

JUDGES RETURNING TO THE BAR.

English Bar. Instances of the kind were common during the troublous times of Charles I., the Commonwealth, Charles II., James II., and William III. Since then no example has occurred in English History, though there is a very noticeable one in Scotland, to which we shall advert.

The earliest example is that of Sir Robert Heath, who was made Chief Justice of the Common Pleas by Charles I. in 1631. Three years afterwards he was discharged from his office, apparently without reason, and next term he took his place at the Bar as junior serjeant: *Oro. Cur.* 375. He continued in practice till the same monarch restored him to the Bench in 1641. His memory is to be freed from the charges of "bribery and corruption," which at one time were made against him. One of his own rules of conduct is memorable: "to do justice for justice' sake, to do *justum juste*; for it is very hard for an ill man to be a good judge."

Prideaux and Browne, who were Lords Commissioners of the Great Seal, appointed by the Commons in 1643, were removed in 1646, and the custody of the Seal transferred to the Speakers of the Houses. Both of them thereupon resumed practice at the Bar. Next in chronological order is the great name of Sir Matthew Hale. He was upon the Bench in 1658, but at the death of Cromwell refused a new commission from his son Richard. Thereafter the better opinion appears to be that he practised till the Restoration, when he was made Chief Baron of the Exchequer.

We may next group a list of comparatively or positively insignificant Judges, who, having been appointed to office by the Parliament or by Cromwell, forfeited their judicial position on the accession of Charles II. to the throne. These Judges were Fountaine (Commissioner of the Great Seal), Glynn, Newdigate, Parker, Widdrington, Archer and Wyndham. These, at the Restoration, all returned to the Bar. Of these Archer was replaced on the Bench in 1663, and Wyndham in 1670.

Next comes the memorable name of Pemberton. He was first appointed Judge of the King's Bench by Charles II. in 1679, but was dismissed from office in less than a year, owing, it is said, to the intrigues of Scroggs, C. J. He at once returned to practice, and in about a year he was selected to supersede Scroggs in the Chief Justiceship. He was

afterwards, at his own request, transferred to the head of the Common Pleas; but in 1688 the King, apparently for political reasons, dismissed him from this Court. Upon this he returned to the Bar a second time, where he continued in practice for fourteen years, till his death. The judgment of posterity upon this versatile judge may be expressed in the language of Macaulay (which Mr. Foss cites approvingly): that his memory is to be regarded with that respect which always accompanies moderation and independence.

In the time of James II. we have first Robert Atkyns. He was appointed Judge in 1672; but in 1680, being out of favour with the Government, he was either dismissed or he resigned. Afterwards he practised in the Courts till he was made Chief Baron by William III. in 1689. In 1687, Wythens, who had been appointed Judge of the King's Bench by Charles II., and continued in office by James II., was discharged because he had gone against the King's wishes. The very next day, it is told, he came to Westminster Hall and practised as a serjeant with immense popularity. About the same time (or rather in 1686) the Judge, Sir Creswell Levinz, so well known from his Reports, suddenly received a *supersedeas* from James II.; "whereto," in his own language, "he humbly submitted." He at once went back to the Bar, and continued in large and remunerative practice till his death in 1696.

We may now again form another group of Judges who forfeited their position at the Revolution. These were Lutwyche, Rotherham, Ingleby, and Jenner. Lutwyche not only returned to the Bar, but commenced a series of Reports, which have preserved his name from oblivion. The others also returned to the Bar, but none were ever replaced upon the Bench.

The last names of English Judges we have to mention are those of Anthony Keck and George Hutchins. They were both Commissioners of the Great Seal under William III. The former was discharged in 1690, and the latter in 1693, and both recommenced practice thereafter.

The one instance in Scotch history which we have been able to verify of a Judge returning to practice, is in the case of the Hon. James Erskine of Grange, brother of the Earl of Mar. He was in the high position