anne, c. 23; 1 Geo. I. st. 2, c. 6 and 13; 8 Geo. I. c. 6; 22 Geo. II. c. 46.
2. 3 and 4 Will. IV. c. 49, 82.
3. 1 and 2 Vict. c. 77.
4. See supra, p. 161.
5. 1 and 2 Vict. c. 105.
6. 8 and 9 Vict. c. 52.
7. In 1849, and again in 1857, he placed his seat at the disposal of the electors, by accepting the Chiltern Hundreds. but was immediately re-elected.
8. 5 and 6 Will. IV. c. 62.
9. 21 and 22 Vict. c. 48, 49; Comm. Journ., cxiii. 338; Hans. Deb., 3rd Ser., cli. 1905.
10. A resolution was held not to be in force after a prorogation; Report of Committee. Sess. 1, 1859, No. 205.
11. 23 and 24 Vict. c. 63. By the 29 and 30 Vict. c. 19, a new form of oath was established, from which the words 'on the true faith of a Christian' were omitted; and thus, at length, all distinctions between the Jews and other members were obliterated.

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