

## SECTION II.

## DISTINCT RACES IN SCOTLAND.

WE come now to the consideration of an important subject; to make a few remarks upon the different races of men which appear originally to have settled in Scotland, and the division of orders and ranks in society into which they came to be separated during this remote era of our history. At the death of Malcolm Canmore, in 1093, four distinct races were discernible in Scotland. There was first the Gaelic or Celtic people, speaking the Erse language, and inhabiting Argyle, Galloway, Inverness, and nearly the whole of Scotland to the north of the Firth of Forth. Beyond them the hardy and warlike Norwegians had seized upon the Western Isles, and colonized the extreme districts of Ross and Caithness. In the richer lowland counties were the Saxons, a Gothic race, from whom Malcolm Canmore had chosen his queen, and whom he highly favoured and encouraged, while the convulsion in the sister country at the great era of the conquest had driven many opulent Normans to desert the service of the conqueror, and to carry their arms and their allegiance to a foreign prince, by whom they were warmly welcomed. During the long interval of a century and a half, which elapsed between the death of Malcolm Canmore and the accession of Alexander the Third, these materials became insensibly blended and mixed into

each other ; but the process was extremely gradual, and during the whole period we can discern distinct marks of the different races.<sup>1</sup> At the death of Malcolm Canmore, an event took place which exhibited in strong colours the animosity of the Gaelic people to the Saxons and Normans. Donald Bane, who had taken refuge in the Hebrides upon the usurpation of Macbeth, having emerged from his northern asylum, seized the throne ; and his first exertion of power was to expel from the country all the foreigners who had intruded into his dominions.<sup>2</sup> The frequent residence of David the First previous to his accession to the Scottish throne at the court of England, and his possession of the large and extensive district of Cumberland, which was exclusively occupied by a Saxon and Norman population, must have contributed to soften the lines of distinction between the different classes of his subjects when he became king. Yet his anxious efforts could not altogether extinguish their jealous animosities, or prevent them from breaking out on most occasions where they were compelled to act together.<sup>3</sup> For example, at the battle of the Standard, Malise Earl of Strathern, a Gaelic chief, remonstrated with the Scottish king against his design of placing his squadrons of Norman soldiers, who were clothed from head to foot in steel, in the front of the battle. “ Why,” said he to the king,

<sup>1</sup> Fordun a Goodal, b. viii. c. 2, 4, and 6, b. ix. c. 34, and c. 47, 48, c. 63.

<sup>2</sup> Chron. Johan. Brompton, p. 990. Chron. Melrose, p. 174.

<sup>3</sup> Rich. Hagulstad, pp. 318, 323. Johan. Hagulstad, p. 262.

“ will you commit yourself so confidently to these Normans? I wear no armour, yet none of them this day will go before me in the battle.” Upon which, David, to prevent a rupture between the two divisions of his army, found himself compelled to give the post of honour to the Galwegians, whom the Norman historians represent as a nation of absolute savages.<sup>1</sup> An attention to the arrangement of the Scottish army in this memorable battle, and to the circumstances under which it was fought, will throw some light upon the various tribes which at this time composed the body of the nation. After the Galwegians, who insisted on forming the first line, and were led by their chiefs Ulric and Donald, came the second body, which was composed of the Norman men-at-arms, the knights and the archers, commanded by Prince Henry, whilst the soldiers of Cumberland and Teviotdale fought in the same line, and beneath the same banner. In the third division were drawn up the men of Lothian, along with the Islanders and Katherans; and the king himself commanded a reserve in which he had placed the Scots and the natives of Moray, with a select body of Saxon and Norman knights, which he kept near him as a body guard.<sup>2</sup> There were at this time in the English army two Norman barons, Robert de Brus, and Bernard Baliol, who possessed estates in Galloway, which they held of David as their liege lord. Before the battle, Bruce, who

<sup>1</sup> Ethelredus de Bello Standardi, pp. 341, 342. Ricardus Hagulstad. Hist. p. 318.

<sup>2</sup> Ethelredus de Bello Standardi, p. 342.

had been an old and dear friend of the Scottish king during his residence in England, requested an interview, and anxiously advised him to desist from further hostilities, and to consent to a peace. In the arguments which he employed, as given by a contemporary historian,<sup>1</sup> the enmity between the Scottish and the Norman race, is strongly insisted upon. He paints the Scots as rejoicing at the opportunity of avenging themselves upon a nation which was odious to them, and accuses the king of extreme folly in making war on that people by whom he had supported his power against the attacks of his Scottish subjects. "Think not," says he, "that one part of these savage tribes will be a sufficient defence against the rest, that the Scots will be barrier enough against the Scots; and raise not your banner for the destruction of those whose faithfulness in your defence has made them to be hated by the Scottish race."

The two races in David's army, thus strikingly described, seem to have been the Galwegians, the Islesmen, the Katherans, on one hand; and the Normans and Saxons, the men of Lothian, of Teviotdale, and of Cumberland, on the other. Nor is it difficult to discover the cause of this animosity. The fact just mentioned, that Bruce and Baliol, two Norman barons, possessed lands in Galloway, will guide us to it. It was the policy of this monarch to encourage the influx of Normans into his dominions, by conferring upon them estates in the districts which his Gaelic

<sup>1</sup> Ethelredus de Bello Standardi, p. 343.

subjects considered exclusively their own ; and out of this policy arose a mutual jealousy and hatred, which it required centuries entirely to eradicate. The arms, the appearance, and the manners of these Galwegians, are marked by the same author as essentially different from the rest of the Scottish army. When compared with the Norman men-at-arms, they were little else than naked savages. Their swords and a buckler of cow hide were their feeble weapons of defence against the steel casques, the chained-mail shirts, the cuirass, vantbrace, greaves, and iron gloves of the English army ; but their first attack, in spite of these disadvantages, was so fierce as to be frequently successful. On the other hand, the Saxons and the men of Teviotdale, Cumberland, and Lothian, appear to have been a civilized and noble race, in comparison with the Galwegians, the Islesmen, and the Kathेरans.<sup>1</sup>

The distinction indeed between the Saxon and the Gaelic people was as strongly marked as that between the Normans and the Galwegians. Malcolm's queen was a Saxon princess, and the sister of Edgar Atheling, the heir of the Saxon line in England. She spoke only her own language, and when she communicated with the Gaelic chiefs or clergy, employed as her in-

<sup>1</sup> Ethelredus de Bello Standardi, p. 345. In Thierry's *Histoire de la Conquête de l'Angleterre par les Normans*, a work of great talent, the author falls into an error (vol. iii. p. 24) in describing the Scottish army as having for its ensign or standard a simple lance. Alred expressly tells us that they had "Regale vexillum, ad similitudinem Draconis figuratum." De Bello Standardi, p. 346.

terpreter the king her husband, who was acquainted both with his own language and that of the English people.<sup>1</sup>

At the coronation of Alexander the Third, we have seen that the Gaelic portion of his subjects claimed a part in the ceremony, by the appearance of the Highland bard or sennachy, who repeated in their own tongue the genealogy of the king ;<sup>2</sup> and, during the long wars of the three Edwards, the animosity of the same people to the new race of the Saxons and the Normans, is manifested by the constant rebellions of the Galwegians and northern Scots ; and the apparent facility with which the English monarchs on all occasions separated the lords of the isles and the northern chiefs from the common cause of liberty. Bruce's expedition against the Western Isles in 1315, which was followed by a temporary reduction of the chiefs, evinces the continued feelings of hostility, and almost the only occasion on which David the Second evinced a spirit worthy of his father, was in the suppression of a serious rebellion of the northern provinces of his dominions.<sup>3</sup> As to the traces of the Norwegian or Scandinavian race in the body of the Scottish people, they were, although perceptible, very partial and evanescent. Their settlements upon the mainland in Caithness and Ross were destroyed, and the Western Isles wrested from them by Alexander ; so that, were it not for the impression which they

<sup>1</sup> Turgot, Vita Margaretæ Reginae. Pinkerton's Vitæ Sanctorum, No. 5.

<sup>2</sup> Fordun a Goodal, vol. ii. p. 81.

<sup>3</sup> History, vol. i. p. 334.

have left in the Scandinavian names and superstitions which are prevalent in those remote regions, and the instruction communicated to the Islesmen in the art of navigation, we should not be able to discover that the children of Odin had ever penetrated into our country.

In the period of a hundred and twenty years, between the accession of Alexander the Third and the death of David the Second, the Norman and Saxon population became so intimately blended together, as to appear one and the same people ; and their superior power and civilisation had gradually gained, from their rude and fierce competitors, the Gaels, the greater and the fairer portion of Scotland. Even in those northern provinces, which had long exclusively belonged to them, barons of Norman and Saxon extraction were settled in possession of immense estates ; and the government of the constitution, which, there is little doubt, had been under Malcolm Canmore essentially Celtic, was now as decidedly feudal, including certain orders and ranks in society which were clearly and strongly marked.

The king, under the feudal form of government, appears to have been superior to the highest nobility, in three great characters. He was the leader of the army in war, and possessed of the supreme military command ;<sup>1</sup> he was the great judge or administrator of justice to his people, either in person or by deputy ; and the fountain of honour, from whose will and authority all distinction and pre-eminence was

<sup>1</sup> Simeon Dunelm. pp. 200, 210.

considered as primarily derived. It would be a great mistake, however, to suppose that his power was any thing approaching to despotic; for it was controlled by that of the higher nobles, whose estates and vassallage enabled them almost singly to compete with the sovereign. At the same time, there is decided proof that ample provision was made for the due maintenance of the royal state and dignity, both in the person of the king himself and his eldest son, whom, at a very early period, we find was considered as entitled to the crown by hereditary right.<sup>1</sup>

Edgar in 1106, being then on his death-bed, bestowed upon his younger brother David, afterwards David the First, a large portion of his dominions, which included the ancient kingdom of Strathclyd, and nearly the whole of the country to the south of the firths, with the exception of the Earldom of Dunbar;<sup>2</sup> a proof that the personal estate of the Scottish king was at that time very great. Many other incidental notices, which are scattered in the pages of our early historians, may be brought to corroborate the same fact.

<sup>1</sup> Simeon Dunelm. p. 223.

<sup>2</sup> Ethelredus de Bello Standardi, p. 344. M<sup>r</sup>Pherson's MS. Notes on Hailes' Annals, vol. i. p. 48. Hailes appears to be in an error, when he imagines that the "portio regni," spoken of by Ethelred, was the part of Cumberland possessed by the Scottish kings, as it was after this that David acquired Cumberland from King Stephen. David, before he was king, erected Glasgow into a bishoprick, from which arises a strong presumption that it lay within his principality; and we find, that on his newly-erected Abbey of Selkirk, afterwards Kelso, he bestowed the tithes of his can of cheeses from Galloway, from which it is evident that he was the feudal superior of that district. Dalrymple's Collect. p. 404.



In the year 1152, the prospects of the kingdom were clouded by the death of Prince Henry, the only son of David the First, upon which that monarch, anxious for the stability of the throne in his own family, commanded his grandson, Malcolm, the eldest son of Henry, to be proclaimed heir to the crown; and on the second son, William, afterwards William the Lion, he bestowed his territories in Northumberland as the appanage of the heir apparent.<sup>1</sup> And we know that David Earl of Huntingdon, brother of William the Lion, held, at the time of his death, which happened in the year 1219, the earldoms of Garioch and Lenox, the lordship of Strathbogy, the town of Dundee, with the lands of Innerbervie, Lindoris, Longforgrund, and Inchmartin, in consequence of a grant from the king, his brother.<sup>2</sup>

In addition to these facts, which prove the power and personal estate of the king, under the feudal government in Scotland, the riches of the royal revenue are evinced by various pecuniary transactions of William the Lion. It is well known that this monarch paid to Richard the First the sum of ten thousand merks, for resigning the homage extorted by Henry the Second.<sup>3</sup> Upon another occasion, he gave Richard two thousand merks to make up the heavy ransom which was exacted from the English monarch by the emperor.<sup>4</sup> Upon John, King of Eng-

<sup>1</sup> Fordun a Goodal, vol. i. 296. Johan. Hagulstad. p. 280. Guilielm. Neubrigen. p. 76.

<sup>2</sup> Fordun a Goodal, vol. ii. pp. 33, 42.

<sup>3</sup> Fordun a Hearne, p. 724.

<sup>4</sup> Chron. Melrose, p. 179.

land, he bestowed the marriage of two of his daughters, with fifteen thousand merks ;<sup>1</sup> and, if we may believe Hoveden, the same king offered fifteen thousand merks for Northumberland.<sup>2</sup> Allowing ten pounds of modern money for every merk of ancient, we find from these insulated instances of the sums paid by this monarch, that he actually disbursed, out of the royal revenue, two hundred and seventy thousand pounds, and was ready, in addition to this, to have paid a hundred and fifty thousand for Northumberland.

Upon the marriage of Alexander the Second with the daughter of Lord Ingelram de Coucy, the portion of the youthful bride amounted to seven thousand merks, which was given her as a third of the royal revenue, so that in 1239, the date of this marriage, the annual revenue of the King of Scotland, proceeding from the crown lands and other sources, amounted to twenty-one thousand merks,<sup>3</sup> somewhat more than two hundred thousand pounds. The same monarch, notwithstanding the drain of the royal treasury, in his father's time, gave ten thousand merks, besides lands, as a marriage portion with his second sister ; and, on one memorable occasion, when the Scottish sovereign paid a Christmas visit to Henry the Third at York, in the mutual interchange of gifts between the two kings, Alexander, for the purpose of fitting out his royal host for the continent, made him a

<sup>1</sup> *Fœdera*, vol. i. p. 155.

<sup>2</sup> Hoveden, fol. 420.

<sup>3</sup> *Math. Paris*, pp. 828, 829. *M·Pherson's Notes on Winton*, vol. ii. p. 481.

present of two thousand merks, or twenty thousand pounds of our present money, taking from him, at the same time, an acknowledgment, that the gift was never to be drawn into a precedent, but proceeded solely from his liberality.<sup>1</sup>

Under Alexander the Third, the riches of the royal revenue appear to have kept pace with the general prosperity of the kingdom. We have seen that monarch obtain the kingdom of Man and the Western Isles by purchase from the King of Norway, paying down for them the sum of four thousand merks with an annual payment of a hundred merks for ever; and, not long after this transaction, the same monarch, at the marriage of his daughter to Eric, king of Norway, assigned as her dower the sum of seven thousand merks, together with lands worth seven hundred merks a year.<sup>2</sup> To give an exact account of the various sources of the royal revenue in those early times, would require a careful and lengthened investigation. The rents and produce of the royal lands and manors throughout the country, the dues payable under the name of can on the products of agriculture, hunting, and fishing, the customs on the exports of wool, wool-fels, and hides, on articles of domestic manufacture, on foreign trade and shipping, the fees and fines which arose at this period in all countries where the feudal system was established, from

<sup>1</sup> Chron. de Dunstaple, MS. Bib. Cotton. quoted in M·Pherson's Notes to Winton, vol. ii. p. 480. Rotuli, Pat. 14. Hen. III. m. 5. and 15. m. 7.

<sup>2</sup> Fordun a Hearne, p. 1358. Fœdera, vol. ii. p. 1079.

the administration of justice upon the wardship and marriage of heirs, and in the escheats of estates to the crown, the temporary aids which the tenants and vassals of every feudal sovereign were bound to pay on great and solemn occasions, such as making the king's son a knight, the marriage of his daughters, his own coronation or marriage, or his ransom from captivity ; these, amongst others, formed some of the principal sources of the revenue of the crown.<sup>1</sup>

If we make allowance for the rudeness of the period, the personal state kept up by the Scottish sovereign was little inferior to that of his brother monarch of England. The various officers of the royal household were the same ; and when encircled by these dignitaries, and surrounded by his prelates, barons, and vassals, the Scottish court, previous to the long war of liberty, and the disastrous reign of David the Second, was rich in feudal pomp and magnificence. This is proved, by what has already been observed as to the condition of the royal revenue, when compared with the inferior command of money which we find at the same era in England ;<sup>2</sup> and some interesting and striking circumstances, which are incidentally mentioned by our ancient historians, confirm this opinion. As early as the age of Malcolm Canmore, an unusual splendour was introduced into the Scottish court by his Saxon queen. This prin-

<sup>1</sup> Chalmers' *Caledonia*, vol. i. p. 747. *Chamberlain's Accounts*, *passim*.

<sup>2</sup> *Gulielmus Neubrig*. p. 98. *M'Pherson's Notes on Winton*, vol. ii. p. 481.

cess, as we learn from her life by Turgot, her own confessor, brought in the use of rich and precious foreign stuffs, of which she encouraged the importation from distant countries. In her own dress, she was unusually magnificent; whilst she increased the parade of the public appearance of the sovereign by augmenting the number of his personal attendants, and employing vessels of gold and silver in the service of his table.<sup>1</sup> Under the reign of Alexander the First, the intercourse of Scotland with the East, and the splendid appearance of the sovereign, are shown by a singular ceremony which took place in the High Church at St Andrews. This monarch, anxious to evince his devotion to the blessed apostle, not only endowed that religious house with numerous lands, and conferred upon it various and important immunities, but, as an additional evidence of his piety, he commanded his favourite Arabian horse to be led up to the high altar, whose saddle and bridle were splendidly ornamented, and his housings of a rich cloth of velvet. A squire at the same time brought the king's body armour, which were of Turkish manufacture, and studded with jewels, with his spear and his shield of silver, and these, along with the noble horse and his furniture, the king, in the presence of his prelates and barons, solemnly devoted and presented to the church. The housings and arms were shown in the days of the historian who has recorded the event.<sup>2</sup>

<sup>1</sup> Turgot, *Vita Sanct. Marg.* apud Pinkerton, *Vitæ Sanctorum*.

<sup>2</sup> Extract from the Register of the Priory of St Andrews, in Pinkerton's *Dissertation*, Appendix, vol. i. p. 463. *Winton*, vol. i. p. 286.

On another occasion, the splendour of the Scottish court, and we must add, the foolish vanity of the Scottish monarch and his nobles, were evinced in a very remarkable manner. Alexander the Third, and a party of a hundred knights, were present at the coronation of Edward the First; and in the midst of the festival, when the king sat at table, and the wells and fountains were running the choicest wines, he and his attendants dismounted, and turned their horses, with their splendid housings, loose amongst the populace, to become the property of the first person who caught them,—a piece of magnificent extravagance; which was imitated by Prince Edmund, the king's brother, and others of the English nobles.<sup>1</sup>

From these facts some idea may be formed of the wealth of the royal court of Scotland. Like the other contemporary feudal monarchs of Europe, the sovereign was surrounded by certain great ministers of state, under the names of the justiciar, the chancellor, the constable, the marshal, the seneschal, the chamberlain, and the hostiarius or doorward. These offices were held by the richest and most powerful nobles, whose wealth enabled them to keep up a train of vassals, which almost rivalled the circle round the sovereign; and who, in their own court and castle, mimicked the royal pomp, and were surrounded by their own cupbearers, constables, seneschals, and chamberlains.<sup>2</sup> Next to the king, therefore, such great officers held the highest rank in the nation; and

<sup>1</sup> Knighton, Col. 2461.

<sup>2</sup> Robertson's Index, p. 82.

no correct picture of the feudal government of Scotland, during this early period, can be given, without briefly considering the respective duties which devolved upon them.

In the history of our legal administration, during that long period which occupies the interval between the accession of the First Alexander and the First James, the office of great justiciar holds a conspicuous place; although, from the very few authentic records of those times, it is difficult to speak with precision as to its peculiar province.

It has already been remarked, that, in this early age, the king was the fountain of justice, and the supreme judge of his people. We are indebted to a contemporary historian for a fine picture of David the First in this great character. "It was his custom," says Ethelred, "to sit, on certain days, at the gate of his palace, and to listen in person to the complaints of the poorest suitors who chose to bring their cause before him. In this employment he spared no labour to satisfy those who appealed to him of the justice of his decision; encouraging them to enter into argument, whilst he kindly replied, and endeavoured to convince them of the justice of his reasons.—Yet," adds the historian, with great simplicity, "they often showed an unwillingness to acquiesce in his mode of argument."<sup>1</sup>

The progresses which were annually made by the king, for the purpose of redressing grievances, and

<sup>1</sup> Fordun a Hearne, p. 940.

inquiring into the conduct of his officers throughout the realm, have been already noticed under the reign of Alexander the Third ; but the general administration of justice, at a very early period, seems to have been intrusted to two great judges,—the one embracing, within his jurisdiction, the northern, and the other the southern part of the kingdom. Under these supreme officers, a variety of inferior judges appear to have enjoyed a delegated and subordinate jurisdiction, who borrowed their designations from the district in which they officiated, and were denominated the Judge of Gowry, the Judge of Buchan, the Judge of Strathern, the Judge of Perth ; but of whose exact authority and jurisdiction no authentic record remains.<sup>1</sup> The existence, both of the supreme and of the inferior judges, can be traced in authentic muniments, preserved chiefly in the Cartularies, throughout the reigns of Alexander the First, David the First, and Malcolm the Fourth, during a period of nearly sixty years, from 1106 to 1165. William the Lion, who assumed the crown immediately after Malcolm IV., appears to have changed or new-modelled these offices, by the creation of two great judges named Justiciars ; the one the Justiciarius Laodoniæ, whose authority extended over the whole of the country south of the two Firths ; and the other the Justiciarius Scotiæ, embracing within his jurisdiction the whole of Scotland beyond the Forth. The series of

<sup>1</sup> Chalmers' *Caledonia*, p. 703, vol. i. note D. Crawford's *Officers of State*, p. 431. Robertson's *Index to the Charters*, Post-script, p. 53.



justiciars of Scotland from the reign of this prince, during a period of nearly a century, has been traced through documents of unquestionable authenticity;<sup>1</sup> but that of the justiciaries of Lothian cannot be so accurately ascertained,<sup>2</sup> while there is a third officer of the same high dignity, the *Justiciarius ex parte boreali aquæ de Forth*, whom we find incidentally mentioned at the same period; upon whose authority and jurisdiction the utmost research of our antiquaries has not succeeded in throwing any distinct or certain light.<sup>3</sup> There can be little doubt, I think, that the judicial authority of these officers was pre-eminent, and that it embraced a civil and criminal jurisdiction, which was next to that of the sovereign. At the period of the temporary subjugation of Scotland by Edward the First, this monarch, in his new-modelling of the machine of government, introduced a change by appointing two justices in Lothian, two others in the country lying between the Forth and the eastern end of the Grampian range, called the Mounth, and, lastly, by separating the great northern district, extending from the Grampians to Caithness,

<sup>1</sup> Dalryel's *Desultory Reflections on the Ancient State of Scotland*, p. 43. See Chamberlain's *Accounts, Excerpta E. Rotulo Comptorum Tempore Regis Alex. III.* vol. i. p. 8.

<sup>2</sup> The *Justiciarius Laudoniæ* appears in the year 1263, under Alexander the Third. Chamberlain's *Accounts, Excerpt. E. Rotulo Compt. Temp. Alexandri III.* p. 15.

<sup>3</sup> In the *Excerpt. E. Rotul. Compt. Temp. Custodum Regni*, p. 58, there appears "William St Clair, *Justiciarius Galwythie*."

into two divisions, over which he placed two supreme justiciars.

Scotland, however, soon recovered her independence; and it seems probable, that the ancient institution of a single justiciar of Lothian was restored, along with her other native dignities, by Robert Bruce. It is certain, at least, that the existence of a single judge under that title can be traced through authentic documents down to the period of James the Fifth. The latter institution of Edward, regarding the four justiciaries of Scotland, who presided over the regions to the north of the Forth, as it was sanctioned by ancient usage, was preserved by him who was the restorer of ancient right.<sup>2</sup> It would thus appear that, during the reign of Robert Bruce, the civil and criminal jurisdiction of the country was, with the exceptions to be immediately noticed, divided between five different justiciars; and it is probable, although it cannot be stated with historical certainty, that these supreme judges acted by deputies, who officiated in their absence, or presided in minor cases; and that they continued to be the supreme judges in Scotland down to the time of James the Fifth.

The office of great justice or justiciar was undoubtedly of Norman origin;<sup>3</sup> and, reasoning from

<sup>1</sup> Ryley's *Placita*, p. 504.

<sup>2</sup> *Cartulary of Lindores*, p. 10. *MS. Monast. Scotiæ*, p. 26, quoted in *Caledonia*, p. 707. *Robertson's Index*, pp. 67, 74.

<sup>3</sup> *Spelman's Glossarium*, p. 399. *Chamberlain's Accounts*, *Excerpt. E. Rotul. Compt. Tempore Alex. III.* pp. 29, 42, 43.

the analogy between the office in England and in Scotland, it may be conjectured, that the principal duties which it embraced, at this period, regarded those subjects or suits which affected the revenue or emolument of the king.

The office of chancellor, next in dignity to that of the justiciar, is certainly as ancient as the reign of Alexander the First ; but the precise nature of the authority committed to this great officer at this remote era of our history, cannot be easily ascertained ; and where authentic records do not demonstrate its limits, speculation is idle and unsatisfactory. It existed at a very early period in France, under the reign of Charlemagne ; it is found in England in the Saxon times ; but it was not till a much later period in Scotland, when the traces of a Celtic government became faint and almost imperceptible, and the Gothic race of the Saxons and the Scoto-Normans drove back the Celtic people into the remoter regions of the country, that Herbert the Chancellor appears amongst the officers of the crown.<sup>1</sup> From this period, down to the coronation of Bruce, the industry of Chalmers has given a series of these great officers ; and without entering into any antiquarian or etymological discussion, we have an authentic muniment in the contract of marriage between the son of Edward the First and the Maiden of Norway, by which it appears, that the custody of the king's seal, the examination of all writs which received the royal signa-

<sup>1</sup> Crawford's Officers of State, p. 4.

ture, and the cancelling or refusing the royal sanction to such deeds as appeared irregular, were then the chief duties of this high officer. In addition to this, the chancellor was the most intimate councillor of the king; he was always lodged near the royal person, he attended the sovereign wherever he went, both in peace and war, and was witness to his most solemn charters, letters, and proclamations.<sup>1</sup> This great office continued, as is well known, down to the period of the union of the kingdoms; an existence, if we compute from its appearance under Alexander the First, of nearly six centuries.

It has been already observed, that the supremacy of the civil and criminal jurisdiction of the great justiciars was limited by some exceptions; and the first of these is to be found in the existence of the ancient office of sheriff, the earliest appearance of which is to be found in the beginning of the twelfth century, under the reign of Alexander the First.<sup>2</sup> This, however, is the very dawn of the institution, and the division of Scotland into regular and certain sheriffdoms must be referred to a much later era. It seems to be a sound opinion of the author of *Caledonia*, that “sheriffdoms were gradually laid out, as the Scoto-Saxon people gained upon the Gaelic inhabitants, and as the modern law, introduced by the Saxons, prevailed over the ruder institutions of

<sup>1</sup> Rymer's *Fœdera*, vol. ii. p. 483. Balfour's *Practiques*, p. 15.

<sup>2</sup> Dalrymple's *Collections*, p. 405. *Charta Fundacionis Abbacie apud Schelechyreh, nunc Selkraig.*

our Celtic forefathers.”<sup>1</sup> Previous to the conclusion of that division of our national history, which this author has termed the Scoto-Saxon period, extending from 1097 to 1306, the whole of Scotland, with the exception of Argyle, Galloway, and the western coast, had been progressively divided into sheriffdoms. Many of these offices, the appointment to which was originally in the crown, had, at this early period, become hereditary in certain families; and, in imitation of the regal state, every greater baron appears to have appointed his sheriff,<sup>2</sup> in the same manner as we find many of these petty feudal and ecclesiastical princes, surrounded by their chamberlains, chancellors, marshals, and seneschals. It is certain, from the evidence of authentic records, that the term schire was anciently given to districts of much smaller extent than the sheriffships of the present day. In the foundation charter of William the Lion to the abbey of Aberbrothock, we find the shires of Aberbrothoc, of Denechyn, of Kingoldrum, and of Athyn; and in the Cartulary of the abbey of Dunfermline, Dumfermeline schire, Dolorshire, Newburnshire, Musselburghshire, with the shires of Gelland and Gaitmilk. Over these minute divisions we do not discover any presiding judge enjoying the title of sheriff. Previous, however, to the memorable year 1296, these smaller divisions had disappeared; and the different enactments of Edward the First,

<sup>1</sup> Caledonia, p. 715.

<sup>2</sup> Cart. of Glasgow, 163, 5, quoted in Caledonia, p. 716. Cart. Newbottle, p. 89.

preserved in the volumes of Prynne and Rymer, present us with an exact enumeration of thirty-four sheriffdoms, over most of which a separate sheriff presided.<sup>1</sup> The jurisdiction of this judge, both in civil and in criminal cases, appears to have been very extensive, and within his own district nearly as unlimited as that of the great justiciars throughout the kingdom.

Under that savage state of feudal liberty, which lasted for many centuries in Scotland, all the higher nobles, both civil and ecclesiastical, enjoyed the power of holding their own court, and deciding causes where the parties were their vassals. The origin of this is curious. At a very early period, probably about the middle of the twelfth century, in the reign of Malcolm the Fourth, the land of Scotland began to be partially divided into royalty and regality. Those parts which were distinguished by the term royalty, were subjected to the jurisdiction of the king and his judges; the districts, on the other hand, which were comprehended under the name of regalities, acknowledged the jurisdiction of those ecclesiastics or nobles, who had received a grant of lands from the crown, with the rights of regality annexed to it.

The clergy appear to have been the first, who, in the charters of lands which they often procured from the crown, prevailed upon the sovereign to convey to them the right of holding their own courts, and to

<sup>1</sup> Robertson's Index to the Charters. Notes to the Introduction, p. xl.

grant them an immunity from the jurisdiction of all superior judges. As early as the reign of Alexander the First, a royal charter conferred upon the monks of the abbey of Scone the right of holding their own court in the fullest manner, and of giving judgment either by combat, by iron, or by water; together with all privileges pertaining to their court; including the right in all persons resident within their territory, of refusing to answer except in their own proper court;<sup>1</sup> which right of exclusive jurisdiction was confirmed by four successive monarchs. The same grants were enjoyed, as we know from authentic documents, by the Bishop of St Andrews, and the Abbots of Holyrood, Dunfermline, Kelso, and Aberbrothoc, and we may presume, on strong grounds, by every religious house in the kingdom. These powers of jurisdiction excluded the authority or interference of every other judge, of which we have decided proof in the Cartulary of Aberbrothoc.<sup>2</sup> It appears, that in the year 1299, the abbot of that house repledged from the court of the king's justiciar, which was held at Aberdeen, one of his own men, upon pleading the privilege of the regality of Aberbrothoc; and in imitation of the clergy, the higher barons soon procured from the royal fear or munificence, the same judicial rights and exemptions, which they in their turn conveyed to their vassals. A superior baron in those ancient times was thus in every respect a king in miniature. Surrounded by the of-

<sup>1</sup> Cartulary of Scone, p. 17.

<sup>2</sup> Cartulary of Aberbrothoc, p. 19.

ficers of his little feudal court, he possessed the high privilege of dispensing justice, or what he chose to term justice, amongst his numerous vassals; he was the supreme criminal judge within his far-extended territories, and enjoyed the power of life and death, of imprisonment within his own dungeon, and of reclaiming from the court, even of the high justiciar, any subject or vassal who lived upon his lands. Can we wonder that, in the course of years, men, possessed of such high and independent privileges, became too powerful for the crown itself? It was in consequence of this, that Bruce, in the disposition of many immense estates, which were forfeited for their determined opposition to his claim to the crown, bestowed them in smaller divisions upon new proprietors, who rose upon the ruins of these ancient houses.<sup>1</sup> The frequent grants of these estates by Bruce, diminished the strength of the ancient aristocracy; but it is evident, at the same time, that, as the new charters frequently conveyed along with the lands the rights of holding their own court, the power which had controlled the crown during the struggle of this great prince for his kingdom, was rather divided than diminished; so that the new barons, under the weak reign and long captivity of his successor, became as independent and tyrannical as before. When we come to consider the origin of the royal burghs, and the privileges conferred upon them by the sovereign, we shall discover a different and inferior judicial

<sup>1</sup> Robertson's Index. Charters of Robert the First.



power, which extended to the determination of all causes arising within the limits of their jurisdiction.

In this brief sketch of our civil history it is impossible to enter upon the great and important subject of the law of the kingdom, as it existed during this remote period; but it may be generally remarked, that in the courts of the great justiciaries, as well as in those held by the inferior officers of justice throughout the realm, most causes of importance appear to have been determined by the opinion of an assize, or an inquest; a mode of legal decision which we can discern as early as the reign of William the Lion. In the year 1124, we find an inquest appointed to decide a dispute regarding the pasturage of the King's Forest, which had arisen between the monks of Melrose and the men of Wedale. The inquest, which consisted of twelve "Good Men," *fideles homines*, and Richard Moreville the constable, were sworn on the relics of the church, and sat in presence of the king, his brother, David Earl of Huntingdon, with the prelates and nobles of the court. It is probable, although it cannot be affirmed with historical certainty, that even at this early age, the opinion of the majority of this jury of thirteen decided the case, and that unanimity was not required.<sup>1</sup>

In an inferior dispute, which seems to have arisen between the monastery of Soltre and the inhabitants of the manor of Crailing, in the year 1271, regarding the right of the monks to a sheaf of corn every har-

<sup>1</sup> Chron. Melrose, p. 176. Cartul. of Melrose, p. 64. Chalmers's Caledonia, pp. 752, 753.

vest out of the manor, the cause was determined by a jury summoned from the three contiguous manors of Eckford, Upper Crailing, and of Hetun, who, under the title of *Antiquiores patriæ*, decided it in favour of the monks of Soltre.<sup>1</sup>

The office of constable, which appears in Scotland as early as the reign of Alexander the First, was exclusively military, and undoubtedly of Norman origin. This great officer was the leader of the military power of the kingdom. In England, we find him, in 1163, denominated indiscriminately *constabularius* and *princeps militiæ*;<sup>2</sup> and there is every reason to believe that the province of the constable, as head of the army, was the same in both countries. What was the exact distinction in our own country between the office of the *marechal* and the constable, it is not very easy to determine. That they were different, appears certain from the fact, that we find a *marechal* and a constable under the same monarch, and held by different persons; but we have no authentic record which describes the nature of the duties which devolved upon the *marechal*, although there is no doubt that both offices, at a very early period, became hereditary in certain great families.<sup>3</sup> The offices of the *seneschal*, or high steward, and of the chamberlain, belonged to the personal estate of the sovereign, and those who held them enjoyed the supreme authority in the management of

<sup>1</sup> Cartul. of Soltre, No. 17.

<sup>2</sup> Math. Paris, p. 1028, l. 63, l. 11. Twysden, x. scrip. vol. ii. Glossary.

<sup>3</sup> Chalmers's Caledonia, pp. 709, 710.

the king's household, and in the regulation of the royal revenue. Both are as ancient as the reign of David the First; and the rolls of the royal expenditure, and receipts of the various items and articles of revenue, which were kept by the chamberlain, in his capacity of treasurer, still fortunately remain to us a most curious and instructive monument of the state of the times. The offices of inferior interest, though of equal antiquity—the panetarius, or royal butler; the hostiarius, or keeper of the king's door; the pincerna, or cup-bearer; to which we may add, the keepers of the king's hounds, the royal falconers, the keeper of the wardrobe, the clerk of the kitchen, and various other inferior dignitaries—sufficiently explain themselves, and indicate a high degree of personal state and splendour. Wherever the king moved his court, he was commonly attended by the great officers of the crown, who were generally the richest and most powerful nobles of the realm. It will be recollected, also, that such high barons were, in their turn, encircled by their own seneschals, chamberlains, constables, and personal attendants, and brought in their train a brilliant assemblage of knights, squires, and inferior barons, who regarded their feudal lord as a master to whom they owed a more sacred and paramount allegiance, than even to their king. To these officers, knights, and vassals, who, with their own soldiers and martial dependents, constituted what was termed the “following” of the great baron whom they served, his voice was, in the most strict and literal meaning, a supreme law,—his service, their only road to

distinction. This has been sometimes called the principle of honour ; but as their neglect was sure to be visited with punishment, if not with utter ruin and degradation, it was, in truth, a lower principle—of selfishness and necessity, which limited their duties to the single business of supporting their liege lord against those whom he chose to esteem his enemies. None indeed can attentively read the history of those dark times, without being aware that the immense body of the feudal vassals, and military retainers, throughout Scotland, regarded the desertion of their king, or their leaguings themselves against the liberty of their country, as a crime of infinitely lighter dye, than a single act of disobedience to the commands of their liege lord ; and considered in this light, we must view the feudal system, notwithstanding all the noble and romantic associations with which it has invested itself, as having been undoubtedly, in our own country, a principal obstruction to the progress of liberty and improvement. We shall conclude our remarks upon the distinction of ranks in Scotland, by some observations upon the state of the lower classes of the people during this important period of our history.

These classes seem to have been divided into two distinct orders. There were, first, the free farmers, or tenants of the crown, of the church, and of the greater or lesser barons, who held their lands under lease for a certain rent, were possessed of considerable wealth, and enjoyed the full power of settlement in any part

of the country which they chose to select, or under any landlord whom they preferred. This class is generally known in the books of the Chamberlain's Accounts by the title of "liberi firmarii;" and a convincing proof of their personal freedom at a very early period is to be found in the fact, which we learn from these most curious and instructive records, that the farmers of the king possessed the full power of removing from the property of the crown to a more eligible situation. During the minority of the Maiden of Norway, a sum of money was advanced to the farmers of the king, in order to prevail upon them to remain on the crown lands of Liberton and Laurencetown, which they were about to desert, on account of a mortality amongst their cattle.<sup>1</sup> It was, I conjecture, this free body of feudal tenants who were liable to be called out on military service, and formed the great proportion of the Scottish infantry, or spearmen, in the composition of the army.

Very different from the condition of this first order was the second class of cottars, bondsmen, or villeyns. Their condition forms a marked and extraordinary feature in the history of the times. They were slaves who were sold with the land; and their master and purchaser possessed over their persons the same right of property which he exercised over

<sup>1</sup> "Item firmariis regis terre de Liberton et Laurancyston quorum animalia anno predicto moriebantur ad valorem x librarum iiii. c. de gracia ad presens, et ne exeant terram regis in paupertate, et ne terra regis jaceat inculta." Chamberlain's Accounts, Temp. Custodum Regni, p. 65.

the cattle upon his estate. They could not remove without his permission; wherever they settled, his right of property attached to them; and, whenever he pleased, he could reclaim them, with their whole chattels and effects, as effectually as he could seize on any animal which had strayed from his domain. Of this state of slavery innumerable examples are to be found in the cartularies, establishing, beyond the possibility of controversy, that a considerable portion of the labouring classes of the community was in a state of absolute servitude.

We find, for example, in the Cartulary of Dunfermline, that a bondsman, of the name Allan, the son of Constantine, with his two sons, had in 1340 transferred themselves from the lands of the abbot of this religious house to some other habitation, under pretence that they were the bondsmen of Duncan Earl of Fife. On being ordered to come back to their own master, they had refused; upon which an inquest was summoned, for the purpose of determining to whom Allan, the son of Constantine, and his sons, belonged; when it was found that they were the property of the abbot.<sup>1</sup>

So early as the year 1178, William the Lion made a donation of Gillandrear M'Suthen and his children to the monks of Dunfermline for ever.<sup>2</sup> We find that David the First, in 1144, granted, to the Abbot

<sup>1</sup> Cartulary of Dunfermline, p. 654. M'Farlane's Transcript. The folio in the original 98.

<sup>2</sup> Cartulary of Dunfermline, folio 13.

of Kelso, the church of Lesmahago, along with the lands of the same name, and their men; and still later, in the 1222, the Prior and the Convent of St Andrew's, by an express charter, which is still preserved, permit a bondsman and his children to change his master, and to carry his property along with him.<sup>1</sup> In the year 1258, Malise Earl of Strathern gave to the monks of Inchaffray, for the safety of his own soul, and the souls of his ancestors and successors, John, surnamed Starnes, the son of Thomas, and grandson of Thore, with his whole property, and the children which he had begotten, or might beget;<sup>2</sup> and this for ever.

When a grant of land was made by the king, or by any of his nobility, either for military service, or to be held blench for the payment of a nominal feuduty, it carried along with it, to the vassal, the power of removing the tenants, with their cattle, provided they be not native bondsmen. The right to these, and the power of reclaiming them, remained in the person of the lord of the soil, or feudal superior. Thus, in a valuable collection of ancient papers, we find a charter, by which one of the Roberts confers

<sup>1</sup> MS. *Monasticon Scotiæ*, p. 33; quoted in Chalmers's *Caledonia*, vol. i. p. 720, and MS. *Original Charters in Advocates' Library*, No. 27. See Dalrymple's *Fragments of Scottish History*, p. 26. See also *Cartulary of Kelso*, p. 9, as to the bondage of the labourers in the time of Alexander the First, and the *Cartulary of Dunfermline*, M'Farlane's *Transcript*, pp. 592, 593.

<sup>2</sup> *Cartulary of Inchaffray*, p. 36; quoted in *Annals of Scotland*, vol. i. p. 304.

upon Maria Comyn certain lands, “ cum licentia abducendi tenentes, cum bovis suis, a terris, si non sint nativi et ligii homines.”<sup>1</sup>

In consequence of this certain and acknowledged right, in the feudal landlord or baron, to the property of his bondsmen, with their children and children's children for ever, it became a matter of great consequence to ascertain with exactness, and to preserve, the genealogy of this unfortunate class of men, in order that, upon any desertion or removal, the power of reclaiming them might be exerted with certainty and success. Accordingly, the cartularies present us with frequent examples of genealogies of this sort.<sup>2</sup> The names of these bondsmen are essentially different from the free-born vassals and tenants, who commonly took their names from their lands. In an ancient deed, entitled a perambulation to determine the boundaries between the lands of the Abbot of Dunfermline and those of David Doorward, which took place in the year 1231, under Alexander the Second, the names of the landholders and minor barons, and of the bondsmen who attended upon this occasion, are easily distinguishable from each other. We meet with Constantine de Lochor, and Philip de Loch, and many others, after which occur such uncouth appellatives as the following—Gillecostentin, Bredinlamb, Gilleserfmae Rolf, Gillecolmmacmelg, John Trodi, Riscoloc, Beth MacLood, Gillepatric Macmanethin;

<sup>1</sup> Haddington's Collections, quoted by Dalryel, Fragments, p. 27.

<sup>2</sup> Cartul. of Dunferm. pp. 145, 146. See Appendix, letter O.



and it may be noticed as a singular circumstance, which proves how different were the habits and customs of this degraded class from the freemen of the same country, that the father does not seem to have transmitted his name or surname to his children, or, at least, that this did not necessarily happen. In the genealogy of John Scoloc, which is preserved in the Cartulary of Dunfermline, the son of Patrick Stursarauch was Allan Gilgrewer, and the son of Allan Gilgrewer was John Scoloc.<sup>1</sup> It seems certain that no change in the situation of these bondsmen, by which they rose in eminence or opulence, could have the effect of removing them from their original degraded condition. They might enter the church and become clerks, or continue laymen, and pursue a successful career as artizans or merchants, but they were still as much slaves as before ; and, till the time they purchased or procured their liberty by the grant of their master, their persons, profits, and whole estate, belonged exclusively to him. This is strikingly exemplified in a convention preserved in the Cartulary of Moray, which took place between Andrew, the bishop of that see, and Walter Comyn. It was agreed, in this deed, that the Bishop of Moray, and his successors in the see, should have all the clerks, and two laymen, whose names were Gillemalovock Macknakengelle, and Sythac Macmallon ; these clerical and lay bondsmen, the deed proceeds to say, are to

<sup>1</sup> Cartulary of Dunfermline, p. 145. M'Farlane's Trans. See Appendix, P.

belong to the bishop and his successors, with their cattle, possessions, and children for ever; while the Lord Walter Comyn is to have all the remaining lay bondsmen of the lands of Logykenny and Inverdrum-myn.<sup>1</sup> It may, perhaps, be doubted whether the *clerici nativi* here spoken of, do actually mean bondsmen who have become clerks, or may perhaps merely signify bondsmen belonging to church lands. Yet the words of the deed, and the marked opposition in which we find the words *clerici et laici nativi*, seem to favour the meaning here attached to it.

In England, under the government of the conqueror, it was the mark of freemen, that they could travel where they chose; and exactly the same criterion was established in our own country. In Domesday Book, a Norman baron, Hugo de Port, is mentioned as the master of two tenants, who, in the days of Edward the Confessor, might go where they pleased without leave. In like manner Robert Bruce, in the year 1320, grants a charter to Ade, the son of Aldan, in which he declares that it had been found, by an inquest held before his chamberlain and justiciary, that this person was not the king's slave or bondsman, but was at liberty to remove himself and his children, with their goods and chattels, to any part of the kingdom which he might select, at his own will and pleasure, without molestation by any one. On which account the king declares the said Ade, with his sons Beth, John, Ranald, and Duncan,

<sup>1</sup> Cartulary of Moray, pp. 53, 54. Appendix, O. Caledonia, p. 721.

to be his freemen, and as such not subject to any yoke or burden of servitude for ever.<sup>1</sup> As the master could reclaim his fugitive bondsman from any place to which he had transferred himself, so it was in his power alone to make his slave a freeman whenever he pleased. Thus, by a charter, dated at Perth on the 28th February, 1369, David the Second intimates to all concerned, that he has made William, the son of John, the bearer of these letters, who was his slave and bondsman, his freeman, and had emancipated all his posterity, so that he had full right, without trouble or molestation, to travel with his property and his children to whatever place he chose, and there take up his abode.<sup>2</sup> Many examples of the manumission of such unfortunate persons by their baronial masters, and still more frequent instances of the gift of freedom, conferred by the rich ecclesiastics and religious houses, are to be found in records of undoubted authenticity.<sup>3</sup> But the progress of freedom amongst the labourers of the soil was exceedingly slow and gradual; the names which are indicative of this degraded condition, such as na-

<sup>1</sup> Henshall's Specimens, p. 74. *Præter hoc habet Hugo duos homines tenentes dimidium solinum, qui poterant tempore Regis Edwardi ire quolibet sine licentia.* Domesday Book, 601. Robertson's Index to the Charters, Postscript, p. 54, and Index, p. 16. No. 26. In Robertson's Index, P.S. p. 54, will be found another curious deed, illustrative of the condition of the "nativi homines," which is taken from an original in the Advocates' Library.

<sup>2</sup> Robertson's Index, pp. 89, 47, 66.

<sup>3</sup> See Appendix, letter O.

tivi, servi, villani, homines fugitivi, bondi, mancipii, occur throughout the whole period of the thirteenth and fourteenth centuries ; nor is it prior to the fifteenth that we can discern the extinction of slavery, and the complete establishment of individual freedom. In Scotland, bondage appears to have been sooner abolished than in the sister country. It continued in force in England as late as the year 1536 ; and its last traces are still discoverable in 1574, when a commission was issued by Elizabeth for the complete manumission of the last relics of bondsmen and bondswomen in her dominions.<sup>1</sup>

<sup>1</sup> Barrington on the Statutes, pp. 247, 351.