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A Chapter Election at St. Andrews in 1417

THE *Formulare* compiled by John Lauder, who was secretary to Andrew Forman, Archbishop of St. Andrews, served for a time under Gavin Dunbar, Archbishop of Glasgow, became chief secretary to Cardinal Beaton, and ended his career under Archbishop Hamilton about 1552, contains almost exclusively contemporary documents. It is well known that in this volume the University of St. Andrews possesses a document of unique value for students of Scottish history on the eve of the Reformation. But in the course of his practice Lauder came across a few writs belonging to an earlier period which interested him, and which he took the trouble to incorporate. One of these, entered at folio 267, purports to be the instrument drawn up on the election of James de Haddenstoun to the Priory of St. Andrews. The compiler of a book of styles was not thinking of the historian as he wrote. Consequently there is an irritating absence of names and dates—except by occasional inadvertence; but very frequently the initials at least are preserved, and the persons are not difficult to identify. In the present instance there is no reason to doubt that we have the copy of a genuine document belonging to the early part of the fifteenth century, just when Scotland was questioning the allegiance which she had maintained to the anti-Pope Benedict XIII.

The writ is a long one, and the Latin prolix. All that can be attempted here is by close paraphrase and occasional translation to give the reader an idea of the proceedings. Documents of this

class, framed for transmission to the papal court at a time when chapter election had been reduced in importance by the practice of reservation, were naturally fugitive ; and a good specimen becomes specially interesting.

The notarial instrument, entitled by Lauder *electio sive decretum electionis per viam scrutinii*, takes the form of an intimation addressed to his Holiness. After referring to the canonical rule that a cathedral church ought not to be vacant more than three months lest the wolf assail the flock or the church itself suffer grievous loss in her widowhood, the document proceeds to relate that, when the last prior (*sc.* James Bisset) went the way of all flesh and was duly buried, the canons regular of St. Andrews unanimously elected William de Camera, the sub-prior, to succeed, and sent him off with the decree of his election to seek the papal confirmation.¹ Before he could obtain this, however, he died, and was buried before one of the altars in the church of St. G. (St. Giles) at B. (Bruges). The fact of his death and burial was communicated to the canons of St. Andrews by a number of credible witnesses who were present. Thereupon W. de B. (William de Balloch?), *tertius prior*, upon whom the duties of vice-gerent devolved, together with the canons in residence, appointed a day for the election of a successor. According to the use and wont of the Priory each individual canon was cited by name, with intimation that those who were present on that day would proceed notwithstanding the absence of any brethren. The meeting assembled in the cathedral church—the names of the participants being appended to the present document—and after the usual mass *de Spiritu Sancto* and Latin sermon before clergy and populace, performed by certain individuals who were evidently named in the original writ, and in the presence of others similarly specified, the notary and witnesses saw the third prior and the canons enter the chapter-house *ut apparuit concorditer* at the proper hour before dinner—*debita hora ante prandium*. The notary accompanied them ; and, when the door was closed, William de Balloch called the names of the canons according to seniority, appealing individually to each of the twenty-six who were present. After they had answered, the meeting was asked to decide what was to be the method of procedure—*per quam viam seu modum de priore possent utilius providere*. Some were unanimous for election, and

¹ The style gives the Pope as 'N. II' : probably 'II' is at error for 'V,' and Martin V. was the Pope intended. In reality, however, Benedict XIII. may have been the Pope mentioned in the original.

election by scrutiny: others thought that the whole business should be devolved upon his Holiness. The latter, ten in number, after some conference decided to maintain their position and left the chapter-house, in spite of the entreaties of the remainder. One of the canons who were left, with the mandate of his fellows, made public protestation in his own and their names that the seceders and their devolution of the matter upon the Apostolic See should not be any impediment to the election or have any force except in so far as they were entitled *de jure* to voices in it. The sixteen canons, regarding themselves as the *major et sanior pars* and therefore entitled to proceed to the scrutiny, first knelt to invoke the grace of the Holy Spirit. Then the third prior, having by use and wont the first voice in the chapter, for his own part and by special mandate of the rest warned all and sundry under sentence of excommunication, suspension and interdict, or any others debarred by law or custom from participating in the election, to leave the chapter; gave permission to the others to choose freely, with protestation that it was their intention to admit qualified voters only, and that any votes subsequently found to have been given by unqualified persons should be held as not received. Three of the brethren were appointed and empowered to ascertain secretly and individually first their own choice and then the choice of the remainder, write down the votes, announce the result, and make a *collatio* according to the requirements of the law.

These *scrutatores*, upon accepting the duty, withdrew to another part of the chapter-house, taking with them the notary and the witnesses, and proceeded to the scrutiny. First they elicited their own views according to the form put into their hands. Two of them, F. and G., adjured K., the third, by Father, Son, and Holy Spirit, and at the peril of his soul, that he should exercise his vote according to a sound and a just conscience. K. gave his support to James de Haddenstoun in this form: 'I, priest, canon regular of the church of St. Andrews, bachelor in decrees, senior *scrutator*, thirty years in the profession and habit, exercising the offices of chamberlain, sacrist, third prior, and precentor *per vices* in the monastery, agree to *dominus* James de Haddenstoun, my fellow-canon, and name him for election as prior.' Similarly F., the second *scrutator*, priest, canon regular, thirty years in profession, having repeatedly held the offices of sub-prior, sacrist, and master of work *per vices*, voted for Haddenstoun. So also voted G., the third *scrutator*, whose services to the house are not recorded in the

style-book. Immediately thereupon the three called William de Balloch, the third prior, who added his voice for Haddenstoun, and then took the rest individually in their seniority by profession. The first was T. M., priest, canon regular, forty-three years in profession, exercising *per vices* the offices of sub-prior, chamberlain, cellarer, and master of work, who voted for Haddenstoun, followed by the others. Haddenstoun himself, called in his order, gave his vote for J. L. (John Lystar).

When the notary had recorded each vote in writing, the *scrutatores* rejoined their brethren and authorised him to read out the results. The *scrutatores*, in virtue of the powers granted to them, then proceeded *collationem numeri, zeli, et meriti etiam in communi facere*. The 'collation' was in the following form: 'It is established that we are twenty-six canons of the church of St. Andrews, of whom ten left the chapter and sixteen remained. Of these sixteen, fifteen directed their votes towards *dominus* James de Haddenstoun and one only, viz. the said James, to John Lystar, as appears by the detailed list of votes read before all. Therefore it is established that the majority of the voters, nay of the whole chapter, even if the seceding brethren had proceeded with the rest, agreed upon James de Haddenstoun: and so he is to be preferred and taken as elect *ratione numeri*. Similarly he is to be preferred *ratione zeli* because those who nominated him are the senior members and are outstanding in respect of their prerogatives, honours, dignities and benefices; and greater confidence would seem to be due to their consciences. Having good motives and a good zeal, and with full regard for the good rule of the Priory of St. Andrews in things spiritual and temporal, they have agreed upon James de Haddenstoun and have named him for prior. And Haddenstoun is of praiseworthy life, honourable conversation, watchful, energetic, careful and far-seeing, prudent in affairs spiritual and temporal, a man of high character, supported by powerful friendships calculated to protect our rights, whom it must be held that God by his special inspiration has called to rule through our votes and unanimous desires. Haddenstoun is also to be preferred *ratione meriti*, for he is of noble birth, whence he may be presumed to have a better ability and a better will to govern. He is a master in Theology, fitted to read in the schools, maintain, prove, and answer *collationes* in presence of our lord the Pope and his court, and to preach in very laudable and honourable fashion. He is of the lawful age, born of lawful wedlock, and in priest's orders. In nominating John Lystar he was alone and

unsupported. It is clear, therefore, that Haddenstoun is to be preferred for election *ratione numeri, zeli, et meriti.*'

After this 'collation' the canons were asked individually if it was their will that Haddenstoun should be elected *in communi*, since the *major et sanior pars* of the voting brethren, nay of the whole chapter, had agreed upon him. As they were all willing and no dissentient voice was heard, the third prior by special mandate solemnly elected him as follows: 'In name of the Father, Son, and Holy Spirit, Amen. When the Priory of St. Andrews fell vacant, due notice was given to the proper persons; and all who were entitled, desired, or were able to take part assembled on the appointed day. It was decided by all those who remained in the chapter-house for the election to provide a prior *per viam scrutinii* according to the form of the General Council. Upon announcement of the scrutiny and a careful *collatio*, it was found that the *major et sanior pars* of the voting canons, nay of the whole chapter, if the whole of the brethren had taken part, gave their votes to James de Haddenstoun, a man far-seeing and discreet, eminent in letters and knowledge, deservedly recommended by his character and good qualities, in holy orders, of the legal age, born in lawful wedlock, prudent in matters spiritual and temporal. Therefore I, William de Ballochy, third prior in the convent, having for the time first voice and first place in the chapter, on my own behalf and on behalf of all the other brethren voting, in virtue of the power granted me by them, do hereby, invoking the grace of the Holy Spirit, elect *dominus* James de Haddenstoun to be prior.'

The election having been thus celebrated, all and sundry the canons present publicly signified their approval, as did the absent canons by tacit consent, seeing that they made no protest or contradiction. So the canons who were present, singing aloud *Te Deum laudamus*, bore their elect, *quasi invitum et renitentem*, to the high altar of the church; and there William de Ballochy solemnly published the election to clergy and people before certain witnesses. Immediately thereafter they returned to the chapter-house, and William de Ballochy in name of himself and his brethren desired Haddenstoun to declare whether he consented. He replied before witnesses that he would give his answer after consideration. On the appointed day Haddenstoun was again formally asked for his decision and replied: 'I, James de Haddenstoun, elected to the Priory of St. Andrews, neither consenting out of ambition nor refusing out of pride, nor seeking

to resist the will of the Lord, do assent to your votes and do agree to my election, always provided that it please his Holiness, to the honour of the high and indivisible Trinity, the glorious Virgin St. Mary, and St. Andrew the Apostle, my patron, in whose name the said church is dedicated.' The document then closes, as Lauder indicates, in the usual notarial fashion.

The *Scotichronicon* tells us, under the year 1417, that the Council of Constance sent an envoy to secure the adhesion of Scotland, and that while the governor Albany supported Benedict XIII. the University of St. Andrews desired a change. We know from the University records that it was in August, 1418, that the Masters of the Faculty of Arts definitely decided upon the withdrawal of obedience from Benedict, and intimated that if the governor did not accede they would act for themselves. The national voice was uttered at a General Council at Perth in October of the same year.

In May, 1417, Haddenstoun, who was a papal chaplain, was made a minor penitentiary by Benedict; and it seems to be implied, though it is not definitely stated, that he was then at the papal court.¹ It is sometimes said that William de Camera intervened as prior between Bisset and Haddenstoun; but it is clear that William, though elected, never obtained confirmation. If Haddenstoun was with Benedict in May, he had certainly returned to St. Andrews before his election. Martin V. began to rule on November 11, 1417, and at Constance, on February 17, 1417-8, he provided Haddenstoun, referring to the chapter election as done in ignorance of the general reservation of major cathedral dignities by Peter de Luna, a reservation continued by himself.² Evidently Haddenstoun had thrown in his lot with the supporters of Martin V. and was sent to Constance by the chapter as their elect, along with Lystar. The latter continued relations with Benedict, and communicated with Peniscola; for on March 10, 1417-8, he was provided by the anti-Pope, and Haddenstoun was to be comforted with a pension of 200 gold scudi.³ When Lystar reached Bruges on his return from Constance he found Benedict's letters, and, according to his own account, repented, saying, 'God be merciful to me a sinner.'⁴ His repentance led to further correspondence; and in December of 1418 Benedict deprived Haddenstoun, as a schismatic, of the pension, transferred it to the chief secretary of his own supporter, the Duke of Albany,

¹ *Vatican Transcripts* (Reg. Ho.).

² *Papal Letters*, vii. 63.

³ *Papal Petitions*, 608.

⁴ *Ibid.* 609.

and extended the provision of Lystar to meet the new situation.¹ Meantime Haddenstoun, who had remained at Constance, obtained an indult from Martin to wear the mitre, ring, and pastoral staff.² In August, 1419, now that Scotland had withdrawn obedience from Peter de Luna, he was appointed papal nuncio and collector, and was sent off with a safe-conduct.³

From Bower we learn that Bisset died on June 25, 1416, and that William de Camera was elected in the same year. The statement that the latter died in 1417 is probably correct; but that he had secured confirmation is demonstrably wrong. The chronicler goes on to say that Lystar was with him, came to Benedict at Peniscola, and obtained provision. 'Meantime, or a little later,' Haddenstoun, as elect, approached Martin V. and was confirmed before Scotland withdrew obedience from Benedict.

This account of Lystar's movements becomes suspicious when we have documentary evidence in the *Calendar of Papal Registers* that he took part in Haddenstoun's election and proceeded with him to Martin V. at Constance. But the main facts seem to be clear. If William de Camera was sent to Martin V., chronology demands that the statement should be interpreted in the sense that he was *not* sent to Benedict XIII. but to await anticipated action by the Council of Constance. This at all events agrees with the absence of any reported action by the anti-Pope, and would explain his seemingly protracted stay on the continent. However that may be, his death probably took place late in 1417 and was followed by Haddenstoun's election. Evidently the ten seceding canons were supporters of Benedict and knew that the remaining sixteen intended to send their elect to Constance. Haddenstoun made no secret of his views: Lystar sat on the fence. Bower's narrative of the period suggests that in St. Andrews the movement for withdrawal from Benedict had been going on for some time before the change was made by the General Council at Perth in October, 1418. It is interesting to observe that in the winter of 1417, and probably soon after the election of Martin V. became known in Scotland, sixteen out of the twenty-six canons of St. Andrews were prepared to give him their adherence.

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¹ *Papal Petitions*, 610.

² *Papal Letters*, vii. 78.

³ *Ibid.* 2, 8.

François Hotman

THE study of the life and temperament of François Hotman brings to light some of the prevailing forces which moulded and directed events for two generations and found full play in Scotland. The prevailing political interest of historical students such as Armstrong and Figgis has tended to limit the significance of the sixteenth-century personages treated by them to one aspect of their work. This abstracted view of the period neglects the side of Jean Bodin represented by his *Démonomie des sorciers*, disregards the ecclesiastical interests of Hugo Grotius, and passes over in silence many fields in which Hotman was an active worker. It may be that in defining the ultimate import of these worthies, contemporary historians have correctly gauged their particular contributions to the sum of human knowledge, but their judgment is apt to appear incomplete to readers who regard the past as a stream of many-coloured tendencies. Seeking to envisage the sixteenth century as a whole, the latter remember that Hotman was not only a predecessor of Montesquieu and Vico, and a subject of criticism at the hands of the regalist, William Barclay, but also one of the formative influences in the later phase of the Reform movement, and an important figure in the development of legal theory. He not only aroused William Barclay, but he also formed the mind of Andrew Melville and influenced that of Sir Thomas Craig. He touched life at many points and angles, and when a writer of our day describes his career as 'une odysée de misère,' the phrase must be taken to refer to the variety of his experiences, and not alone to his material misfortunes.¹ He was one of those spirits, 'animi saltem militareis et feroces,' who emerged from one inherited *milieu* to explore many others.²

The tradition which Hotman inherited at his birth on 23rd August, 1524, was clearly defined and typically French, though

¹ Petit de Julleville, iii. 568.

² *Budaei de asse* (Lyons, 1551), 706.

based on a foundation of Teutonic ancestry.¹ His grandfather came to France from Silesia, and settling down in Paris, married a Frenchwoman. His eldest son rendered useful service to the Crown in connection with the ransoming of Francis I. after Pavia, and other members of the family occupied important positions in the public administration. Lambert, an uncle of François, was Prior of S. Maurice at Senlis, and his father, the youngest of twenty-two children, after administering the Royal Woods and Forests, became a Councillor of the *Parlement de Paris*. The latter married a lady of good birth from Picardy, whose family belonged to the powerful *noblesse de la robe*, three of her brothers being respectively assessor to the *Prévost de Paris*, Royal Secretary, and an esteemed Councillor of the *Parlement de Paris*. François Hotman, the eldest of a family of nine sons and a daughter, was the descendant of generations of functionaries, but he was destined to become almost a traitor to his cast and to lead the van of revolt against that centralised authority which they had all assisted to consolidate. His life marked a startling breach in the family tradition, but the prolific stock to which he belonged carried on the torch in the younger lines, and his son Jean, after wanderings and hesitations, reverted at length to the family type. François marked a dangerous salient in the straight line of the Hotman tradition. The passage of one generation sufficed to straighten it out.

The Hotman family was a notable one, exhibiting in the course of two generations the most diverse tendencies, and maintaining a worthy standard of achievement. The conventional Catholicism of Pierre Hotman developed in the person of his son Antoine into the faith of a Leaguer, and later into a moderate Gallicanism. The latter was Advocate General during the League, but at the risk of his life he defended the claims of Royalty and the authority of the Salic Law, and espousing the cause of the Cardinal de Bourbon, carried on a polemical contest which produced his more famous brother's treatise, *De successione inter patruum et patris filium*. In after life he wrote in support of the Gallican Church. His wife earned a reputation for sanctity. His memory is enshrined by Loisel in his immortal catalogue of the leaders of the Paris Bar.² Jean, another brother of François

¹ Petri Neveleti Doschii *Vita Fran. Hotmani* (1592), and Daresté, *François Hotman, d'après sa correspondance inédite : Revue Historique* (Paris, 1876), ii. pp. 1 and 367.

² Scaevola Sammarthanus, *Elogiorum*, lib. iv., and Maimbourg, *Histoire de la Ligue* (1686), iv. 333. 'C'estoit,' wrote Loisel, 'un tres-suffisant homme, et qui

Hotman, was Chancellor to the Cardinal of Lorraine, and during the Religious Wars other members of the family fought on the Catholic side.¹ The fierce Calvinism of François was abandoned by his son Daniel for Romanism, and in the case of his son Jean was developed, through contact with the Anglican Church, into a belief which sought to find a common basis between doctrinal extremes.² This diverse orientation of the Hotman family gave them from time to time political importance. The most striking instance of this occurred in 1585, when Jean Hotman was closely associated with the family of Sir Amyas Poulet, the English Ambassador at Paris, and his uncle Antoine was a member of the Council of Archbishop Beaton, the representative in France of Mary Stuart. Morgan, one of the agents of the Scottish Queen, hoped that the relationship might be made use of for the furtherance of his mistress' ends.³ But the extremes tended to meet, and there was a certain fitness in the publication in 1616, when the older and more vigorous generation had vanished, of the *Opuscles Françaises des Hotmans*, in which the minor writings of the great Protestant jurist are associated with

chassoit, comme l'on dit, de race, estant fils d'un bon conseiller, et frere d'un grand jurisconsulte assez connu par ses escrits, tenant de la prud'homme de l'un et du sçavoir de tous les deux, n'ignorant rien du droict civil ou canon, ni des bonnes lettres requises en sa charge, comme il a fait paroistre, tant par ses escrits qui sont doctes et judicieux, que par les remonstrances et plaidoirs qu'il fit en parlement, lorsqu'il fut eleu advocat du roy durant la ligue. Aussi commençoit-il d'entrer aux consultations, et d'y tenir dignement sa place, ayant les textes de droict et les decisions communes du palais en main, et sur tout le jugement bien certain. Il estoit en effet meilleur advocat qu'il ne sembloit à le voir, ressemblant aux Silenes d'Alcibiade ; car il avoit assez peu de façon, et, si je l'ose dire, peu de grace, et la mine désagreable, mais tres-bonne, lors qu'il parloit. . . ' Dupin, *Profession d'Avocat*, i. 252 ; cf. Pasquier, *Les Lettres*, xvi., à Theodore Pasquier.

¹ *Mémoires de Sully*, ed. Paris, 1822, v. 336, and d'Aubigné, *Histoire Universelle*, iii. cap. 17.

² Cf. Pattison, *Isaac Casaubon* (1875), 504.

³ From the Bastille to Queen Mary on 9th April, 1585, 'I do think,' wrote Morgan, 'of all the means I can to find out amongst Poulet, his friends and followers, some to serve your turn, which God will send you. There is one Hotman, a Frenchman, that much haunteth the said Poulet, whose children he brought up both here and in England. The said Hotman is a great Huguenot, and much addicted to Leicester, as far as I perceive. The said Hotman is a kinsman to Hotman that serveth your Majesty in your Council here ; whereof upon these occasions I will give instructions to the Bishop of Glasgow to deal with old Hotman, and to see whether the other may be made an honest man and an instrument to serve your majesty, which he might do without all suspicion . . .' (Thorpe, *State Papers*, xv. 64 and 65 ; Morris, *Letter Books of Sir A. Poulet*, 1874).

the *facetiae* of his Leaguer brother, and the scholarly disquisitions of his diplomatist son.¹ In the history of the Hotman family is found that *curiosa diversitas* which will always attract a certain type of mind to the study of the sixteenth century.²

After studying at the Collège de Plessis, Hotman began his legal education at Orleans in 1539-40, under the influence of Pierre de l'Estoile and Dumoulin. Returning to Paris, he commenced practice as an advocate, but he soon found the rough life of the Law Courts uncongenial to his temperament and doctrinaire cast of mind, and in 1546 he opened a *cours libre* at the University. He made a deep impression, and Etienne Pasquier, writing in his old age to Loisel, bore witness to the debt which he owed to his legal teaching in early youth.³ Here Hotman was closely associated with Badouin, who was also delivering a *cours libre* on Roman Law, and formed a friendship which was destined soon to be transformed into the bitterest enmity. In the following year he took a step which determined the whole course of his life. He joined the party of religious reform, and, unlike his fellow jurists Dumoulin and Badouin, remained steadfast in the cause until his death. His conversion to Protestantism has been attributed to the spectacle of the constancy of the victims of religious persecution,

¹ Paris: chez la veuve Matthieu Guillemot, tenant sa boutique au Palais, à la galerie des prisonniers. The Hotman family, devoted through successive generations to the study and practice of law, recalls the Ubaldi of Perugia, who had a similar record at an earlier date. Vide Panziroli, *De claris legum interpretibus*, ii. c. 170, and Morphae, *Catalogus interpretum juris civilis*.

² Among the letters of Paolo Sarpi is one of 1608 addressed, according to Polidori, to 'Francesco Hottman, abbate di san Medardo,' i.e. Abbot of S. Médard at Soissons (?). In a note the editor states: 'L'Ottmanno fu anch' egli consigliere del Parlamento di Parigi.' The witty Venetian, in response to a request from his correspondent, gives the latter some characteristic advice on the study of Ecclesiastical History, with particular reference to the controversies of the day. 'Ma eccovi,' he sums up, 'a mio parere, una regola generale e infallibile per tutte le difficulte che voi potrete incontrare nel corso de' vostri studi. Voi dovrete consigliarvi coi Gesuiti, per risolvere poi in tutte le cose direttamente all' apposto di quanto essi vi diranno' (*Lettere di Fra Paolo Sarpi*, ed. Polidori, Firenze, 1863). The letter was addressed to one of the sons of Monsieur de Mortfontaine Hotman, French Ambassador in Switzerland (cf. Jean Hotman, 'Traité de l'Ambassadeur': *Opuscules Françaises des Hotmans*, Paris, 1616, p. 504). This worthy was a brother of François Hotman, and in 1592 his sons were studying at Padua under the protection of Huraulte de Maise, French Ambassador at Venice (*v.* Letter from de Maise to Jean Hotman of 26th December, 1592: *Archives du Musée Teyler*, série ii. vol. xii. pt. ii. p. 263).

³ *Lettres*, xix. (vol. ii. 501, ed. 1619).

but the cause lay deeper in the critical individualism of his spirit. He fled to Lyons from his father's anger, and replied to his threatenings with the defiant declaration: 'Habeamus aquam, habeamus polentam: Jovi ipsi de felicitate controversiam faciemus.'¹

Soon after his departure from Paris, Hotman came in contact with Calvin, and became one of his secretaries. The two men had much in common, and the correspondence of the great theocrat offers ample evidence of their intimacy and of the stern tolerance with which the older man accepted the vagaries of his protégé. In February, 1549, Hotman published at Lyons a Latin version of Calvin's *L'Advertissement contre l'astrologie qu'on appelle judiciaire*, which the latter had dictated to him in French.² After paying two visits to Lausanne and Geneva he settled down in the former place in February, 1550, having been provided with a professorship at the Academy.³ During his residence at Lausanne he accompanied Calvin to Frankfort, whither the latter had been summoned to settle acrimonious disputes which distracted the English congregation there, and in which John Knox played a prominent part.⁴

He was soon tired of the drudgery of a teacher's life, and troubled Calvin with his complaints. 'Est enim,' the latter wrote to Viret, 'ut video, inflatus solida confidentia, quae facit ut omnia illi evanescant.'⁵ At length he had his way, and reached Strassbourg in August, 1555, furnished with letters from Calvin to Sturm and Peter Martyr.⁶ He found his friend Badouin in possession of the chair of Civil Law, but Peter Martyr held out hopes of an early vacancy.⁷ On 14th June, 1556, the latter wrote to Calvin, 'Othmannus locum Balduini habuit.'⁸ In

¹ Doschius, *op. cit.*

² On 22nd November, 1547, Hotman wrote to Calvin regarding this work. *Calvini Opera*, xii. 619 and 717. Cf. Doumergue, *Jean Calvin* (Lausanne, 1899, etc.), iii. 596.

³ Doumergue, *op. cit.* ii. 202, n. 5.

⁴ *Calvini Opera*, xvi. 301 and 714; cf. Knox, 'Narrative of the Proceedings and Troubles, etc.,' *Works*, iv. 1 et seq.

⁵ Calvin to Viret (15th August, 1551), *Opera*, xiv. 165; cf. *ibid.* 343 and 357. Calvin did not spare his protégé, who wrote, 'Oratio tua vehemens et incitata animum meum perculit.'

⁶ *Ibid.* xv. 687 and 727.

⁷ On 28th September, 1555, Martyr wrote to Calvin that Badouin was going to Heidelberg, and added, 'Hotomanum substiterere loco ejus velim' (*ibid.* 788).

⁸ *Ibid.* xvi. 197. In the interval Hotman had visited Basle, from which he sent Bullinger an envious account of the vogue which Castellion enjoyed, in

the same month he was offered a chair by the Duke of Prussia.¹ His settlement at Strassbourg was marked by a rupture with Badouin, which gave rise to a fierce controversy, conducted in the free tone of the age.² Calvin, who had a measure of reluctant respect for Badouin, soon wearied of Hotman's vindictive abuse of his enemy, and wrote strongly of his foolish behaviour.³

Until the death of Henry II. in 1559 Hotman's interests, apart from his professorship, were theological and ecclesiastical. He was an ardent disciple and a favoured protégé of Calvin, and during his residence at Strassbourg supplied his leader with information which he thought might be of use. His activities in this direction are open to criticism, and a fastidious reader of his letters is inclined to dub him a sycophantish tale-bearer. The usual struggle between Lutherans and Reformed was proceeding at Strassbourg, and Hotman faithfully reported the indiscreet remarks of Calvin's opponents to the latter. In July, 1558, Alexander had abused the Great One to a deacon of the French Church, who, in reporting the outrage to Hotman, had represented himself as having retorted 'Si D. Calvinus sciret se appellare papam et non pertinere ad illum curam aliarum ecclesiarum quam suae Genevensis?' Hotman took care that Calvin knew with as little delay as possible.⁴

The succession of Queen Elizabeth to the English throne seemed to offer a brighter future to Continental Protestants, and

contrast with Calvin's unpopularity. *Ibid.* 803; cf. Buisson, *Sébastien Castellion* (Paris, 1892), ii. 90 and 120; Giran, *Sébastien Castellion* (Haarlem, 1914), *passim*; cf. also Letter from Hotman to Bullinger of 28th September, 1555, *Epistolae* (Amsterdam, 1700), pp. 1 and 253.

¹ *Ibid.* 199.

² This incident is dealt with at length by Bayle in his article on Hotman with his usual zest for a scandal. The modern view is expressed by Daresté, *François Hotman*, *Revue Historique* (Paris, 1876), ii. 1; Doumergue, *Jean Calvin*, i. 154, and ii. 387; *Bib. Ec. Ch.* v. 360. Calvin's sympathies were with Hotman, but he condemned his heat; cf. Prat, *Maldonat et l'Université de Paris* (Paris, 1856), 326.

³ *Cal. Op.* xvi. 132, 172 and 261, 'Haec tibi ab eo praecipere memineris qui, etsi acrioris quam oportaret vehementiae sibi conscius est, pacato tamen animo quotidie multos impetus sustinent, puae quibus lusorium est tuum cum Balduino certamen.' Calvin's reprimand was hardly justified in view of his unseemly attacks on Badouin, whom he described as *caméleon suborneur* and *Ablativus*. Lenient, *La Satire en France* (Paris, 1866), 224. The former epithet suggests the origin of George Buchanan's attack on Maitland of Lethington. Cf. Badouin, *Responsio ad Calvinum et Bezam* (Coloniae, 1564), 86 *et sqq.*, and A. Wicquot, *François Balduin*, *Mémoires de l'Académie d'Arras*, II. série xx. 260 and xxi. 140.

⁴ Hotmanus 'Calvino,' *Cal. Opera*, xvii. 266.

the fact that Hotman had been living for some years on intimate terms with the exiles who were destined to high office under the new regime turned his thoughts to politics.¹ On 12th December, 1558, he wrote joyfully to Calvin of the advent of a Protestant Queen, and expressed his relief that Calvin had written to the English community at Strassbourg dissociating himself from the anti-feminist polemic of John Knox.² Hotman seems to have been dazzled by the wide horizon which thus opened, and was soon deeply involved in the conspiracy which ended in the Tumult of Amboise.³ In September, 1559, he wrote urgently to Calvin to send Beza to Strassbourg, and enlarged eagerly on his hopes of the fruits which would result from the important affair on which he was engaged.⁴ The letter can only be interpreted as referring to the conspiracy, in which he sought to involve Calvin.⁵ The failure of the Amboise affair resulted in a fierce breach between Hotman and another friend. After Badouin came Sturm. The latter had accompanied Hotman in the spring of 1560 on a diplomatic visit to Heidelberg on behalf of the cause of French Protestantism.⁶ After this journey Sturm and Hotman apparently returned to Strassbourg, but Hotman soon departed by stealth on a secret errand. His unexplained absence endangered his official position, and Calvin found it necessary to intervene and explain to Sturm that his protégé was at the Court of the King of Navarre at Nerac, whither Beza had preceded him.⁷ While Calvin was willing to intercede in his favour, he did not approve of his *démarches*.⁸ In July, 1561, Hotman had not returned from France,

¹ His English friends included Sir Anthony Cook, Sir Thomas Wroth, Sir John Cheke and Sir Richard Morison (*Cal. Opera*, xvi. 83, 199, 316 and 414). He dedicated his *De Actionibus* to Sir Thos. Wroth, and his *Praefatia in Jurisconsultorum* to the Earl of Bedford, both in 1559.

² 'Omnes laetati sunt tuis literis in quibus aperte testatus es libellos illos tibi non placere. In disputatione de Gynaeconatia praejudicium huic piae reginae fiebat. Sed spero rem omnem extinctum iri' (*ibid.* 396). The letter closes: 'Uxor et Joannes et Theages et Maria et quidquid in utero est tibi salutem optant!' On his departure for England Sir Thomas Wroth left his son in Hotman's charge (*ibid.* 480).

³ On Hotman's share in the conspiracy, *v.* Lavissee, vi. (1) 13.

⁴ *Cal. Op.* xvi. (2), 645; cf. 'Hot. Cal.' *ibid.* 672 (14th November, 1559); *ibid.* xviii. 19 and 38.

⁵ Calvin found it necessary to write to Coligny denying all association with the scheme (*vide* undated letter, *ibid.* xviii. 425).

⁶ *Ibid.* xvii. 21.

⁷ *Ibid.* xvii. 201 and 231.

⁸ 'Scito, tamen, me ab ejus conciliis fuisse alienissimum nec quidquam eum majis studuisse quam ut me celaret' (*ibid.* xviii. 233)

and in the interval he had been in Germany again negotiating with the Protestant princes on behalf of the King of Navarre.¹

In the meantime his quarrel with Sturm, who was not inclined to follow him in the dangerous paths of political intrigue, had burst forth. Hotman accused his friend of betraying the conspiracy, which had been in fact detected through his own boastful imprudence. Sturm wrote to Condé defending himself against charges which Hotman was spreading that he was a supporter of the Guise faction, and addressed a scathing letter of rebuke to Hotman himself, in which the latter's political activities are shown in the worst light.² He also wrote on 17th June, 1562, to the Bishop of Valence in the same strain, having apparently learned of Hotman's negotiations with the latter.³ Hotman, however, had cast the dust of Strassbourg from his feet, and in the winter of 1562-3 was in Germany.⁴ While he was thus engaged, a pamphlet appeared in Paris, in which he was associated with Calvin and Beza in the responsibility for the Tumult of Amboise, and for a time the Calvinist world became too hot for one whose imprudence had involved his associates in suspicion.⁵ The Colloquy of Poissy had induced a *rapprochement* between the Huguenots and the Crown, and Catherine de Médicis was seeking Protestant support to counteract the influence of the Guise family. In these circumstances she was anxious to enlist the support of Hotman for Rambouillet's mission, and gave her envoy written instructions to wait upon 'Dr. Hotomanus' at Strassbourg and to offer him a pension.⁶ Hotman accompanied the French envoy to Heidelberg, but their joint negotiations were not attended with much success. The growing breach between the Lutherans and the Reformed was neutralising the political influence of the German Princes in France, and the Cardinal of Lorraine took full advantage of their mutual distrust.⁷

¹ *Ibid.* xvii. 540, xviii. 292.

² *Ibid.* xviii. 481 and *Bibl. de l'Ecole des Chartes* (1854), v. 360.

³ *Ibid.* xviii. 518. For an unpleasing example of Hotman's methods of secretly libelling Sturm, *v.* letter to Harnack, secretary to the Landgrave of Hesse: *Revue Historique* (1908), xcvi. 304.

⁴ *Ibid.* xix. 211, 228, 380 and 494.

⁵ *Religionis et Regis adversus exitiositas Calvini Bezae et Ottomani conjuratorum factiones defensio prima* (Paris, 1562). Printed in *ibid.* xix. 438.

⁶ MS. Hotman de Villiers (*Bulletin de la Société de l'Histoire du Protestantisme français*, xvii. 100).

⁷ On 7th March, 1558, Hotman wrote to Bullinger: '... Card. Lotharingum scripsisse Palatino, captivos Parisienses indignos esse pro quibus ipse cum caeteris

In the course of his visit to Germany in the summer of 1561, Hotman found that the astute policy of the Cardinal was bearing fruit, and that while some of the Princes were prepared to send a collective embassy to the King of Navarre, the Elector of Saxony hesitated. In the view of the Elector the Princes must give formal expression of their condemnation of Zwinglianism, and might find it necessary to make their support conditional on the acceptance of the Augsburg Confession by the French churches.¹ In August Hotman wrote to William of Hesse that the Guises were sending couriers throughout Germany to counteract his mission, and that he was watched by spies.² The diplomacy of the Cardinal was entirely successful, and, with the exception of the Landgrave of Hesse, the German Princes imposed the impossible condition of the acceptance of the Augsburg Confession. When things were in this case, civil war broke out in France, and Hotman's rôle became a responsible one. He acted as political secretary to Condé in his negotiations with the German Princes, though it is apparent from his correspondence with the Landgrave which has been recently recovered, that he could neither understand nor write German.

At length the long looked-for German legation started for Strassbourg in May, 1562, and Hotman left Orleans to meet it. On the 7th June he sent a long despatch to the Landgrave of Hesse, in which he painted in very lurid colours the wretched condition of Catherine, in the power of the Guises and in constant danger of personal violence.³ In spite of his urgency the German Princes did nothing, and the Landgrave wrote that he was astonished that the Queen of England and the Evangelical cantons, who were at one with the French Protestants on the article of the Eucharist, did not come to the assistance of Condé. Hotman continued to correspond with the Landgrave and his son until peace followed the assassination of the Duke de Guise in the spring of the following year. On 15th August, 1563, he wrote to the Landgrave that he had received an invitation from Valence, and that he intended to go there for a year after he had paid a visit to the Court.⁴ Two years before he had been appointed *Maître de Requêtes* to the King of Navarre, and principibus intercedat, quoniam omnes sunt Calvinistae, Zwingliani, sacramentarii. Itaque in duobus edictis regiis nunquam Lutherani, ut antea, sed semper sacramentarii nominantur' (*Calv. Opera*, xvii. 84).

¹ Daresté, *Hotman, Nouvelles lettres : Revue Historique* (1908), xcvi. p. 298.

² *Ibid.* 300.

³ *Ibid.* p. 307.

⁴ *Ibid.* p. 315.

during his visit to Paris he was appointed Historiographer Royal, an equally unremunerate post.

Before this short interlude of active political intrigue Hotman had laid the foundation of his reputation as *savant* and pamphleteer. In 1558 he published his *Commentarii in XXV Ciceronis nobiliores orationes*, in which for the first time he interpreted the work of the great orator in terms of Roman Law, and defined himself as a distinguished legal humanist.¹ In 1560 his *Commentary on the Institutes* appeared at Basle, and displayed his humanism applied to a purely legal subject matter.² Before his settlement at Strassbourg, and while he was still under the direct influence of Calvin, he had published several works of a theological and controversial character directed against his brethren Douaren and Dumoulin.³ He did not, however, return to this field until he published his *Brutum Fulmen* a few years before his death.⁴ Before his settlement at Valence, Hotman had achieved a *succès de scandale* in the publication of the notorious libel, *Epistre envoyée au tygre de la France*, a fierce attack on the Cardinal of Lorraine, which passed like a firebrand over France and cost its printer his life.⁵

¹ Published by Robert Etienne and dedicated to Joannes Lucius. In the dedication Hotman justifies his commentary by observing 'quum adhuc commentarii in eas quidem Orationes nulli, quod sciam, scripti sint nisi ab hominibus juris civilis imperitis et ab eis qui praeclare suo se munere perfunctos arbitrantur, si aliquot in locis figuras (ut dixi) Graece nominarint.' The copy of this treatise in the Library of Glasgow University is in a contemporary binding with the *Gentium et familiarum Romanorum stemmata* of Richard Strein, one of Hotman's German pupils. Strein became an Imperial Councillor at Vienna, and corresponded with Hotman in 1589. The pupil's treatise is provided with commendatory letters from Beza to Hotman and *vice versa*, and bears the following MS. note: 'Dono mihi dedit D. Beza, vir ornatissimus, et de me quam optime meritus.'

² Published at Basle by Johann Herwagen. The dedication to the Elector of Saxony is dated from Strassbourg, February, 1560. Gravina writes of these legal writings of Hotman: 'Extulit eadem aetas Franciscum Hottomannum, qui Tullianam scribendi venam attulit ad jus civile, eique reddidit Romanae historiae lucem, veteresque Jurisprudentiae cunabula eruit e Ciceronis libris, ubi recondebatur' (*Orationes*, Utrecht, 1713, iv. 158).

³ *De statu primitivae ecclesiae ejusque sacerdotiis, de pontificis Romani potestate atque amplitudine* (Geneva, 1533) and *Pro ecclesiasticae unitatis defensione: Œuvres comp. de du Moulin*, Paris, 1681, iv.; cf. *Cal. Opera*, xvi. 81. The latter treatise was published under the name of Fr. Villerius.

⁴ Hotman's great contemporary Cujas shared none of his ecclesiastical tastes, and is said to have parried a searching theological question with the quiet observation, *Nihil hoc ad edictum praetoris*.

⁵ Brantome, *Des Dames: Œuvres complètes* (Paris, 1876), ix. 492. At the time at which this libel was published, Hotman's brother Jean was in the service of the Cardinal of Lorraine. In Sturm's indignant letter of 1561 he taunted

Hotman's political activities during the latter years of his official residence at Strassbourg were, as has been indicated, of a doubtful character and at times open to grave criticism. Their beginnings were insignificant, and it is probable that he had to impose himself on the leaders whom he desired to serve. He was eager to take a hand in intrigue and conspiracy, and though he failed to obtain a footing in the inner circles of the Huguenot party, he was able to obtain a certain measure of reluctant recognition from the Protestant leaders of France and Germany. If the measured invective of Sturm, a scholar of high merit and unblemished reputation, be accepted as well founded, Hotman's manner of ingratiating himself resembled that by which a notorious Jewish financier of last century obtained a partnership and a bride at one stroke. He claimed in France to be the confidant of the German princes, and in Germany he represented himself as deep in the counsels of Condé and Navarre. Neither claim had any real foundation, and until the outbreak of the first Religious War he was treated with suspicion by the Huguenot leaders. With his usual indiscretion he loudly accused the King of Navarre of levity and laxity, but Antoine and his *entourage* had correctly gauged the limitations of this doctrinaire firebrand and vain-glorious conspirator from Strassbourg.¹ The measure of recognition which he eventually obtained was due to his identification with a policy which for a short period was favourably considered by the Huguenot leaders and Catherine de Medici. This policy was at first an attempt to obtain the assistance of the Protestant Princes of the Empire for the Protestant party in France and for the Queen, who found herself in the power of the Guise family. It developed later, when war broke out, into a scheme to get the German Princes to intervene in force on the side of Condé, and effect a settlement which would leave the Crown independent and the security of the Protestants assured. As we have seen, the growing breach between the Lutheran and the Reformed churches, and the mutual suspicions of the Princes, prevented any effectual aid being rendered to Condé. Hotman had not spared himself, and his zeal and

Hotman with his passion for notoriety, which led him to endanger his brother's life in publishing his attack on his master. 'Cum fratrem Joan Hottomannum habeas apud Cardinalem Lotharingiae quaestorem, tu tygrem divulgare audes et fratrem tuum certissimo exitio objicere' (*Bib. Ec. Ch.* v. 360). Cf. Lenient, *op. cit.* 288.

¹ *Gal. Op.* xvii. 621.

intellectual force gained for him a position of some temporary importance, but with the failure of his policy his usefulness was at an end, and he was glad to depart from a field in which he had promised much and achieved nothing.

In the meantime Strassbourg had cast in its lot with Lutheranism, the Academy was showing signs of decadence, and Sturm was a bitter enemy of Hotman.¹ At the instance of the Bishop of Valence, Hotman accordingly returned to France, and for three years from 1563 he filled the principal chair at the University, which had fallen into decay since the departure of Cujas in 1559. His learning and his power of attracting pupils rehabilitated the Law School. His doctrine had the polemical quality which marked all his activities, and was not generally approved by his seniors. 'Nous nous occupons,' he wrote to Henri de Mesmes, 'moins d'interpréter le droit civil, que de renverser les inventions sophistiquées des praticiens, et de nettoyer pour ainsi dire les écuries d'Augias.'² In spite of continual disappointments in his struggle to obtain his share of his father's estate, the period of his residence at Valence was one of the most pleasant of his life.³ He was recognised as a jurist of distinction, was known by the leaders of the Protestant world, and his eldest son Jean, now in his teens, was among his students. But he left Valence at the end of three years owing to a quarrel with the authorities. He claimed the 1200 *livres* of salary formerly paid to Cujas, and, on being refused, departed to Bourges, and thus unconsciously enabled his rival to return to Valence at an increased stipend of 1600 *livres*. During his residence at Valence, Hotman wrote his *Anti-Tribonian*, in which he gives expression in his usual sweeping and exaggerated manner to the considerations which led l'Hôpital to produce *l'Ordonnance de Moulins* of February, 1566.⁴ The fact that the treatise was not published during the author's lifetime seems to indicate that it did not meet with the approval of the Chancellor, and that the author judged it prudent to lay it aside.⁵

This treatise was published posthumously by Nevelet in 1603, with a dedication to de Thumery. It is stated on the title-page

¹ Fournier et Engel, *Les statuts et privilèges des Universités Françaises* (Paris, 1894), 66, 67, 74, 76, 131 and 144.

² Dareste, *op. cit.* 47.

³ Hotman to Amerbach, Dec. 1558 : *ibid.* 14, n.

⁴ Lavissee, vi. p. i. 86.

⁵ Badouin anticipated some of Hotman's views in his *De institutione historiae universae et ejus cum jurisprudentia conjunctione* (1561).

to have been written on the advice of l'Hôpital 'dés l'an 1567,' and in the preface to have been communicated to the editor by Jean Hotman. The sub-title of the treatise, *Discours pour l'estude des Loix*, indicates its scope. Its object was to attack the abuses which appeared to arise from the absorption of the attention of young men studying for a legal career in the antiquities of Roman jurisprudence. Legal texts appeared to Hotman to have less value from an historical point of view than a book of Livy, Suetonius or Tacitus, and as a preparation for a forensic career, the *tronçons et lopins* which Justinian threw together had no value without a preliminary knowledge of Roman History. In short, the remains of Roman law had little historical value, and had no value as authorities to French legal students. The latter were preparing for entrance into a world of legal thought and practice which had nothing in common with that of Rome.

Turning first to the law of persons, Hotman indicates with his usual force and point the contrast between the world of sixteenth-century France and that of Justinian, between the *Coustumiers de France* and the Digest. The study of the latter is useless. 'Car,' he writes, 'c'est autant comme si les Prestres et Moines de maintenant enseignoient à leurs Novices la façon de dancer és processions solempnelles, parce que les Prestres Saliens de Rome avoient coustume de la faire.' The same conclusion is arrived at when Hotman turns to the law of things, and the Law of Succession, including the questions connected with *fideicommissa* and accretion. He would leave successions to be regulated by *droit naturel*, 'estant la matiere testamentaire par la confession mesmes de tous les Practiciens, la source et mere nourrice de la pluspart des procez et chicaneries qui sont au pais que l'on appelle de droit escrit.' He enlarges on the futility of studying the obsolete intricacies of the Roman *stipulatio* and forms of process. What part can such studies have in the education of 'un Philosophe politique discourant de raison et equité, tel que doit estre un jurisconsulte'? They are useless even for the formation of the most ordinary and mercenary *praticien*. Roman Law, he maintains, was never intended to take the place of equity and natural reason. It was created by the Roman *bourgeoisie* for their own protection, and was adopted by the ruling caste in other communities.

Having dealt with what one may describe as classical Roman Law, Hotman turns to the codification which took place under Justinian at the hands of Tribonian. He describes the Digest

as a hotch-potch of fragments, torn from their setting and forced to convey a meaning which their different authors would never have accepted. These fragments belong to all periods, and often refer to forms which were obsolete in Justinian's day. They are presented, he adds, 'non pas avec discours et deduction, qui fut intelligible, mais par petits eschantillons et lopins qui sont comme des bulletins anciens de la Sybille, ou Enigmes fait à propos pour gehenner et tourmenter les meilleurs esprits de ce monde.' Thus Hotman disposed of 'ce precieux reliquaire de Tribonian.' In his view, its reputation would have disappeared in the West, which wisely followed customary law, had it not been revived by the Papacy for its own ends, and made use of for the creation of Canon Law, by the side of which it took on new life.¹ 'Par ce moyen,' he adds, 'les Princes estrangers, qui ont vouler enricher aucunes de leurs villes de l'estude et exercice des livres de Justinian, ont esté tellement contraints par cette mixtion et conjunction artificielle de recevoir l'exercice du droit Canon, qu'encores aujourd'huy en plusieurs endroits de l'Allemagne ils ne se peuvent developer des lectures du droit Canon, tant est asservi à la grandeur du siege Romain l'exercice des livres de Justinian. Parce que notoirement l'un attiroit l'autre, comme une adjonction inseparable.' Hotman's estimate of Canonists is summed up in the proverb, *Magnus canonista, magnus asinista*.²

From the Canonists he passes to the Glossators and to the *practiciens*, whom he describes as their offspring in respect that 'l'ordure du droit Canon et des sophistes chaffourreurs jointe avec les livres de Justinian, a par cy-devant recen et porté toute l'envie et mal-veillance des procez et plaideries, comme si elle seule en fust cause.' But his examination of external abuses does not divert his attention from 'le vice interieur, qui semble naturellement estre és livres de Tribonian et discipline d'iceux.' This vice is introduced through the prevalent educational methods and material. The study of the Pandects has been further com-

¹ Cf. Hobbes' famous *dictum*: 'And if a man consider the originale of this great Ecclesiasticall Dominion, he will easily perceive, that the Papacy, is no other, than the Ghost of the deceased Roman Empire, sitting crowned upon the grave thereof: For so did the Papacy start up on a sudden out of the Ruines of that Heathen Power' (*Leviathan*, iv. 27).

² Hotman's antipathy to Canon Law was not entirely disinterested. The correspondence of Calvin makes it probable that Hotman was betrothed to a Catholic before his conversion to Protestantism, and this neglected tie may account for his hostility to Canon Law and for the charge of adultery which Badouin brought against him and his Protestant wife.

plicated by the Florentine Codex being made available and by the innumerable questions of textual criticism and interpretation raised by the humanist school of Jurists. 'Cependant,' he writes, 'on peut juger par ce discours, si c'est grand felicité aux hommes de maintenant, de consumer la fleur de leur aage en l'estude de ces livres, veu que la plus grand partie d'iceux ou est du tout abolie et hors d'usage, ou est remplie de desordre et confusion, ou est farcie de contrarietez et antinomies, ou est entachee de fautes et erreurs, ou est revoquee en doute et en dispute par les corrections et changements qui s'y font ordinairement.'

Hotman's insistence on the importance 'du vice naturel et du defaut interieur qui est en la matiere et substance de la discipline' is apt to mislead a hasty reader in his estimate of the import of the treatise. Hotman observed the eternal conflict between the conservative tradition of his country and its eager willingness to accept doctrinaire gospels imposed upon it from without. To his mind the invasion of Roman and Canon Law seemed as alien to the real spirit of France as the doctrinaire theories of the French Revolution appear to the French nationalists of our day. Just as the Revolutionary tradition encouraged the kind of discussion which diverts public attention to fruitless and ingenious debates, so it appeared to Hotman that 'seroit il plus expedient et plus salutaire de commettre à la prudence et judgement des hommes de bon sens et entendement, cogneus pour bons droituriers, la decision de la pluspart des causes privees, sans vouloir entreprendre d'establiir une loy particuliere sur chacune d'icelles, qui est une chose autant impossible comme elle est infinie.' It was an appeal from technical jurisprudence to the judgment of men who had been formed in Hotman's school of abstract justice, customary law and knowledge of the scriptures.¹

On his departure from Valence Hotman found a warm welcome at the University of Bourges, and was honourably lodged at the hôtel of the Duchess de Berry, but after five months' residence his fierce Protestantism produced a riot and he fled to Paris, leaving his library to the tender mercies of the mob. On the outbreak of the second Religious War in 1567

¹The latest estimate of the *Anti-Tribonian*, Baron's *Franz Hotmann's Anti-tribonian, ein beitrag zu den codificationsbestrebungen vom XVI bis zum XVIII Jahrhundert* (Bern, 1888) links it on to the development of legislative codes in Germany.

he took refuge in Sancerre, and assisted in the defence of this Protestant stronghold. After three years of misery, shared with an ailing wife and a growing family, he returned to his teaching at Bourges. The defiant self-reliance of his youth had been broken on the wheel of Fortune, and, like many another sixteenth-century worthy, he produced a *Consolatio*. This little treatise is one of his most characteristic productions. During the siege of Sancerre he found consolation in the Scriptures and St. Augustine's *Civitas Dei*, in the contemplation of the Divine guidance granted to the chosen people, and produced in fact something in the nature of a Commentary on Psalms cvii. and cxiv.¹ It offers a striking contrast to the writings of the same category produced by Du Vair and Justus Lipsius, in which the revived spirit of Stoicism finds expression.² This treatise was published in 1613, with a Dedicatory Letter by Jean Hotman to his cousin François, the correspondent of Paoli Sarpi.³

At Bourges, as had been the case at Strassbourg and Valence, Hotman was surrounded by German students, and, to meet their requirements, he delivered a course of lectures on the *Libri Feudorum*, in which the Teutonic origin of Feudalism was popularised for the first time. The Massacre of St. Bartholomew brought this short interlude of peaceful work to a sudden close, and Hotman and his family fled with nothing but their lives to Geneva. He had 'said his good-night' to France, and never saw it again. His acute mind had probably arrived at the conclusion that, with the death of the most worthy Huguenot leaders, the cause of Protestantism was certain to pass into the hands of political leaders whose aims were ultimately secular.⁴

The first months of Hotman's residence at Geneva were occupied by him in the composition of the writings which the

¹ In a letter to Bullinger of Feb. 1572, Hotman writes that during the siege he found great consolation in the latter's chronological Commentary on Daniel.

² Du Vair, *De la constance et consolation ès calamités publiques*, and Lipsius, *De constantia* (1585); *Traite de la constance* (Tours, 1594): cf. Petit de Julleville, iii. 480; Zanta, *La renaissance du Stoicisme* (Paris, 1914), and Croll, *Juste Lipse: Revue du seizième siècle*, 1914, p. 200.

³ It is interesting to find that Jean Hotman's letter closes with a greeting to Du Vair: '*Duvero nostro viro doctiss. salutem ex me plurimam.*' The copy of this treatise in Glasgow University Library belonged to that distinguished scholar, Edward Reynolds, Warden of Merton and Bishop of Norwich. Reynolds was a friend of Jean Hotman.

⁴ Lavissee, vi. p. i. 135, and Romier, *Les origines politiques des guerres de religion* (Paris, 1914), ii. 225.

horrors of St. Bartholomew evoked. In 1573 his *De furoribus Gallicis* was published under the pseudonym of Ernestus Varamundus and with the false imprint of Edinburgh. In it he described in the manner of Sallust and in the terse and vibrant Latinity of which he was the master, the nightmare of blood and cruelty from which he had escaped.¹ He pictured the Scots Guard protecting the maddened and degenerate king, haunted by terrors which they were powerless to avert.² In January, 1573, the widow of Coligny wrote to Hotman urging him to produce a vindication and memorial of her murdered husband, and in compliance with this request he wrote his *Colinii Vita*.³ But these pamphlets are of minor importance to his *Franco-Gallia*, which was published at Geneva in 1573. This is the work by which he is remembered and by which he earned for himself a European reputation in a few months. He was already widely known as a distinguished jurist and a virulent pamphleteer, but his masterly handling of the past history of France in the *Franco-Gallia*, to aid the cause which he had at heart, gave him a secure place beside Duplessis-Mornay and George Buchanan in the history of political theory.⁴ This treatise has been defined as 'un livre de doctrine et un livre de combat, une 'Politique' et un pamphlet.'⁵ Hotman looked to the *Politiques* to enforce his theories. He was guilty of the common error of seeking to impose on enlightened opportunists a doctrinaire policy, and was inevitably destined to disappointment.⁶

¹ *De furoribus Gallicis, horrenda et indigna Amirilii Castillonii nobilium atque illustrium virorum caede, etc. Vera et simplex narratio. Ernesto Varamundo auctore, Edimburgi 1573.* Cf. Quérard, *Les supercheries littéraires* (Paris, 1870), iii. 912.

² 'Nam in aula Ligio regia perpetuo in statione et excubiis esse solet; arcis vestibulo, Vasconum, Scotorum, et Helvetiorum cohortes dies noctesque praesident' (52).

³ The letter is printed in *Bulletin de la Société de l'Histoire du Protestantisme français*, vi. 29. An English translation of these two pamphlets by P. de la Ramée appeared in 1574.

⁴ Hotman treated his *Franco-Gallia* as a serious contribution to history. 'Deinde,' he wrote to Capellus in 1575, 'liber est historicus, historia facti est. Tota igitur facti controversia est' (*Epistolae*, 47). His reputation among his contemporaries led to his being generally credited with the authorship of *Vindiciae contra tyrannos*: vide, e.g., Agrippa d'Aubigny, *Histoire Universelle*, t. i. bk. 2, cap. 15 and t. ii. bk. 2, cap. 2.

⁵ Lavissee, vi. p. i. 146.

⁶ 'A Paris même,' he wrote to Walter on 24th April, 1574, 'on a jeté en prison plus de mille personnes, nobles, gens de robe ou marchands. Ils ont pris

A distinguished contemporary has defined Joseph de Maistre as 'un prétorien du Vatican,' and the champion of the Papacy in face of the Revolution had something in common with the Huguenot jurist who turned to the past for a remedy for the ills of his time.¹ Their immediate and practical aim and attitude were similar, but their material and their interests were poles asunder. The former found in the theoretical claims of the Papacy a medicine for a world which had been carried away by doctrinaire conceptions of liberty, while the latter turned from the encroachments of centralised royalty to an abstract tradition of constitutional freedom. To the eyes of Hotman the Valois monarchy was the Revolution, a disastrous breach with the past; but while de Maistre had recourse to an articulate authority, Hotman found it necessary to create for himself from the fragments of the past a theory which would serve his purpose. They shared, however, the conception that the course of events had falsified the true lines of development, and sought to revert to a past which was malleable to their doctrinaire hands. They had both received in some Pentacostal manner the gift of vision. The two writers share what M. Faguet has described as the Praetorian spirit; they were devoted, competent, but impatient of discipline and indifferent to the *communis consensus*. Hotman's study of French origins was preceded by Pasquier's *Recherches*, but it has nothing in common with the massive product of that distinguished antiquary. It possesses the marks of the historical disquisitions which are sometimes delivered by counsel in ecclesiastical cases. It is well arranged, relevant and pointed, but it bears little relation to facts, and is arbitrary and abstract. The litigant disguised as historian is not a safe guide, and a collection of historical instances torn from their setting does not really disguise the defects of a theoretical proposition.

In the *Franco-Gallia* Hotman seeks to define 'la forme de la police de nostre chose publique,' and, with that end in view, he gives a rapid survey of the development of French institutions. His thesis is, shortly, that, as far back as one can go in the history of France, one finds representative institutions and

le nom de *politiques*, et avec l'appui du frère du roi ont demandé que l'on fit revivre l'ancienne constitution française, en convoquant les Etats généraux. C'est en effet le seul remède à tant de maux, mais c'est en même temps le plus grand coup qui puisse être porté à la cause des tyrans' (*Revue Historique*, ii. 374).

¹ Faguet, *Politiques et Moralistes*, i. 60.

constitutional checks on the central power. There was no real kingship in ancient Gaul, and the encroachments of Roman imperialism were swept away by the Frankish invasion. The amalgamation of the Gauls and Franks produced a new creation, *Franco-Gallia*, which marked a distinct breach with the separate traditions of each element.¹ The characteristics of this new regime, which prevailed until the growth of a centralised monarchy destroyed it, were the limited nature of kingship and the existence of representative assemblies. The former was elective and divisible, and was held at the will of the nation, while the latter were integral parts of a well-defined constitution. The assemblies met by right at stated times, were composed of representatives of all classes of the community, and were in a position to deal with constitutional matters. This well-defined system was to Hotman a harmony which had been reduced to discord by the encroachments of royal power, and he aimed at its restoration. The past which he sought to revive was unfortunately the creature of his imagination, and devoid of foundation in fact or even in theory.² Against this capital defect may be placed the merit which belongs to one of the earliest attempts to deal with distinctively national history from the point of view of politics.³

It is a limited patriotism that seeks to heal its country's woes by imposing a doctrinaire remedy from without. On the other hand, the remedy which Hotman offered may be said to have consisted in a return to the worthy elements in the country's past. This is Hotman's defence. The criterion to be applied is the question whether this past could have been revived without a complete disruption of the national organism. That Hotman's ideal France could not have been revived without a preliminary

¹ Hotman's conception of the important part played by the Franks in the development of European nations is supported by the verdict of modern historians. Cf. 'Parmi les peuples qui depuis le v^e siècle, se sont déversés sur l'empire, les Francs ont prévalu, malgré leurs échecs en Italie et en Espagne. On peut dire qu'ils conduisent l'histoire' (Lavissee, ii. p. i. p. 127).

² The modern view of the historical questions dealt with in the *Franco-Gallia* is set forth by Fustel de Coulanges in his *Histoire des institutions politiques de l'ancienne France*, and in particular in the sixth volume, which bears the title *Les transformations de la royauté* (ed. Jullian, Paris, 1914, pp. 238, 385-412), and by Luchaire in his *Manuel des institutions françaises* (Paris, 1892).

³ Fueter, *Histoire de l'historiographie moderne* (Paris, 1914), p. 174. Cf. Armstrong, *Political Theory of the Huguenots: English Historical Review*, iv. 13, which contains a detailed analysis of the *Franco-Gallia*, and Esmein, *Droit constitutionnel* (Paris, 1914), 282.

dissolution is proved by the fact that he found it necessary to sweep away the whole legal institutions of the country, and to transform the mentality of the most influential class. He advocated an intellectual revolution which was based on no general sense of its necessity. The slow revolution marked by the growth of royal power was only ripe for destruction two hundred years after his death.

The theoretical interest of Hotman's thesis has thrust into the background its importance as a political pamphlet written in support of the claims of Henri of Navarre. This has been due to two main causes. In the first place, it was only in the fourth edition, published in 1586 with six additional chapters, that the treatise was given this practical turn. In the second place, it was only in the year 1911 that the publication at Haarlem of the Hotman correspondence from the archives of the Musée Teyler demonstrated that Hotman had *remanié* the material of his *Franco-Gallia* at the urgent request of Henri of Navarre and his councillors.¹ The correspondence is a tribute to the influential position in the learned world occupied by Hotman, but it also shows that he was judged capable of moulding his writings to ulterior ends. To students of the period the reiterated warning, 'qu'il falloit plustost déduire nostre droict *a jure regni vel potius feudali et francisco quam a justa re,*' is illuminating. Hotman was urged to take his stand on a view of royal power, based on a separation of the kingdom from the individual ruler, and on the system of reciprocal rights and duties expressed in the feudal law. In obedience to these suggestions, he devoted six new chapters to an elaboration of his views on the power of the community to depose unworthy rulers, to the royal domain and *appanages*, to the powers of representative assemblies, to the distinction between the king and the kingdom, to the manner in which the national assemblies had resisted papal encroachments, and to the limited character of royal sovereignty in France. These additional chapters outline the position taken up at one time by the supporters of Henri of Navarre, and subsequently adopted by the pamphleteers of the League. It rested on the view that

¹ Blok, *Correspondance de François Hotman (Archives du Musée Teyler, serie ii. vol. 12, part 2, Haarlem, 1911)*, pp. 203 *et seq.*, particularly letters from Henry of Navarre, of 24th August, 1584, from Duplessis-Mornay and Paul Choart. These were insistent that Hotman should write nothing that could excite the jealousy of Henry III., and Choart referred to the manner in which James VI. of Scotland was supposed to have injured his prospect of succeeding to the English crown by his over-eagerness (p. 210).

kingship was not a possession which could be defined in terms of the Roman law of personal property, but a function to be interpreted as only one part of a governmental harmony. It might also be treated as falling within the field of feudal institutions in which every right was weighted with a corresponding duty. The changes effected in the fourth edition of *Franco-Gallia* clearly indicate the conscious development of political theory to suit the needs of the hour which marked the age. In the history of this treatise may be traced the trend of contemporary politics.¹

While the *Franco-Gallia* was published at Cologne in a French translation in 1574,² it did not receive an English dress until the commencement of the eighteenth century. The English translator was the first Viscount Molesworth, an ardent Whig and a disciple of Algernon Sidney, and the translation was produced as a political pamphlet.³ It is beyond question, however, that Hotman's treatise was widely known in England during the author's lifetime.⁴ The appreciation of the Irish peer was preceded by a century by the criticism of a Scottish Regialist, and in William Barclay's *De regno et regali potestate* the

¹ In his *Franco-Gallia* Hotman deals with some of the legal matters which he had treated in his *Anti-Tribonian*. The Chapter, *Des Parlemens et sieges judiciaux de France*, contains an energetic expression of his view that Clement V. in transferring the Papacy to Avignon, had contaminated the simple French legal practice of that day with 'cest art de chichanerie Romaine.' Again, Hotman's treatment of the Salic Law in the *Franco-Gallia* recalls his views on Succession Law expressed in the *Anti-Tribonian*. It is to his credit that he refused to make use of vulgar errors which had unduly exalted the import of the Salic Law, and rested his opposition to female rule on the customary law and practice of France. *Vide* Armstrong, *op. cit.*

² *La Gaule François de François Hotoman, Jurisconsulte*: a Cologne par Hierome Bertulphe, 1574. The translation is anonymous, but is generally ascribed to Simon Goulart of Senlis, who became the third ruler of Geneva on the death of Beza. The Hotman family was connected with Senlis, and Goulart, who was pastor at Geneva from 1572, was probably one of the attractions which drew François Hotman there. It is interesting to note that Hooker's *Ecclesiastical Polity* owes much to the patristic researches of Goulart (Lee, *French Renaissance in England*, 150, 316, 339).

³ *Franco-Gallia, or an Account of the Ancient Free State of France*, translated into English by the author of the *Account of Denmark* (1711 and 1721). The second edition is preceded by an interesting preface, in which the Whig principles are set forth with some epigrammatic force. Lord Molesworth's attention was probably drawn to the *Franco-Gallia* by his master, Algernon Sidney, who deals with it in his *Discourses concerning Government* (London, 1751, p. 233), cap. ii. sec. 30. On Molesworth, *vide* Seecombe in *D.N.B.*

⁴ It is quoted *e.g.* by Craig in his *Jus Feudale*, i. 12, § 9.

Franco-Gallia is ranged for attack beside Buchanan's *De jure regni* and the *Vindiciae contra tyrannos*.¹ Barclay's treatise was published in 1600, and by that time Hotman's historical thesis regarding the limitations of royal power had been adopted by the League and the Jesuits. The doctrinaire arguments of Buchanan and Duplessis-Mornay still demanded criticism in their original form, but Hotman is only attacked 'at the second intention,' as the inspirer of the polemical writings of Jean Boucher. Hotman was credited with the authorship of the *Vindiciae* in some quarters, and Barclay shows considerable acumen in disposing of the attribution,² but the latter only comes to close quarters with the *Franco-Gallia* when he turns to Boucher, the 'fighting parson,' in the seventeenth and succeeding chapters of his Sixth Book. He treats Hotman, under whom he had studied at Bourges, with respect, and contrasts the 'subtilis alioqui acutus jurisconsultus' with this ignorant pamphleteer, who made use of Hotman's perverted learning for his own ends without acknowledgment.

In 1573 Hotman published the substance of the lectures on Feudal Law which he had delivered at Strassbourg, Valence and Bourges, under the title *Commentatio tripartita ad Libros Feudorum*. In an introductory letter he expressly links this treatise to his *Franco-Gallia* in an interesting manner.³ After sketching the decline of Roman Law as presented at length in his *Anti-Tribonian*, he depicts the break-up of a general system of law into local *consuetudines*. 'Jam vero,' he writes, 'quid de Francogallia nostra dicemus? in qua non, ut in veteri proverbio est, quot homines, tot sententiae sunt, sed quot civitates ac regiones, tot leges, instituta, mores: ut jam probabiliter disputari posse videatur, non

¹ Lib. i. *ad init.* For an account of William Barclay, *vide S.H.R.* xi. 136.

² *Ibid.* lib. ii. cap. i. Cf. iv. cap. 16 et 17.

³ The work is preceded by two dedicatory letters: the first dated from Bourges in June, 1572, and addressed to Caspar Seydlitz, one of his German students from Silesia, and the second dated March, 1573, and addressed to Reuber, a jurist who became in after years the trusted counsellor of the Elector Palatine. The former contains a pleasant picture of L'Hôpital conversing paternally with Hotman's students, and the latter recounts the tale of the MSS. which Hotman lost when he had to fly from Bourges. Some, however, had been in the printer's hands and had escaped, and he had succeeded in recovering or rewriting others. Others had been seized by 'is, quem tu joculariter Christophorum Porcum appellabas' (Christopher de Thou). The ruthless manner in which Hotman criticised contemporary Feudal developments had a political basis. The doctrinaire left wing of the Huguenot party bitterly resented the manner in which Reform was made subservient to the political ambitions of feudal potentates.

unam Justitiae et aequitatis esse formam...' These local customary laws were in due course reduced to writing, and suffered at the hands of sophists the same degeneration which Roman Law had experienced at the hands of the Emperors and their creatures. In falling into the hands of specialists they ceased to be intelligible to the common people, who suffered accordingly. He observes that the case was particularly hard when a body of foreign customs was imposed on a people by a conqueror, and cites the example of England suffering under Norman laws of a particularly offensive character. 'Sane Normannus,' he adds, quoting Polydore Virgil, 'pro suo instituto, non potuit alias dare leges: quando non alia est natio, quae peritius sciat calumniari, praevicari, atque, tervigersari: id est, per fraudem et cavillationem, frustrationemque litigare, seu vexare litibus.'¹ Far happier, he adds, were the peoples who had enjoyed the simplicity and purity of the Saxon-Frankish code, and quotes the saying of Tacitus: 'Plus apud illos bonos mores valere; quam apud alios bonos leges.' He proposes to treat in this treatise 'institutum de Feudastico jure nostrum,' a body of customary law which has peculiar importance as treating of principalities and powers and, being like Civil Law, Public Law directed to the good of the community. This feudal customary law is set forth in the *Libri Feudorum*, and he opens with an attack on this code as violent as that which he directed in his *Anti-Tribonian* on the Digest. He found it marked by three vices: *ambiguitas, repugnancia et absurditas*.² 'Ausus etiam sum,' he proceeds, 'barbarica illorum librorum scriptione offensus, in libello quodam observationum scribere, ingeniorum illam carnificinam esse et Augiae stabulum, in quo expurgando altero Hercule opus esset.' In support of this view he quotes numerous antinomies, many of which are familiar to students of Craig's *Jus Feudale*. The debt which Craig owed to Hotman cannot easily be overestimated.

In his *Disputatio*, the first section of his tripartite treatise, Hotman deals with feudal institutions from an historical point of view. He finds his material in the *Germanorum historiae* rather than in the despised *Libri Feudorum*, and assigns to feudalism a distinctively Germanic origin. The *clientela* of the Roman differed from it in important respects, but there was sufficient similarity

¹ Cf. A. Maitland, *English Law and the Renaissance* (Cambridge, 1901), 58.

² Cf. his phrase: 'istis feudisticis deluotionibus exagitandis finem imponamus' (*Disputatio*, c. 24) and 'rhapsodia ex variorum auctorum scriptis suffarcinata' (*Commentarius*, Pref.).

between the two to justify Hotman in defining a *feudum* as *clientela militaris ea lege contracta, ut cliens pro beneficio accepto militarem operam praebeat: vicissimque Patronus suam illi fidem, benevolentiamque praestet*.¹ The military element is essential, and where it is wanting, as in the case of *feuda* held by women, the *feudum* is degenerate, and is in fact a *feudastrum*.² Hotman protests against the application of legal categories derived from Roman Law to feudal conceptions. He insists on the equal reality of the *dominium directum* of the superior and the *dominium utile* of the vassal, and declines to reduce the latter to a usufruct.³ In this view he stood alone in his age, but his reasoning convinced Sir Thomas Craig. The adoption by the latter of Hotman's two *dominia* was a decision of capital importance in Scottish legal theory.⁴ Again, Hotman carefully distinguishes *feudum* from *emphyteusis*.⁵ While insisting on the individuality of feudal customary laws, he devotes some space to the examination of certain features of them from the point of view of Roman jurisprudence. Thus, after weighing the considerations to be urged on both sides, he answers in the affirmative the question: *an obligatio servitii feudalis jure civili valeat?*⁶ Again, he discusses whether a *feudum* can be acquired by the *Lex Commissoria*.⁷

Like all the Protestant jurists of his age, Hotman was attracted by legal origins, and directed his attention to the primitive and uncontaminated Civil Law of the Republic. He went further back than his German brethren who turned from Canon Law to the legislation of Imperial Rome and helped to form the theory of the modern state. He went back to the laws of the Roman primitive community, and found that simplicity and sweet reasonableness which to his mind lay behind every existing code of law.

¹ *Disputatio de jure feudali*, cap. iv.

² 'Hottomannus, non ineligeni vocabulo, vocat feudastra, id est, semifeuda, quod a vera feudi natura degenerent' (Craig, *Jus Feudale*, bk. i. 9, § 6); cf. *Disputatio*, cap. xv. and xvii.

³ *Disputatio*, cap. 34, where he defines eight points of similarity and eighteen of distinction. He describes the *feudum* as the *hypostasis* or *subjectum* and the right of the vassal as the *accidens*, an interesting piece of legal metaphysics which Craig adopted (*Disputatio*, c. 4 and 33).

⁴ Craig, *op. cit.* i. 9, § 11. ⁵ *Disputatio*, cap. 35; cf. Craig, *op. cit.* i. 9, § 19.

⁶ *Ibid.* c. 31; cf. Craig, *op. cit.* ii. 11, § 31.

⁷ *Ibid.* c. 17. Craig wrote regarding this passage: 'Hic Hottomannus, captata occasione, mirum in modum contra jus Feudale insultat, ambiguitatem, absurditatem et antinomiam objiciens... At absurditatem exaggerat Hottomannus.' (*Op. cit.* ii. 7, § 29; cf. Hot. *Commentarius*, L.F. i. 27.)

He did not regard the jurisprudence of the classical Roman period as the supreme source of legal wisdom; he found in it rather the revelation of the perfect type which, could it be unearthed, lay hidden beneath even the farrago of the *Libri Feudorum*. He sought the ideal simplicity of justice and right dealing, and his impatience and intolerance towards these fragmentary records is the measure of his idealism. These characteristics give piquancy and a certain fascination to his treatises on Feudal Law, and account for the manner in which a douce Scottish practitioner like Sir Thomas Craig was permeated by their spirit.¹

In the same year (1573) Hotman dedicated to the Landgrave William of Hesse the first edition of his *Quaestionum Illustrium Liber*, a work of the same type as Dirleton's *Doubts*. It is another of the sources of Craig's *Jus Feudale*, and it is interesting to observe that many of the legal speculations in which Craig indulges are specially treated by his eminent predecessor in this treatise.² Many of them were doubtless *loci communes* of debate, but a perusal of the feudal treatises printed in Zilettus' *Mare Magnum* does not lead one to minimise the debt which Craig owed to Hotman. This treatise is also of interest to the student of Hotman's character. He treats in it of the question, *Rege mortuo, cujus nepos ex primo ejus filio demortuo, et alter ejusdem filius extant, utri hereditas deferatur*.³ This dispute as to the respective rights of succession of the nephew and uncle came to be of political importance later, when the opponents of Henry of Navarre set up against him the claims of the Cardinal de Bourbon, his uncle. In 1573 Hotman decided in favour of the older generation, but at the request of Henry he maintained the opposite view in his pamphlet, *De Controversia Patru et nepotis in successione regni*, published twelve years later. Not

¹ 'Hottomannus, vir sane magni judicii,' wrote Craig in a typical passage, 'miris modis Oberto et Gerardo insultat . . . Sane in hoc casu et ego cum jure civili et Hottomanno assentior . . . ; sed odio quod in jus feudorum aperte Hottomannus profitetur, paulo eum altius, quam par erat, evictum constat' (*Jus Feudale*, ii. 11, § 10; cf. *ibid.* i. 6, § 3; i. 13, § 17; iii. 3, § 31, and iii. 5, § 26). Hotman's trenchant criticism did not spare Sir Thomas Littleton, whose treatise was given to him by Etienne Pasquier. He describes it as 'ita incondite, absurde, et inconcinne scriptum, ut facile appareat, verissimum esse quod Polydorus Virg. in Anglica Historia de jure Anglicano testatus est, stultitiam in eo lib. cum malitia et calumniandi studio certare' (*Dictionarium verborum Feudalium*, s.v. Feodum).

² *Vide*, e.g., *Quaestio XI*. An dominium sine possessione acquiri possit? and *Quaestio XII*. In dominio transferendo an praesentia et naturalis traditio requiratur?

³ *Quaestio 3*, cf. *Ibid.* 4.

content with this recantation, Hotman altered the later editions of his *Quaestiones Illustres*. In the first edition he based his decision in favour of the uncle's claim on the texts of Roman Law, but in the later editions he supported the claim of the nephew by drawing a distinction between Civil Law and the customary law of France.¹ This treatise also marks an important change in his manner of treating the question of royal succession. In his *Franco-Gallia* he made the monarchy largely elective, but in this legal work he envisages the law of succession as definitely fixed and the claim of the heir as not open to discussion. These changes lay him open to accusations of time-serving inconsistency, and some countenance has been given to them through the recent recovery of the letters addressed to him during the last ten years of his life by Henri IV. and his entourage. These letters reveal Hotman in the position of an official pamphleteer on behalf of the king's cause, and as a matter of fact almost all his writings were *tendancieux*. If we condemn him on this ground, we must also condemn the age in which he lived. In the sixteenth century theories, political and legal, were adopted like weapons: they arose from concrete situations and had in themselves no formative influence.

For some time after Hotman's return to Geneva his mind was absorbed in the publication of these legal treatises and in the production of the political writings evoked by the Massacre of St. Bartholomew and of the furious replies which his critics drew upon themselves.² He declined a chair at the University of Marburg which the Elector Palatine pressed upon him, and when peace was restored to France he refused a semi-political post

¹ *Vide* 6th ed. (*Apud Jacobum Chouët*, 1598), p. 30 *et* *sqq.*

² Thuanus, *Historia sui temporis* (ed. London, 1732), vii. pt. 2, p. 25 *et* *sqq.* Hotman, *Matagonis de Matagonibus* (1578) and *Strigilis Papirii Massoni* (1578). These rare pamphlets, written in a macaronic style which caricatures that of the glossators, are perfect examples of the controversial methods of the age, and define with fierce brutality the thesis which found more dignified expression in the *Franco-Gallia*. Hotman insists that he is merely *simplex narrator et recitator historiarum* and offers the arguments of his critics to Ronsard 'ad perficiendam suam Franciadem.' He exalts German influence in France at the expense of the insidious corruption of the Italianate Court, and attacks the influence of women with comical violence. He seizes the opportunity of attacking Cujas, 'Recatholicatissimus doctor in utroque,' and covers his dead opponent Badouin with obscene abuse. Of women he wrote, 'Mulieres sunt sanctae in ecclesia, angeli in accessu, daemones in domo, bubones in fenestra, picae in porta, caprae in horto,' and compared his critic to women, 'quae dicuntur non posse inservire Missae quia nunquam perficeretur Kyrieleyson quia semper volunt esse ultimae. ad loquendum.' The relevancy of his attack on Badouin lay in the fact that he was Masson's teacher in law at Angers.

at Montpellier which was offered to him by the king. His acute mind, sharpened by bitter experience, refused to accept the patched-up peace as lasting, and the course of events justified his judgment. A few months later, Henry III., in the course of one of the quarrels which distracted the doomed family of Valois, gravitated towards the Huguenot camp and made tempting offers to Hotman. But a reconciliation was effected between the brothers, and the hopeful prospect vanished like smoke. The disintegration of Protestantism, which found expression in the growing hostility between Lutherans and Calvinists, gradually closed the doors of the German universities to Hotman, and he had to support himself by lecturing on law and taking private pupils, by practising as a consulting advocate and by minor diplomatic work on behalf of the German princes. He was burdened with an ailing wife and a growing family, and bewailed his miserable condition.¹ Geneva, distracted by plague and the hostility of the Duke of Savoy, proved but a precarious asylum, and in 1578 he left it for Basle, where, with a short interlude at Geneva, he was destined to spend the remainder of his life. The majority of his students at Geneva were young Germans, some of whom were destined to fill important positions in after-life, but none of them played a part equal to that which awaited Andrew Melville. The young Scotsman sat at the feet of Hotman at Geneva and drank deep at his well. 'He hard ther,' wrote his nephew James, 'also Francis Ottoman, the renoundest lawer in his tyme.'² The harsh and vivid intellect of Hotman inspired the kindred spirit which directed the second Reformation in Scotland, and the personality of the former, revolutionary jurist and convinced Calvinist, was indirectly an important factor in our national history.³

¹ 'Uxor dies et noctes has fortunas nostras deplorat. Videt me senem morbis obnoxium, novem liberis onustum, naufragum, opis conciliis egentem' (Hotman to Cappel, 7th January, 1575 : *Epistolae*, 46).

² *James Melville's Diary* (Wodrow Society), 42.

³ It is interesting to note that in the preceding generation the French element had been strong in the law schools of Germany. In 1523 Zasius wrote to Amerbach : 'Lectio ordinaria juris civilis Catenus elevata est, ut aegre sex assiduos auditores, et eos quidem Gallos habeam' (*Epistolae*, Ulm, 1774, 62). Like Cujas, Zasius had the distaste of a scholar for polemical theology, which distracted youth from fruitful studies. He described Luther as *pestis pacis, omnium bipedum nequissimus* (*ibid.* 73-97), and contrasted him unfavourably with Erasmus. Joseph Scaliger echoed the same complaint in 1608, in face of the Jesuit reaction : *Opuscula* (Frankfort, 1612), 461.

Hotman's political activities during his residence at Strassbourg gained him two patrons who remained faithful to him and assisted him in a measure during his declining years. These were William IV., Landgrave of Hesse, son of the Landgrave Philip, the distinguished Reform leader, whose sexual vagaries led the Protestant churches to countenance¹ concubinage, and the uncle and tutor of the young Elector Palatine. The former carried on a regular correspondence with Hotman, and was always glad to receive a visit from him at Cassel. In July, 1573, Hotman wrote of a visit to Cassel and of his admiration at the sight of the astrological apparatus collected there.²

The Elector's letters present an interesting picture of post-Reformation Germany, and well repay perusal. In 1559 and again on 12th March, 1573, he had offered Hotman a chair at Marburg, and on the latter's refusal, owing to political engrossment, he had made representations on his behalf to the French king.³ Three years later the Landgrave wrote Hotman regarding a protégé who was suffering from the heat at Padua where he was studying. He referred to a legal opinion with which Hotman had been charged, and closed his letter with an anxious postscript regarding his health.⁴ The worthy prince suffered from gout,⁵ and Hotman seems to have dabbled in empirical medicine. The latter also corresponded with his other patron, the Elector Palatine, on medical treatment, and on the fascinating subject of alchemy. The Italian *fuorusciti*, who had poured into France in a steady stream since the reign of Francis I., had infected Northern Europe with a passion for the shady side of medicine and experimental physics.⁶ Thus we find Hotman and the Elector

¹ William IV. (le sage), eldest son of Philippe I., succeeded his father in 1567, and died, aged 60, in 1592. Louis VI., Elector Palatine, abandoned the Reformed faith for Lutheranism. He was succeeded in 1583 by Frederick IV. (b. 1574), whose tutor, Jean Casimir, brought him up in Calvinism, which he re-established in the Palatinate (*L'Art de vérifier les dates*, Paris, 1819, série ii. t. 15, p. 361, and t. 16, p. 13).

² 'Quae vidi ego, cum istic aliquandiu apud C.T. commorabar, mathematica instrumenta! quas machinationes! qualem vero et quanto artificio elaboratam sphaeram! ut etiam Archimedeam illam propemodum superare videratur' (*Quaestionum illustrium*, Praefatio).

³ Calvin, *Opera*, xvi. (2), 705.

⁴ He required a physician, but he must be skilful and not a quack. 'Ante omnia,' he wrote, 'videndum erit, ut iste sit Hypocraticus. Nam Paracelsistas cum suis chemicis somniis non admittemus' (*Epistolae*, p. 68).

⁵ *Ibid.* p. 73.

⁶ Romier, *Les origines politiques des guerres de religion*, i.-ii. (Paris, 1913-4), *passim*.

exchanging reports regarding 'l'or potable,' of a 'miniére que savés,' and of a receipt for 'Idromel.'¹ References to the abortive Formulary of Concord and to the feats of the great English queen are followed by urgent requests for French plums.² The Landgrave was occupied between successive attacks of gout with the planting of a garden³ and the formation of a library at Cassel, and made use of Hotman's assistance in both directions. The references, in particular to the library, throw an interesting light on the mentality of post-Reformation Germany. In June, 1580, William of Hesse-Cassel wrote that the new buildings on which he had been engaged were complete, and that he proposed to devote himself to the formation of a library. He asked Hotman to send him from Basle folio editions of Zwingli, Bucer, Peter Martyr, Wolfgang, Musculus, Calvin, Bullinger, Viret and 'aliorum neotericorum Reformatae Religionis monumenta.' He preferred folio editions and good bindings ('asseribus albo corio obvolutis, quod nos Germani in *surizoryttor* vocamus').⁴

In October of the same year the Landgrave wrote with enthusiasm of Hotman's purchases on his behalf, 'quae sicut non adeo ornate, prout exoptandum, compacta fuerint, attamen cum tantorum auctororum monumenta nova nostra Bibliotheca non indigna censeatur . . .' The passion of the collector had taken possession of him, and he urged his correspondent to send him more Protestant theology in good bindings, such as Capito, Aretius, Marloratus, Beza and Walter. If well-bound sets of *opera omnia in folio* cannot be secured, he writes, let him send them unbound and he will have them bound to his taste. Nothing but folio

¹ *Epistolae*, pp. 65, 73, etc.

² *Pruna Brignollica* and *surculi Bricionales*: e.g. 'sed etiam prima occasione medicore quoddam vas plenum prunorum conditorum, quae vulgo Bricionolles nuncupantur' (162).

³ e.g. 'Quod ad surculos illos attinet quos nobis per Hassium misisti, horum pars aliqua, licet exigua quidem, in horto nostro perierunt. Ambae vero plantae hyacinthi orientalis, adeo foeliciter animi nostri desiderio respondere, ut odoris suavitate ceteras omnes ejusdem generis, quae ab Imperatore defuncto nobis missae fuerunt, longe superare videantur . . . Ceterum quo denuo hortus noster Cas-selanus variis fructuum generibus ornari possit, nobis constitutum est, proximo anno proprium quendam nuntium ad te Genevam mittere, idque in mense Februario; quo tempore commode et sub initio veris ad nos redire possit. Quare te rogamus, ut quicquid interea surculi bonae et exquisitae arboris comparare poteris, illud diligenter asserves' (Letter of 14th January, 1584). This passage recalls Pierre de Nolac's fascinating *Excursus on Pétrarque jardinier (Pétrarque et l'Humanisme* (Paris, 1907), p. 258 et sqq.

⁴ *Epistolae*, p. 122.

editions would satisfy him. 'Intelleximus,' he wrote, 'opera Aretii in folio extare. Quod si ita est, gratius nobis esset opus illud in folio quam in octavo. Da igitur operam ut in folio, si fieri potest, mittatur . . .'¹ In December the Landgrave again appeals to Hotman for 'libri probe ligati ad Bibliothecae nostrae ornamentum.'² By October of the following year he had turned his attention to editions of the classics, and pressed for the despatch of all that Hotman and his friends could lay their hands on. He had made vain efforts to get them in Germany. 'Typographi negant hos authores Graeco idiomate impressos in Germania inveniri,' he wrote. 'Cum autem Theologi hos summe expetant, dabis operam si vel in Gallia vel Italia impressos mihi acquirere possis.'³ It is probable that the Landgrave adorned some of his shelves with lighter material, but he did not address himself to Basle for that purpose, and would have received little sympathy from Hotman. The latter wrote with fury to Walter in December, 1580, of an edition of Machiavelli's works which Perna was printing at Geneva, 'detestanda opera omnia Machiavelli ab eodem illo Stupano Latine conversa,'⁴ and we may assume that at least this 'complete set' did not find its way to Cassel. Many famous names appear in the course of the correspondence. Thus, the Landgrave requests Hotman, in December, 1580, to induce Erastus to accept a Chair of Medicine at Marburg University, and there are frequent references to Justus Lipsius, Scaliger, Henri Etienne and Paolo Sarpi.⁵ The last glimpse which we get of the Landgrave is found in a letter from Reuber to Hotman of January, 1587. Fourteen years before Hotman had refused the offer of a Professorship at Marburg, but in his old age and poverty he returned to the project.

¹ *Epistolae*, p. 137.

² *Ibid.* p. 142.

³ It is possible that the reference is to editions of the Fathers. The phrase used is 'nonnulla veterum Graecorum monumenta' (*ibid.* 147).

⁴ *Ibid.* 141.

⁵ e.g. *ibid.* 157, 167, 195 and 109.

In October, 1580, Hotman made the acquaintance of Montaigne, who passed through Basle on his way to Italy. The latter recorded the meeting in his *Journal de Voyage*. 'Nous y vismes force gens de scavoir, comme Grineus, et celui qui a fait le *Theatrum*, et ledit medecin (Platerus) et François Hottoman. Ces deux derniers vindront soupper avec Messieurs lendemein qu'ils furent arrivés. M. de Montaigne jugea qu'ils estoient mal d'accord de leur religion, pour les responses qu'il en receut; les uns se disans Zvingliens, les autres Calvinistes, et les autres Martinistes . . .' (*Journal de Voyage*, ed. Paris, 1909, p. 78). Montaigne wrote to Hotman from Bozen (*ibid.* 148).

He was too late. The University was dominated by the Landgrave Louis, 'ubiquitarius summus, talis factus a dominante conjuge, quae ab Hunio Theologo pessimo nebulone regitur.' His brother William, Hotman's friend, was at Cassel, and the authorities, 'negociationibus dediti, homines doctos parum curantes,' would grant neither stipend nor exemption from taxation.¹

Hotman's latter years were shadowed by disillusionment no less than by penury and bereavement. His critical temper was associated with a strong vein of idealism, and as early as 1579 he was repelled by the growing dissensions among Protestants, but he had no conception of compromise, and remained in the narrowing world of Swiss Calvinism.² Basle was gradually drifting, like Strassbourg, towards the German shore, and Hotman left it for Geneva in 1584. He resumed his old life of teaching and giving legal opinions in the Calvinistic stronghold.³ He was now a widower, and dependent for the cost of any unusual outlay on the sale of such fragments of his patrimony in France as he had been able to secure from the reluctant clutches of his relatives, or on the property of his wife. By this time his son Jean was in the household of Poulet, the English Ambassador in Paris; his second son was dead, worn out with the privations of guerilla warfare in the south of France; the third had reverted to Roman Catholicism and passed from his father's ken; and the fourth, who had inherited none of the family talent, was a tradesman at Zurich. Only his daughters were left to him, and they were helpless young girls. Twenty years after Hotman's death, Scipio Gentili, moved to reminiscence by the death of his brother Alberico, wrote to Jean Hotman of a visit which he had

¹ *Epistolae*, 191: 'Nam Ludovicus praesens cum sit, multo plus potest quam Wilhelmus absens.' In 1579 Hotman had refused a chair at the University of Leyden offered to him in pressing terms by Douza and Lipsius (*ibid.* p. 109).

² On 26th May, 1579, he wrote to Walter: 'Credo istas dissensiones ex fastidio Evangelii, et corruptelis ac depravatione morum natas esse. Quid commune est Evangelio cum helluatione et crapula et ingurgatione tanta, quantam nunquam me visurum, aut auditurum sperassem? Quid mirum, si Deus istas disputationum furias in istud hominum genus immittat? Velim agi de disciplina et conformandis moribus. Nos Papistis ipsis ludibrio sumus. Doctrina reformata est, vita deformatissima' (*ibid.* 111).

³ On 6th November, 1584, Hotman wrote to Sttück: 'Sed mihi crede nihil opus fuit consolatione, sed gratulatione potius, quod ex illa Basiliensi solitudine me meamque familiam huc in tot amicorum affinium et familiarum meorum convictum recipim, etc.' (*ibid.* 181).

once paid to his father at Basle. He greeted the old savant as *Your Excellency*, and received the bitter and melancholy retort: 'Dic potius Tua Miseria, Tua Calamitas, Tuum Naufragium!' ¹ A long life of misery had taught François Hotman the vanity of the defiant self-confidence with which he had cut himself off from his father in his youth.

The only consolation left to the ageing scholar lay in the exercise of an intellect trained by legal studies and years of polemical writing to a high point of critical *finesse*, and he enjoyed it to the utmost. The period of his last residence at Geneva was marked by the publication of numerous works, including his *De re nummaria* and his *Observationes*, in which he indulged in trenchant criticisms of Cujas.² His attitude of scornful superiority to the material with which he dealt irritated more conservative and scientific jurists. As early as 1555 Dumoulin wrote to Amerbach of Hotman as a *litterator*, and in thanking Hotman for a copy of his *Commentatio* even his friend Cappel could not avoid a note of irony.³ The same note is present in a letter which Reuber addressed to him in 1586, urging him to compose his 'swan's song' in demolishing Canon Law.⁴ The veteran was only too eager to accept the suggestion, provided sufficient pecuniary inducement were offered. He sounded the Elector Palatine on the subject, and repeatedly urged Lingelsheim to induce his

¹ 'Omnia ejus non solum seria sed et faceta memini. Illud in primis, quod saepe commemorare soleo, cum in portu Basileae sedens me interrogantem isto vulgari et inepto more, unde ejus excellentia advenisset, oculis in me intentis me comiter objurgaret, quam tu, inquit, excellentiam mihi nominas, dic potius Tua Miseria, Tua Calamitas, Tuum Naufragium' (*Epistolae*, 394).

² *Observationum et emendationem Libri XIII* (Geneva, 1586 and 1589), xii. 30; cf. *Quaestiones*, 34, and *Hotmani in Cujacii commentarium in l. Frater a fratre Renovata disputatio*; *ibid.* p. 299. Cujas' criticisms of Hotman may be found in his *Observationes*, xv. c. 16, and xvii. c. 7 and 15, and in his *In Paratit. Digest. s.v. De mandatis principum*. It is characteristic of Cujas that he does not name Hotman. He charges him generally with errors caused by the superficiality of his interpretation. They were at issue regarding, e.g., *legis actiones*. This subject is dealt with by Gravina in his *Opuscula* (Utrecht, 1713), 298, and *De Ortu et Progressu Juris Civilis* (Leipzig, 1708), 218.

³ Cappellus Hot. June, 1575: *Epistolae*, 54.

⁴ 'Vellem te in tua honoranda senectute, quam Deus vegetam tibi concedit, oppugnationem Juris Canonici suscipere, ad cujus argumenti explicationem et tractationem neminem te melius instructum scio. In eo scriptitionis genere sese confutanda offerret Pontificis Romani Principum negligentia, et nullo jure usurpata jurisdictione, quo sola suam auctoritatem et impia sua dogmata semper testatus est... Non dubito quin de ejusmodi Cygnia aliqua cantione sis cogitaturus' (Reuberus Hot. 3rd April, 1586: *ibid.* 189).

young master to provide financial assistance.¹ 'Habeo contra jus Canonicum,' he wrote to Toussaint on 8th May, 1587, 'notas innumerabiles, quibus Antichristi R. partim stuporem in civilis juris scientia, partim imposturas, fraudes, falsitates incredibiles patefeci. Concilia Graeca et Latina recentiora cum illa Gratiani farragine contuli. Dicitur non potest, quantas imposturas animadverterim: ut mihi non dubium sit, quin orbem terrarum posthac pudeat, tam foeda Purpuratae meretricis menstrua, tandiu in tanta caecitate pro divinis oraculis coluisse. Opus intra biennium facile Deo adjuvante potest confisci. Sed mihi Maecenato est opus.'² Alas, the Erastian Princes of post-Reformation Germany were not inclined to spend money on the project.

During the five years which preceded Hotman's death his legal treatises were hawked over Germany in search of a princely patron who would pay something in exchange for a Dedication. Reuber, the Chancellor of the Elector Palatine, sent him assistance, and, modestly declining a Dedication, asked that his name might merely be mentioned therein. Hotman, however, was not content, and pressed for the patronage of his young master and his uncle. Reuber unwillingly consented, protesting that the uncle knew no Latin, and that the Elector was too young to understand a treatise on Roman Law. Hotman received a charming and witty letter of thanks from the latter and a sum of money.³ His efforts in other quarters were unavailing, though he went the length of appealing to Queen Elizabeth and endeavoured to revive forgotten family ties with distant kinsmen in Silesia.⁴ There was, however, one quarter from which Hotman received ample encouragement and appreciation during the last years of his life. The position of his only patron was unfortunately such that he was only able to offer him thanks and empty official appointments. On the formation of the League in Paris in December, 1584, following on the death of Alençon in June of the same year, Henry of Navarre welcomed the assistance of Hotman in the war of pamphlets

¹ *Epistolae*, 207 and 8. 'Nam jusculum ejus Canonisticum ita condire cogito, ut et ipsius Assectis crebrum commotum reddam.'

² *Ibid.* 195.

³ *Ibid.* 226, 230, 253. In view of Reuber's protest, Hotman substituted his *Re nummaria* for his *Observationes*.

⁴ *Ibid.* 253, 219, etc. Hotman went the length of borrowing from Toussaint on the expectations of his son Jean, 'qui in summa gratia est apud Lycesterum Comitum' (*ibid.* 251).

which ensued. The result was the publication by Hotman of a Latin edition of his *Franco-Gallia* under the title *De jure Regni Galliae* with considerable additions, of his *De controversia patris et nepotis in successione regni*¹ and of his *Brutum Fulmen*. These treatises were directly inspired and largely controlled by Henry and his advisers. The recent discovery and publication of the Hotman correspondence at Haarlem has given new significance to them.² The first two have been referred to already, but the last merits special notice.

Five years before his death Hotman published his *Brutum Fulmen*, in which he took advantage of the excommunication of Henry of Navarre by Sextus V. to launch a sweeping attack on the Papacy in his most characteristic style. This virulent treatise forced the attention of Europe on its author, in the same manner as his *Epistre* and *Franco-Gallia* had done at an earlier period, and gained for the old warrior a kind of Indian summer of that notoriety in which his heart delighted. Such arbiters of literary taste as Scaliger³ and de Thou⁴ greeted it with approval, mingled with amused astonishment. The national cause which he sustained was shared by him with most of his contemporaries of any real mental calibre, and his attack on papal claims gained a hearing as being well-timed. But for the fact, however, that the best interests of France were opposed to the unlimited exercise of Papal authority at the date of its publication, the treatise would have been immediately classed as a blunt and heavy bludgeon to be added to the Protestants' armoury. Had Hotman been content to confine himself to the political and ecclesiastical situation of the hour without introducing the life-long bitterness

¹This treatise is remarkable in respect that it contains a recognition of the hereditary character of kingship.

²Blok, 'Correspondance de François Hotman': *Archives du Musée Teyler*, série ii. vol. xii. pars ii. p. 207 et seq. (Haarlem, 1911). The correspondence contains autograph letters from Henry, Duplessis-Mornay, Sillery, Du Pin and others.

³'Hotomanni Franco-Gallia est bonne, j'y ay aidé ; il y a au Catalogue Brutum Fulmen. S'il est de Geneve, volo : s'il est de cette ville, ne emas. Fulmen Brutum, liber mihi donatus ab ipso Hotomanno, est praeclarus liber, multa bona dicit, sed multa addita sunt in editione Lydensi ; praestat Genevensis' (*Scaligerana*, s.v. Hotomannus). My copy of the Leyden edition belonged to Thomassin, the great French canonist.

⁴'Postea et in censuram illam scripsit Franciscus Hotomanus jurisconsultus, joculari stylo, libroque Brutum Fulmen titulum fecit ; quo et de beati Francisci et beati Dominici vita ac moribus veteres historiae, ab obsolete viris scriptae, ridicule discutuntur' (*Historia sui temporis*, London, 1732, iv. 305).

of his antipathy to Roman Catholicism, his *Brutum Fulmen* would have taken its place by the side of his *Franco-Gallia*. He could not resist the temptation to attack all along the line, and, in the light of the ultimate triumph of the Counter-Reformation in France, his onslaught must be held to have missed its mark.¹ Yet the production of a work on any other lines would have been too hard a task for Hotman. Not only had a long life spent in destructive criticism unfitted him for the production of a positive political programme, but he was also out of sympathy with the most important element in the situation with which he proposed to deal. The *Brutum Fulmen* is generally negative and destructive, but it contains many of the elements which marked the Gallican polemic for centuries. There are constant references to the anti-Papalists of the Conciliar period, to Marsilio of Padua, to Platina, to writers of the school of Lorenzo Valla, and to the ideas represented by the Pragmatic Sanction of Bourges. From the Gallican point of view he quotes Douaren and Faber, and the pronouncements of the Parlement de Paris, addressing himself at times to his *togati lectores*; while at other times he turns to canonists such as Zarabella, Jason and Philippus Decius. His violence, however, defeats itself. He sums up his attack on the Bull of Sixtus V. in four charges: (1) *Temerarii iudicis incompetentia*; (2) *Allegationis falsitas*; (3) *Ordinis judicialis defectus*; and (4) *Conceptae formulae stultiitia*. Under the first heading he includes the following: (1) *Papa sibi divinitatem asciscit*; (2) *Religionem Christianum illudit ac deridet*; and (3) *Falsas et commentitias religiones in Ecclesiam inducit*. The last subdivision enables him to launch an unbridled assault on the Regular orders,

¹ This was the judgment of cultivated Protestants of the period. Bongars, a distinguished Huguenot diplomatist and savant, made some sound criticisms on the political writings of Hotman in a letter addressed to President de Thou in May, 1595. 'Je vous confesseray librement, de *Franco Gallia*, vellem parcius, tant pource que le livre n'est pas de saison, que pource qu'il me semble que le bon homme s'est grandement abusé en cette dispute la. La doute donnoit quelque couverture à l'ouvrage, lors qu'il fut imprimé la premiere fois: et nous laissons eschapper beaucoup de paroles, en une fascherie extreme, ausquelles nous rougirions si elles nous estoient representées, après le cours de la passion. . . . Je scay bien que le bon homme se plaisoit de cette piece la, il l'avoit tesmoigné par les impressions reiterées. C'est une maladie, de laquelle beaucoup de nos gens, et trop sont entachés, qui eussent volontiers reduit nostre Monarchie à une Anarchie. S'il y a du mal en un chose, ce n'est pas a dire, qu'il la faille ruiner.' Of the *Brutum fulmen*, Bongars wrote, 'Je vous assure, Monsieur, que le Roy n'achepta jamais livre si cher, que cestui là: il a esté payé beaucoup pardessus son prix.' *Lettres de Jaques de Bongars* (La Haye, 1695), p. 651.

and particularly on St. Dominic and St. Francis and their followers.¹ The Jesuits, he maintains, are simply their successors.² Not content with attacking the Bull, he attacked the Pope, the Papacy, and generally the most characteristic developments of Roman Catholicism, or rather of the Medieval Church. A justification for the sweeping character of Hotman's indictment may be found in his expressed belief that, if religious freedom were granted in France, a large majority of the population would renounce allegiance to Rome,³ but it is certain that he was mistaken. His cold and critical intelligence, so well furnished with a mastery of searing invective, saw nothing in the Society of Jesus but a renaissance of perverted monkish sentiment.⁴ He had been drawn in his old age into the bleak uplands of desiccated Calvinism peopled by the Swiss, the Hollanders, and the Scots. But the old warrior had been permitted to sing his *Cygnia cantio* and to exercise his practised hand in 'cleaning the Augean stables of Canon Law.'⁵

The last stage of the Odyssey of François Hotman commenced when he fled with his daughters from Geneva, invested by the Duke of Savoy, and returned to Basle in September, 1589. He died there on 12th February, 1590, worn out with misery and quack medicines. His material belongings consisted of his MSS., some boxes of books, a little plate, and some worthless astrological instruments and chemical *formulae*. Against these was set a mass of long-standing debt, largely incurred in his experiments in alchemy.⁶ He was buried in

¹ e.g. 'Stultitia discipuli Bernardonis supereminet aurículas omnium onagrorum, qui sunt in Arcadia' (185). Cf. pp. 44 *et seq.* Reference may be made to *L'Alcoran des Cordeliers*.

² 'Nam Jesuitae nuper exorti sunt, qui defessis Dominicanis integri ac recentes succurrerent . . .' (193). Cf. p. 63.

³ 'Denique constat inter omnes, si par Gallis hominibus utriusque colendae exercendaeque religionis liberatas daretur, vix quartam popularium regni partem in sedis Romanae religione permansuram' (118). But cf. Armstrong, *French Wars of Religion*, p. 20.

⁴ 'The form in which the Catholic reaction was threatening Europe was indeed that of military force, but it was also an invasion of opinion. The Jesuits did not draw the sword in Germany until they had gained a footing in the minds of men' (Pattison, *op. cit.* p. 350).

⁵ *Vide* p. 339. The most effective method of estimating the value of Hotman's treatise, from the point of view of his contemporaries, is to compare it with, e.g., William Barclay's *De Potestate Papae*: vide *Scottish Historical Review*, xi. 155.

⁶ 'Senex etiam,' wrote his first biographer, 'ad naturalium arcanorum cognitionem adspiravit, Plinii aliorumque ductu et exemplo' (Doschius, *op. cit.*).

the Cathedral, by the side of Erasmus and Oecalampadius, at public expense.¹

J. A. de Thou, who had studied under Hotman at Bourges, noted his death in his *Historia*, in a few colourless sentences, which offer a marked contrast to his affectionate tribute to Cujas, who died in the same year.² The eminent historian probably remembered Hotman's attack on his father, and while he noted in his pages from time to time the telling effect of his polemical writings, he condemned the man with silence when he passed to his account.³ The verdict of Scaliger was similar. 'Hottomannum,' he wrote, 'sola dictio Latina commendat ac eloquentia. Caetera, pauvre homme.'⁴ Protestant writers have sought to place a halo round his brows, but the effort does not carry conviction, and Dareste, who has studied him in the course of a long life, wisely refrains from an attempt at a final estimate.⁵ The skin of a jackal of Calvin ill fitted the frame of a great jurist and eminent historian.⁶ The omnivorous appetite which marked the intellect of François Hotman was combined with the harsh and relentless bias of an ecclesiastical partisan. Seething with spleen and bile, his mind was incapable of the serene aloofness of Cujas and de Thou, and disdained the urbanity of lesser lights, such as Etienne Pasquier. To the malevolent curiosity of a Platina he added the intellectual force of a legal mind which acted on the material presented

¹The egregious Fynes Morison describes his tomb. Vide *Itinerary* (Glasgow, 1907), i. 59. No portrait of Hotman exists. Doschius describes his appearance as 'Statura excelsa, naso oblongo, oculis caesiis, vultu augusto.'

²Lib. xcix. 17, ed. London, 1732, vol. iv. 895.

³'Christopherus Thuanus, primus illius Parlamenti praetor, homo levitate simul et crudelitate insignis' (*De furoribus Gallicis*, 48). For de Thou's estimate of Hotman's *De successionem* vide *Historia*, iv. 256.

⁴*Scaligerana*, s.v. Hotman; cf. 'De voce Ionum in Plinio, puto recte sensisse Othomanum, atque utinam ita bene in aliis: minus enim sibi invidiae, et nobis laboris quaesivisset.' Letter of January, 1575, *iuveni doctissimo* (Scipio Gentilis?): *Epistolae* (Frankfort, 1612), 246.

⁵Viguié, *Les Théories politiques libérales au XVI^e siècle* (Paris, 1878). The first contribution of M. Dareste to the study of Hotman appeared in 1850 and the last in 1908, both in *La Revue Historique*.

⁶'Vir fuit,' wrote Gravina, 'universae antiquitatis, tum sacrae, tum prophanae oppido peritissimus, et non minus ingenio, quam oratione felix et candidus; cui ad veram virtutem nihil defuisset, nisi bonitatem, quam a natura traxerat, mutanda religione pervertisset' (Gravina, *De ortu et progressu juris civilis*, Leipzig, 1708, 218).

to it like a corrosive acid.¹ 'Tels hommes,' to quote a phrase of a great moralist, 'passent une longue vie à se défendre des uns et à nuire aux autres, et ils meurent consumés de vieillesse, après avoir causé autant de maux qu'ils en ont souffert.'²

DAVID BAIRD SMITH.

¹ For the estimate of the succeeding generation on Hotman as a jurist, *vide* Duck, *De usu et autoritate juris civilis* (London, 1679), 70 and 83, etc. For a modern estimate, *vide* Brissaud, *Droit Français* (Paris, 1904), 353; *Great Jurists of the World* (London, 1913), 104; Flint, *Philosophy of History*, 187, and H. D. Foster, *Political Theories of the Calvinists* (*American Historical Review*, xxi. 481).

² La Bruyère.

The Early Years of Henry Frederick, Prince of Wales, and Charles, Duke of Albany [Charles I.]

1593-1605

IT would appear that the learned Royal author of the *Basilicon Doron* found it an easier matter to write books of good advice for his sons' guidance than to be personally concerned with their upbringing. An investigation of the contemporary records makes it clear that it was the practice of James VI. and of his Queen Anne to entrust the care and education of their children to trusted friends in their native land, upon whom devolved the duty of bringing them up in their tender years. There are some points in connection with the history of the early years of the children of King James VI. which have been somewhat obscure : it is worth while to review some of the scattered sources of our knowledge as to those years, and to consider the influences which surrounded the royal children and the way in which those influences may have affected the formation of their character.

The history of the early years of the eldest son, Prince Henry Frederick, who was, until his death in 1612 at the age of nineteen, the heir to the throne, presents less difficulty than that of his brother Charles. The very fact that he was the heir to the throne caused him to be the subject of more detailed records. The manuscripts of the Earl of Mar and Kellie, preserved at Alloa House, and published in 1904 by the Historical Manuscripts Commission, contain documentary evidence from which authoritative accounts of his guardianship from 1593 to 1603 can be derived.

Prince Henry Frederick was born at Stirling on 19th February, 1593-4. From the month of his birth he was entrusted to the care of John, second Earl of Mar, and his wife, Dame Annabell Murray. That fact is conclusively shown by the Ordinance for the Nursing and Keeping of Prince Henry, dated February,

1593-4, published in the Earl of Mar's MSS.¹ Sir Robert Douglas, in his *Peerage of Scotland*, however, states that 'upon the birth of Prince Henry, in 1593, President Seton was entrusted with his tuition till he went to England, anno 1603.' And some support has been found for this statement in the fact that in the acknowledgment given by the King under the Great Seal, dated 28th June, 1603, to the Earl of Mar for his care in the education of Prince Henry it is stated that Prince Henry was placed in his charge 'in the year of our Lord 1596.' A further examination of the Mar papers, however, clears up this difficulty. A letter from King James to the Earl of Mar, dated 11th September, 1594, refers to his guardianship of the Prince.² On 24th July, 1595,³ there appears a further letter from the King to the Earl of Mar, strictly charging him to retain the Prince, and not to deliver him to anyone without express order from his Majesty.

'And in kayce God call me at any tyme,' the letter proceeds, 'that nather for Quene nor Estaitis pleasure ye delyver him quhill he be auchtein yeiris of age and that he commande you himself.' In the following year, 1595, we find a renewal of the commission to the Earl of Mar, authorising him to continue his custody of the Prince for the year 1595. There is no document among the Mar MSS. specifically renewing the charge in 1596, but it is not improbable that it was so renewed; and if so, the reference in the Great Seal document of 1603, already mentioned, would be to some such renewal of the charge rather than to the original charge which undoubtedly took place in 1593.

Prince Henry remained at Stirling in the charge of the Earl of Mar and his Countess until May, 1603, when he was conveyed by the Queen to England, whither James VI. had already proceeded. The Treasurers' accounts for May, 1603, contain the following entry: 'The furnishing following delyverit be the directioun of the Lordis of Secretit Counsall for the use and cleithing of the Queenis Majestie, the Prince grace and princes, thair paiges and laqueyis and certane utheris quha wes appointit be directioun foirsaid to attend upone thair service at thair removing heirfra towards Ingland . . .' (fol. 272 a). And in the same month⁴ £90 13s. 4d. was paid for eight stons weight of gunpowder shot in the Castle at Edinburgh, when the Queen and Prince Henry arrived at Holyrood from Stirling.

¹ *Hist. MSS. Comm. E. of Mar*, p. 39.

² *Ibid.* p. 43.

³ *Ibid.* pp. 43-44.

⁴ *Treas. Accounts*, fol. 290 (a).

On May 23, 1603,¹ King James grants to the Earl of Mar a discharge from the responsibility for the custody and education of Prince Henry, but he was required to continue 'his careful and vigilant attendance upon the person of the Prince' until he was actually handed over to his Majesty.

From all this evidence it appears clear that Prince Henry was in the charge of the Earl of Mar at Stirling from his birth in 1593 until at the age of ten he was taken to England to his father's court. The possibility of his having been at any time under the charge of President Seton, Lord Fyvie, seems thus altogether excluded.

As already stated, there is more difficulty in reconstructing the account of the first four or five years of the life of Duke Charles, afterwards King Charles I. There is no one source like the MSS. of the Earl of Mar, to which recourse can be had to get a collected account of those years in the life of Charles. Information has to be gleaned from several sources, the most fruitful of which are the *Treasurers' Accounts*, the *Register of the Privy Council of Scotland*, the *Calendar of State Papers* (Domestic Series) and other public records. Nor is it easy to reach a definite conclusion as to the conditions of his guardianship, especially during the years 1600-1603. There has not been any doubt in the past as to the fact that from the time when James VI. left Scotland for London in 1603 until the autumn of 1604 Charles was in the charge of Alexander Seton, Lord Fyvie, afterwards Earl of Dunfermline and Chancellor of Scotland.

Charles was born at Dunfermline on 19th November, 1600.² As to this date practically all authorities are agreed. It may be noted that the following day, 20th November, is assigned in the *Historie of King James the Sext* (Bannatyne Club, 1825), where it is stated: 'Duc Charlis, the King's sone, was borne the 20 day of November and was baptesit the 23 of December and installit Duc of Albanie, Marquise of Ormont and Erle of Rosse.' From the references which will be quoted it will be seen that Duke Charles remained at Dunfermline at any rate until 1603, and probably until 1604. The question arises: Was Lord Fyvie guardian of Charles during the years 1600-1603, or did his charge only begin when his royal master went south in 1603? It would appear that in some sense Charles was in the charge of Lord Fyvie from his birth.

¹ *Hist. MSS. Comm. E. of Mar*, pp. 52-53.

² *Reg. Privy Council of Scot.* vol. vi.

Queen Anne of Denmark was 'Lady of Dunfermline,' the regality of Dunfermline forming part of her dowry. On 15th February, 1596, Alexander Seton, then Lord Urquhart, and President of the Court of Session, was granted by Queen Anne by charter the office of heritable bailie and justiciary of the regality of Dunfermline. In the same year the office of Constable or Keeper of the Palace of Dunfermline was also conferred upon him. Accordingly, during the years 1600-1603, when Duke Charles was in the Palace of Dunfermline, Lord Fyvie was occupying the posts of Bailie of the Regality and Constable of the Palace; and so during those years the Prince was in his charge, although it was not until April, 1603, that 'the charge of the education of the Duke of Albany was committed to Lord Fyvie' by a Privy Council decree.¹

Lord Kingston, in his continuation of Sir Richard Maitland's *History of the House of Seyton*, referring to the departure of King James and Queen Anne to England in 1603, and to the custody of Prince Charles by President Seton, says: 'He kepted him in his house three years and carried him into England himselfe, by land, to the King and Queen's Majesties, well and in health; for which faithfull service the King's majestie was thankfull to him.' Part of the three years mentioned by Kingston must have been the time which Charles spent in Dunfermline prior to 1603, though it appears strange that the Palace of Dunfermline should be described as Lord Fyvie's house. It is possible that during part of 1603-04 Charles lived in Lord Fyvie's own house in Edinburgh.

If Lord Fyvie was in general charge of the young Prince from 1600-1603, the more immediate charge of his person seems to have devolved upon Dame Margaret Stewart, Lady Ochiltree. This is shown most clearly by the following extract from the *Register of the Privy Council of Scotland*:²

'Dame Margaret Stewart, Ladie Ochiltreie, producit a gift of a yeirle pensiou of sevin hundreth merkis money of this realme grantit unto hir be the late king for hir carefull and duetifull attendance upoun the late Queene and thair royall childreene in thair young and tender aige; haveing servit the late Queene the space of threttene yeirs from hir arrivall in this kingdome till hir removeall to England and haveing had the charge and credite of Ladie Margarett till sho was twentie foure weekis of aige and of

¹ *Reg. Privy Council of Scot.* vi. 556. *Haddington MSS. Excerpts.*

² 2nd Ser. vol. i. *Acta*, March, 1625-Jan. 1628, fol. 90 (a).

Duke Robert till the houre of his decease and of the Kingis Majestie till he wes twa yeiris and ane half that by warrand from the Queene he wes delyverit to the late Earle of Dumfermline.'

Lady Ochiltree's statement of her service of the Queen for thirteen years previous to 1603 is substantiated by a payment of £666 13s. 4d. made to her in 1590-91, recorded in the *Exchequer Rolls of Scotland*.¹ And again she receives the same sum in 1601: 'Item payit be command of his hienes precept to Margaret Stewart maistres nureis to his Majesteis second sone the Duik of Albanie in recompence of hir service as the said precept with hir acquittance producet upon compt beiris £666 13s. 4d.'²

On 13th February, 1601, John Murray was appointed valet to Duke Charles.³ In November, 1601, Charles was still at Dunfermline: 'Item the furnitour following delyverit be his hienes speciall command and directioun to Alexander Millar, tailyeour, for the use of Duike Charles, his grace darrest sone. . . . Item ane eln bukrum to send this geir in to Drumfermeling 13s. 4d.'⁴ In November, 1601, the *Register of the Privy Seal* records the 'gift to Charles of Scotland, Duke of Albanie, etc., etc., of the ward and non entry of the earldom of Buchan and lordship of Auchterhouse since the decease of James, Earl of Buchan, Lord Ochterhouse and until the entry of the righteous heir thereto.'⁵

Shortly afterwards, on 26th January, 1602,⁶ the King on behalf of Duke Charles, with the advice and consent of his treasurer and the Lords of Council, sets in tack the Earldom of Buchan and the Lordship of Ochterhouse, to 'his hienes darrest counsalour Alexander, Lord of Fyvie, President of his hienes sessioun,' in return of an annual payment of 1000 marks to the Crown, for the same period for which Duke Charles held the ward and non-entry.

In 1602 we find the first reference to another noble lady who was in attendance on the young Prince at Dunfermline. Jeane Drummond, third daughter of Patrick, third Lord Drummond, and second wife of Robert Ker, first Earl of Roxburgh, was apparently the first governess of Charles, and perhaps of others of the royal children. In February, 1602, we find the following entry: 'Item be speciall command and directioun the furnissing following send to Drumfermeling to Maistres Jeane Drummond for the use of his hienes sone Duik Charlis';⁷ and similar

¹ Vol. xxii. p. 151.

² *Treas. Accounts*, 1601.

³ *Reg. Privy Seal*, vol. 71.

⁴ *Treas. Accounts*, f. 68 (b).

⁵ *Reg. Privy Seal*, vol. 72.

⁶ *Ibid.* vol. 72.

⁷ *Treas. Accounts*, f. 109 (a).

entries concerning 'furnissing' sent to 'Maistres Jeane Drummond' occur in the later accounts.¹

Another of Duke Charles' personal entourage about this time was Marioun Hepburn, his 'rokken.' April, 1602.—'Item for ane stickit mat to Marioun Hepburn rokker to Duik Charlis £6 13s. 4d.'² We hear of Marion Hepburn, nurse, again in 1602-3,³ when she receives a pension of £166 13s. 4d., and on March 23, 1605, when she is granted an annuity of £15 by Privy Seal Letter⁴ in recognition of her services to the Prince.

An interesting entry in the *Treasurers' Accounts* is found under date April, 1603: 'Item payit be command foirsaid for certane plaigeis babeis and uther small necessaris for the use of his hienes sone Duik Charlis quhilkis wer delyverit to Robert Robiesoun £6 18s.'⁵

It was in April, 1603, as we have seen, that by decree of the Privy Council, Duke Charles' education was definitely committed to Lord Fyvie, one of King James' last acts before he left Edinburgh to take up the Crown of England. The year and a half which followed that event contain several letters from Lord Fyvie giving an account of the Duke and of his health: for it was on account of his extreme delicacy in his early years that he was left in Scotland and did not accompany the Queen, Prince Henry Frederick and Princess Elizabeth to England in June, 1603.

The first of these letters is one dated 29th April, 1603,⁶ from Lord Fyvie to the King, and in it he refers thus to his royal ward: 'that precious jewell it pleisit your hienes to credict to my keiping, quha is (praisit be God) for the present at bettir health far then he was, and, to mak your maiestie mair particular accoumpt, eats, drinks, and uses all naturall functions as we wald wiss in onye child off his graces age, except that his nights rest is nocht as yit as sound as we hoipe in God it sall be shortlie. The greate weaknesse off his bodie, after so lang and heuie seikness, is meikill suppliet be the might and strenth off his spirit and minde: I will assure your maiestie he luiks als statlie and bearis als greate ane maiestie in his countenance, as could be requirit of onye prence, albeit four tymis aboue his age.'

¹ *Treas. Accounts*, Dec. 1602, fol. 205 (a); March, 1603, fol. 251 (b).

² *Ibid.* f. 135 (a).

³ *Comptroller's Accounts*.

⁴ *De Concessionibus*, etc. Rymer's *Foedera*, xvi. p. 611.

⁵ *Treas. Accounts*, f. 265 (a).

⁶ *Letters and State Papers of Reign of James VI.* Abbotsford Club, 1838, pp. 46-47.

Early in May, 1603, Lord Fyvie was in Stirling,¹ whence he passed to Dunfermline,² possibly to visit his ward; for on May 30³ he again writes to the King and mentions Charles: 'Your sacred maiesties maist nobill sone Duik Chairles contenewis, praisit be God, in guid healthe, guid courage, and loftie minde, althocht yet weak in bodie; is beginnand to speik some wordis—far better as yet off his minde and tongue nor off his bodie and feite. Bot I hope in God he sall be all weill and prencelie, wordie of your maiestie, as his grace is jugit be all werye lyke in lineamentis to your royall person.'

It is not difficult to understand that the writer of such adroit and courtly letters would stand well in the eyes of one so susceptible to flattery as James VI.; and it is interesting to see that this was evidently the case, as we learn from a reference in the Venetian State Papers. On October 22, 1603, Scaramelli, the Venetian Secretary in England, writes thus to the Doge: 'He (King James) has written however to the President, Alex. Seaton the governor of his Majestie's second son who is very deep in the King's confidence, telling him to put off this meeting as long as he can: though Seaton, too, is thought to be a Catholic at heart, for he was maintained at the University of Rome by Pope Gregory XIII at a cost of ten ducats a month, and took his doctor's degree at Bologna.'

Scaramelli is, of course, referring to Lord Fyvie's political services: for soon after, viz. in 1604, he was appointed a commissioner for the Union between the Crowns of Scotland and England. By April, 1604, Duke Charles' health was sufficiently improved to make it feasible for him to be conveyed south to London. To this event there is a whole series of references in the *Calendar of State Papers* (Domestic Series).

On 14th April there is a warrant to pay to Dr. Atkins, physician, sent to Scotland to attend Prince Charles, 50s. per diem. On 11th June there is a warrant to pay 'to the President of the Session in Scotland, *i.e.* Lord Fyvie, 500*l.* for charges of bringing the King's son, Duke Charles, to England.' On 19th June there is a warrant to pay 'the chargis for the provision of litters with their attendants for the conveyance of Duke Charles to England.' On 3rd July, Dr. Henry Atkins, who had arrived at Dunfermline, writes to Cecil about Prince Charles' health: 'He is recovering and is beginning to walk alone, which he never

¹ *Treas. Accounts*, f. 292 (b).

² *Ibid.*

³ *Letters and State Papers of the Reign of James VI.* p. 55.

did before. They will begin the journey to England on the 17th.' On 21st September there is a warrant to pay '40*l.* to Edward Phillips, apothecary, sent into Scotland with Dr. Atkins to Prince Charles.'

The journey to England appears to have taken place in August, 1604. An excellent account of some experiences on the journey has been given by Mr. George Seton in his *Memoir of Chancellor Seton*:¹ 'From the following curious letter, addressed by Sir John Crane² to the Mayor of Leicester, and still preserved among the records of the Corporation of that historical town, it appears that the Duke of York (afterwards Charles I.), accompanied by Lord Fyvie, spent a day and a night at Leicester, in August, 1604. The young Prince must have been attended by a considerable retinue, seeing that the required sleeping accommodation amounted to twelve beds, and the beer to seven hogsheads. We may presume that the 'pewter' referred to in the letter embraced a suitable supply of tankards for the consumption of the liquor. The letter is dated from Worksop in Nottinghamshire, which was probably the previous resting-place of the royal party :

'S^r, I ame to advertis yo^u that on Wednesday the XVth of this instant, Duke Charles, the Kings Ma^{ty}s second sonne wth my Lo. of ffyvie, Lo. P^rsident of the Sessions in Skottland, who hath charge of his Grace, entendeth to bee at Lecester, whear thaye mean to rest Thursday all day, and on ffriday after dinn^r to goe forwards on their Jorneye, ffor which cause these are in his Ma^{ty}s name to require yo^u to make choice of a sufficient house for the lodgine of the Dukes Grace wth the Lo. P^rsident whearin ther must be xij bedds, wth all nassicaries for a Kytchine, and y^t there bee vij hogsheads of Beare layed in the same house, for the wth you shall have satisfaction ; for pewter and lininge his Grace must be furnished wth from you ; before his cominge their shal bee one sent for the making of provision, unto whom I would, if hee find it nedfull, he may have yo^r assistance. Thus, not doutinge of yo^r care hearin, I byd yo^u hartelie farewell.— Yo^r lovinge ffrend,

JOHN CRANE.

'ffrom Worsop, the ix of August, 1604.

To the Right Wo^o^{ll} the Mayo^r, Leicester, or in his absence to the Aldermen of the same, give these.'

The Mayor immediately despatched a messenger to Sir William Skipwith to procure his town mansion for the use of the Prince and his attendants, which was prepared for their reception. The

¹ Pages 58-61.

² A John Crane was Comptroller of the Works and also interim Governor of Berwick in 1603.—*Border Correspondence in the Record Office, London.*

house was decorated with fresh boughs, with which it was long customary to hang the walls of rooms for perfume and coolness during hot weather, while the floors were strewed with rushes and green leaves. Pewter and linen were borrowed, as on the occasion of the Queen's visit, bedding and furniture being removed to Sir William Skipwith's mansion from the Recorder's chamber at the Guildhall. The Prince arrived on Wednesday the 15th of August, and remained until after dinner on Friday, when he departed for Dingley, *en route* to London. During his stay the Corporation provided a 'banquet,' besides several gallons of sack and other wines, and a sugar loaf. A gift of Rhenish wine and claret was made to a certain Mr. Grimes,¹ who had the charge of the King's horses; and twenty shillings were given to his Majesty's trumpeters. The royal attendants, as on the former occasion, evinced a disposition to make the most of their opportunity, without respect for the rights of property; as it appears that, after their departure, the Corporation had to pay for certain 'Flanders fruit dishes,' which were provided along with 'divers sorts of banquetting dishes,' some of which were broken, and the rest carried away by the Duke's officers and followers. A portion of the pewter and linen which had been borrowed was also abstracted by them; whilst someone actually stole the bolster belonging to the Recorder's bed! It is to be hoped that the Prince's worthy guardian—the Lo. P'sident of the Sessions in Skottland—knew nothing of the villany of his attendants, who perhaps considered that the inhabitants of Leicester would overlook the barefaced pillage, in grateful recognition of the honour conferred upon them by the royal visit.

Another contemporary writer, Robert Carey, Earl of Monmouth, who succeeded Lord Fyvie in the charge of Prince Charles, also gives some interesting information in his *Memoirs* on the journey to England and the arrival in England: 'The summer after (1604), my Lord Dunfermline and his lady² were to bring up the young Duke. The King was at Theobalds, when he heard that they were past Northumberland; from thence the

¹The 'Mr. Grimes' here referred to was Richard Graham, Gentleman of the Horse to James VI., created a baronet in 1629, and grandfather of Richard, first Viscount Preston, whose present representative is Sir Robert-James-Stuart Graham of Esk, Bart.

²Grizel Leslie, Seton's second wife. She is not specially mentioned as having accompanied her husband and the young Prince to Leicester (p. 58 *supra*); but it would appear from Carey's statement that she must have found her way to London in the course of the summer.

King sent me to meet them, and gave me commission to see them furnished with all things necessary, and to stay with them till they had brought the Duke to court. I did so, and found the Duke at Bishops Awkeland. I attended his Grace all his journey up; and at Sir George Farmor's (Eaton), in Northamptonshire, we found the King and Queen, who were very glad to see their young son. There were many great ladies suitors for the keeping of the Duke; but when they did see how weak a child he was, and not likely to live, their hearts were down, and none of them was desirous to take charge of him.

'After my Lord Chancellor of Scotland and his lady had stayed here from Midsummer till towards Michaelmas, they were to return to Scotland, and to leave the Duke behind them. The Queen (by approbation of the Scotch Lord Chancellor) made choice of my wife,¹ to have the care and keeping of the Duke. Those who wished me no good, were glad of it, thinking that if the Duke should die in our charge (his weakness being such as gave them great cause to suspect it), then it would not be thought fit that we should remain in court after. My gracious God left me not, but out of weakness he showed his strength, and, beyond all men's expectations, so blessed the Duke with health and strength, under my wife's charge, as he grew better and better every day. The King and Queen rejoiced much to see him prosper as he did. . . . My wife had the charge of him from a little past four,² till he was almost eleven years old (1611); in all which time, he daily grew more and more in health and strength, both of body and mind, to the amazement of many that knew his weakness, when she first took charge of him.'

On 27th October, 1604, there appears a grant to Sir Thomas Knyvet³ of 20*l.* *per annum* in consideration of his giving up his lodgings at Whitehall for the use of Prince Charles. On 6th January, 1605,⁴ Prince Charles was created Duke of York. One of the witnesses at Westminster to the document is 'Praedilecto & fidele nostro Alexandro Domino Fyvie.' On 26th January⁵ Mr. Chamberlaine writes to Mr. Winwood: 'He (the King) continues still his wonted bounty . . . and hath lately given . . .

¹ Elizabeth, daughter of Sir Hugh Trevanion.

² This must have been subsequently to 19th November, 1604, when the Prince completed his fourth year.

³ *Cal. State Papers* (Dom. Ser.).

⁴ Rymer's *Foedera*, xvi. 607.

⁵ *Progresses of King James the First*, 1828, p. 491.

£200 a year in fee farm to the Lord of Fifies for his pains in the Union and bringing up the young Duke of York.'

In February, 1605, Lord Fyvie's guardianship of Prince Charles was formally concluded. On 8th February we find in the *Calendar of State Papers* the following Declaration by the King: 'We heretofore committed the custody of Charles, our second son, now Duke of York, to Sir Alexander Seaton, Baron of Fyvie and Chancellor of Scotland who has conducted him to England and being now about to return to his charge in Scotland, has delivered him up. We therefore give this public testimony that he has carefully and discreetly governed our son and has now delivered him into our hands in such good and sound estate, that his diligence and duty therein deserve thanks and reward.'

And on 12th February there is a 'Discharge for Alexander Seaton, Lord Fyvie, Chancellor of Scotland, of the custody of Charles, Duke of York, with attestation of his being in perfect health.' On the same day¹ Prince Charles, acting through the King as administrator for him, appointed Lord Fyvie his assignee to the gift of the ward and non-entry of the earldom of Buchan 'for the many thankfull and notable services done to his Majesty be his hienes richt trustie and weilbelovit counsalour Alexander Lord of Fyvie and for sommes of monie payit be him.'

So ended Lord Fyvie's official guardianship of the future King. Reference has been made to the fact that Lord Fyvie was in London in the autumn of 1604 partly on business connected with the Union of Scotland and England and partly on business concerning his guardianship of Prince Charles. No satisfactory reason has, we believe, ever been given why Shakespeare brings 'Seyton' into *Macbeth* as 'an officer attending on Macbeth.' The date of *Macbeth* is a question on which there has been much controversy. Some critics assign it to the year 1604. If that view is correct, then it may not be impossible that the name was suggested to Shakespeare by the presence of Alexander Seton in London in 1604, when his political work in connection with the Union would have made him well known. And conversely, if this theory has any foundation, it may to some slight extent support the assignment of *Macbeth* to the year 1604.

Having thus reviewed the miscellaneous information, from which we can derive some knowledge of the external circumstances of the early years of Prince Henry Frederick and Prince Charles, it remains to consider what significance, if any, can be

¹ *Reg. Privy Seal*, vol. 74, fol. 255.

found in the selection of guardians made for them, and what influence it may have had upon their characters. The two principal figures in this account of the early years of the two Princes are of course John, second Earl of Mar, and Alexander, Lord Fyvie. Their association with the family life of James VI. represents very accurately the phases through which the influences surrounding the Scots Court passed in the decade 1593-1603. John, Earl of Mar, was the head of a family which had been closely associated with the earlier years of James himself. The King had as a child been committed to the charge of the first Earl of Mar, and had been brought up under the same roof as John, second Earl of Mar. There seems little doubt that a strong link of friendship and regard existed between James and Mar. Moreover, Mar represented with fair consistency the Protestant party in Scotland: he was closely identified with the ministers of the Church of Scotland; he was in command of the royal castles of Stirling and Edinburgh. It is well known that the relations between King James and his Queen were the reverse of cordial for several years following the birth of Prince Henry in 1593. The Queen was bitterly opposed to the Earl of Mar, and appears to have attempted to remove Prince Henry from his charge. Of this there is some indication in the letter from the King to Mar, dated 24th July, 1595, to which reference has already been made. Accordingly, Mar's guardianship of Prince Henry may be regarded as representative of the dominance of the Protestant influence in the life of the Scots Court and nation about 1593.

So too the appointment of Dame Margaret Stewart (*née* Kennedy), Lady Ochiltree, as 'maistres nureis' to the Queen and her children from 1590-1603 is significant. She was the wife of Andrew, Lord Ochiltree, a nobleman who was consistently associated with the Protestant party in politics and bitterly opposed to the Catholic Earls and to the Romanising influences which were at work in that decade in the Court. Of Lady Ochiltree's character we do not find much recorded. In 1595, when the King rigorously resisted the Queen's efforts to secure the person of Prince Henry, the Queen in disgust retired to her bed and pretended to be suffering from a mortal sickness: as a matter of fact her confinement was then close. Lady Ochiltree and a jury of matrons were appointed to investigate the Queen's malady, and they pronounced it to be genuine. If the influences which surrounded Prince Henry in his first ten years were thus designedly Protestant, those which surrounded Prince Charles were equally

designedly Catholic, or at any rate Episcopalian. Changes had been slowly but surely taking place in the religious kaleidoscope in Scotland during the seven years which intervened between the birth of Prince Henry and that of Prince Charles. Mar was no longer the 'power behind the throne' which he was in 1593. The struggle with the ministers of the Kirk was running its weary course. The King's plan to restore a bastard Episcopacy in Scotland had been carried into effect. Above all, the unsuccessful Gowrie Conspiracy had just taken place, and Gowrie was all too intimately associated with the party of the ministers. Under these circumstances it is little wonder that the guardian chosen for Prince Charles was not Mar, but one whose political and religious outlook differed widely from that of Mar, Alexander Lord Fyvie.

Politically Lord Fyvie occupied in 1600 a position of the greatest influence. He was one of the 'Octavians,' the eight statesmen who formed a kind of Cabinet for the government of the country. Lord Fyvie enjoyed great popularity with Queen Anne: he was also in high favour with the King, notwithstanding the temerity with which in 1598, as President of the Court of Session, he gave judgment in favour of the Rev. Robert Bruce in his suit against the Crown in spite of the King's personal appeal to the Court: he was a trusted correspondent of both the Cecils, father and son. But from the religious point of view he was an enigma. He was popularly believed to be a Papist. Speaking of the appointment of the Octavians, Calderwood, the great Presbyterian writer, remarks: 'This change portended a great alteration in the Kirk; for some of their number was suspected of Papistrie.'

The Rev. David Black was even more outspoken about Lord Fyvie: 'What could they look for? Was not Satan at the head of both court and council? Were not all kings devil's bairns? Was not Satan in the court, in the guiders of the court, in the head of the court? Were not the Lords of Session miscreants and bribers: the Council cormorants, false, godless and degenerate: and the Queen of Scotland a woman whom, for fashion's sake, they might pray for, but in whose time it was vain to hope for good?' It is not at all certain, however, that Lord Fyvie was even at heart a Roman Catholic, and still more doubtful whether he was such officially. Calderwood, writing of him after his death, says: 'howsoever he was popishly disposed in his religion, yet he condemned many abuses and corruptions in the Kirke of Rome.'

And so it was to Lord Fyvie that King James entrusted his second son, probably from his very birth, but certainly with more complete responsibility when he went South. As has been already shown, the guardianship lasted from 1600 to 1604 : that is to say, about four years. One cannot reasonably expect to see the results of the influence of surroundings at so early an age marked with much clearness. Yet it seems probable that the influences which surrounded Charles in these four years were at any rate a contributory factor in giving a trend to his character as it developed in later life. He would have acquired his antipathy to the Presbyterian form of Church government : he would have received a bias in the direction of loyalty to Episcopacy, a loyalty which was to lead him to the final tragedy. Under Lord Fyvie's influence we may be sure that the doctrine of the Divine Right of Kings was carefully instilled into his youthful mind. If one compares the character of Charles in later life with those of his father and of his mother, it is difficult to find many, if indeed any, points of resemblance to either. The influence of the heredity of his grandmother accounts for much ; but the influence of those early years spent in his native land under Lord Fyvie's charge must not be overlooked.

I am indebted to Mr. Henry Paton, M.A., for assistance in collecting in the records in Edinburgh some of the materials for this paper.

WALTER W. SETON.

Scotstarvet's 'Trew Relation'¹

*Mr Ja. Dalrymple his oration² at his entry to be advocat
15 Feb 1648 in presence of the Lords of counsell &
session³ on the title 22 lib 1 of the fewes. If any man
make investiture or excambion of his souldiers benefice
without his consent to qhom the benefice belongs, let it be
holden as unmade.*

ILLUSTRIOUS and noble Lords and most worthy senatours learned Lawyers & courteous auditors heir present the interpreters of fables tells us that Orpheus being much inflamed with a huge desyre of wisdome above the measure of mortall men vnderooke a long & laborious journey to the infernall parts of the earth & remaned there a space that being instructed in the oracles of Sybilla he might carry away the degree & triumph above all other wise men so that his memory might never be extinguished qho being admitted to the sounding cave of Sybilla qhen he had seene the propheticall leaves of trees sparkled all qhere by the majestie of qhich things he being terrified and with incertitude what he sould choyce of so many hundreth thousand

A facsimile of the MS. exhibiting the commencement of this 'Oration' is added opposite.

¹ Continued from *Scottish Historical Review*, vol. xii. p. 412.

² It is of peculiar interest to have the terms of this maiden speech of James Dalrymple, afterwards Lord Stair, before that court of which he was to become in a legal sense the most distinguished of all its Presidents. Born in 1619, he was in 1648 no fledgling, but had had a career of some military and scholastic variety and attained important academic position before he gave himself definitely to the Scottish bar.

³ Lord Stair's biographer, the late Sheriff Aeneas Mackay, describes his admission thus: 'On 17th February, 1648, Stair was admitted advocate, having no doubt passed the examination in the Roman civil law, which, down to the middle of the following century, formed the ordinary and only honourable mode of entrance to the Scotch bar.'—*Memoir of Sir James Dalrymple* (1873), p. 25. A note on the same page says 'The civil law thesis required from Intrants to the bar had been introduced before 1619.'

leaves being distracted qhere to begin he became stupid his hair stood up and his voyce failzied and if by the indulgence of Sybilla he had not bein walkned and directed out he had sounded¹ in a deadlie oblivion, 2^die a thing not unlyklye to that qhich hapned to me, noble lords, qhill I turned over so many vast volums of leaves lyke Sybillaes leaves by an indigested digested² & confused Cod and the glosses of commentaries written therupon with there counsellis & decisions the wearisomnesse therof is well knowne to such qho hes straggled in these bywayis without a guide so that I know [not] qhat first to speake in such a variety of things I was inhibite to handle any title or chapter of the civil Law³ by the copious amplitude of the matter qhilk hindered me from capitulating the things that I would speake at this tyme granted to be so to digest the same as they aucht to be lest I sould disgust your llo[rdships] or wrong others whose actions are higher to be agitated It will seeme to your lo[rdships] out of purpose to handle the quiddities & wynding moranders⁴ of law and I have oftentymes in vaine wished that these qho vnder-taks this bussines to have lessons of the law might by your lo[rdships] appoyntment have a prefixed text althoght the matter in itselfe were never so difficill in end knowing that it will be taken heed wnto with great attention & kyndly acceptance qhilk is best in itselfe and tends to the interest of many I resolve to handle something that is now in controversie in this house that I may give patrociny & travell nether invited by the parties nor for respect of any man qhatsumever but to the verity itselfe and publick vtility of the land 3^d I did see Lately a persute intended betwixt the noble worthy gentlemen persewers & defenders contraverting upon this behalff there were certane territories or Land that fell againe into the kings hands by right of his croune by abolishing of prelats qhich therfore the barrons held before and now hold of the illustrious king as supreme sole & immediat lord superior of the same, the same lands the noblemen defenders have obtened from the king and gotten them erected in temporal livings qherby they are interponed betwixt the king and the barrons persewers as intermediat superiors if they gott there desyre, the persewers therfore craves your aut[orit]y

¹ Sounded, swooned.

² *Sic*: A scribal repetition from the previous word. Read Digest.

³ See Sheriff Mackay's note, *supra*.

⁴ ‘Moranders’ presumably a misreading for ‘meanders.’

interponed noble senatours that it may be declared qhat¹ they are and sould remane only vassals to his majesty without agknowledgment of any other superior but himselfe as they were of before and be consequence these grants lately given to these Lands by the king to be declared invalid and estemed null & to be reduced The thing then to be judged in this cause is qhither it be lesome for any man by indulgency of the prince to accept or to the king to give such gifts qherby one or other superior may be interponed betwixt him and his vassals they refusing to condescend to the same, so we goe from the hypothesis of the parties to these and it is a publick cause & popular to syde through all mouthes qhilk to agitat a litle will nether seeme vnfitt to me nor I hope impertinent to yow nor offensive to any altho the matter itselfe be of no small importance yet does contene in itselfe an apology of my boldnesse to any just judge with your permission Let me [be] suffered courteous auditors to deduce the matter from the original itselfe—

In the auintient golden age all the elements were pure without bounding common by the law of nature nether was there a grater property of the earth then therafter of the water or more of the aire so farre as the placing doune of the foote or the setting doune of the seats extended they had only full dominion therof there only possession given them totally therevnto; there was no inquiring in that simple and sincere age after marches marchstones or tithes yet humane kynd augmenting subtilty & avarice growing against the common law the law of nations by a certane necessity was broght in a Laudable profit perswading to the same and the propertie of rowmes introduced distinguished and separate from possession qho even in themselffs are disterminat by a fiction of the law & distinguished in civil & natural possession and more nor one hes leave to possesse at once dyversly albeit there be only one proprietar; then began bounds to be set and marches placed, then began tithes to be devysed that silver age scarcely distinguished betwixt vsufruct or lyferents from the property established the full & solid dominion in or placing the Labouring in the person of the tennent and that service in others as the other lord was pleased to appoynt. Bot this iron & hard age qherin we haue fallen hes involved & confounded the dominion of one and the same roome multiplying the samyn so that there is ane direct dominion and an other profitable ane lord superior and another an inferior or fewer to qhom againe the other inferior in ane subalterne course without bounds proceed & avarice hes so farre

¹ 'Qhat' *sic.* Query, read 'that'?

gone on that all men are desyrous & ambitious to seeke the dominion [P. 23] of all to the attaining of quich lest they sould be prohibited they devysed imaginary wayis qherby they all may be stiled lords or masters and that the propriety may consist with the community qherin in the meane tyme the dominion being left by such an intricat involving lyke slaves every one become servaunts nether have we any thing proper or free bot the aire qherin we breath. The original qherof was the Roman empyre declyning this proceeded and was gotten from the Longobards qho to the effect they might nourish souldiers with a constant stipend gave them roumes vpon condition that the dominion sould be reserved to themselffs, the usufruct either temporary vital or perpetuall sould remane with the souldiers they randring therfor to there lords and masters service and faithfull assistance in the warre from qhence such a lyke grant or roome gott the name of few from *fides* faithfull fewars vassals or attendants at there masters gates and there masters were called suizers & superiors and a mutuall paction intervening of the overlord of protection of the vassals of obedience by a solemne oath taken in both hands——

from this institution all feudal lawes contened in this booke of the fewes proceded for because fewes were not acqyred by a pryce but were bestowed upon souldiers by the favour of there masters for service done by them and given to them as a perpetuall band of gratitude therfor it was not lesome nether for the overlord to deny protection of his vassall nor to the vassall to deny obedience to his master by selling the few or transferring it in the persone of any other except with mutuall consent and any of the two doing any thing unworthily against the master the direct dominion of the Land returnes to him and because the land was fewed for militiuous service they were only granted wage¹ unfit for warre or renuncing to enter to the few the direct dominion was to returne to the master from qhence the m^r having taken inquisition of the successor of his vassall and taken his oath of fidelity he receives him to his fathers few and that act or instrument of ressavng it is called investiture

Now some 400 yeirs is past over since the name of few or nature of it was knowne to the wordle the Romane fewers knew no such thing

¹ Some omission apparently here makes the passage rather unintelligible, but the sense presumably is that on the successor to the vassal being of an age unfit for war or refusing to enter there was a reversion of right to the superior. Probably the scribe passed from 'wage' to 'age' in copying.

nor thought vpon it; then all mo[rta]ll things were enjoyed by a full right as now our moveable scarcely in the last novels of Conrade & Frederic emperours mention is made therof yet Obertus¹ in the 2^d book of the fewes first title testifies that it is contrare to the Romane Law for the emphyteutie in few ferme and these who had the lybell called lybellaries and superficiaries are greatly different from these *feudators* for the emphytues are digressed farre from there origine and redacted to the estate of a few and is now counted among the kynds therof but now throgh all the wordle qhither it hes travelled with the foot of an heart or flowne with the wings of an eagle I know not yet it is communicate to all men for militiuous service any uthere service or burden qhatsumever is imposed to be payed and by the change of the service the m^r and the vassall hes a lighter tye to others thoght that even to women fewes are communicable with a lesse solemnity of fidelity & perrell of selling then before thoght that men now all heare of a frank & allodiall few given to women yea the few as the same Obertus notes is become lyke a patrimonie.

From this universall communication of fewes not without good advyse it pleased princes to induce a new dominion upon the subjects of befor they enjoyed the empyre of jurisdiction now also they are prevalent by the dominion of superioritie & recognition and are become hightest first and original Lords of all Lands within there dominions as they from qhom the sds lands first flowed and to qhom the last fewes returns qhich therfor either mediatly or immediatly are all holden of them nether are they only agknowledged as lords of the men but also of the Lands. Therfor our illustrious King enjoyes not only the title of jurisdiction & superiority but also hath vs his subjects tyed as personally and in our estates really being the supreme Lord therof he does recognise vpon his subjects forfals there Lands yea the few itselffe by its awin nature remanis with him or by the lesser age of the air being minor & not meet for service the few in the meanetyme remans open; as father of the country he hes the custody of the persons of the people qhich they call ward and as supreme lord of the fewes retenis with himselffe the rents & emoluments of the same. Be the same right the prelatiCALL hierarchy being abolshed the fewes of the clerks or kirkmen therupon being laid open returns to the king *ipso facto* not by a retributory law of etc qherby his majesty offended with the fault

¹Oberto dall' Orto, a lawyer of Northern Italy in the time of the Emperor Frederick I. (Barbarossa).

is pacified by the punishment of the delinquents but by this title of sole superiority for a legall act comes to be punished under the name of fault, now here the vitious acts of persons how many soever they be is not punished but the estate of hierarchie itselffe is rooted out as vnprofitable.

Therefore fewes of the clerks being so open & Laid voyd there is a gape here betwixt the king and ecclesiastical vassals qhilk he may fill two wayis for he may either take to himselff these fewes immediatlie as the clerks were to be his awin vassals and of mediat ones make them immediat or els he may substitute and place others in the roome of these extruded prelat without the harme or prejudice of the vassals seing now they are in lyke cace as they were before provyding that they suffer not the pressure of a wylder master as we have somtymes seene it done in the temporary erections for albeit these liberalities have bein excessive yet the statute of parl^t in K[ing] Ja[mes] the 6 tyme of happy memory pag. 195. par. 14. they are rescinded.¹ Now the same ecclesiasticall vassalls being made in the number of these immediat ones either be the kings chartour of annexation or declarator of the estates qherby they are to be holden as if in effect they had bein received by the King & infest, the question then is qhither or not it be Laufull to his majestie to interject betwixt him and his vassals another superior and this is the cleare cace of our cause for so it is contraverted betwixt the parties; we stand for the negative and by permission of these great men qho have intress of qhom I humbly crave pardon I shall endeavour to shew that it is not permitted b[y] the common Law the municipall or Law of nations, nor our custome but direct contrair to the same.

Seeing the question is established anent the right and dominion of roomes with good reason I have opened to yow the cause the beginning and progresse therof even from the beginning of the wordle to our tymes let me then be permitted to apply the same to our bussinesse we say then that the old lawes of fewes in that qhilk intervenes betwixt the king and his leiges and immediat vassals does most nobly shine and albeit the rest were reduced lyke unto a patrimony yet this remanis established in the iron fundaments & pillars of a few for a kingly few is only granted the rest either acqyred by title of buying permutation or some other title, that also is so granted for corporal service in the wards that all the vassals are holden by reason of the fewes to doe to others or for other payments and there is greater solemnity in

¹ *Acts Parl. Scot.* 1594, cap. 5, vol. iv. p. 63.

the oath of protection in a leige few qhen the King having taken his croune gives his oath of protection to all his subjects cheifly to his fewers and finally alienation of the few upon the kings part as herafter we sall shew it is impossible upon the part of the vassall it may be presumed upon ane great vrgent necessity it is then undoubted that from the common feudal law an argument may be brought to our leige fewes and therfor I come to my text lately landed [?] from [P. 24] qhence I bring my first and greatest reason *ut supra*.

[P. 24] We will not stay upon explication of the words hasting to the matter; by excambion is understood the changing of roomes qhilk oftymes was done without new infestment therfor it is sd alternative if any make excambion or investiture the investiture denotes the act or instrument of receiving the vassall and be the benefice is understood the few itselfe being in its awin nature granted and the word souldier by the original name signifies a fewer, then the sense is perspicuous if any lord superior qha granted to any man a few give to any man other infestment therfor without infestment changed without consent of his fewer, such ane fact is voyde & null and sould be halden as vnmade, sall it then be Laull to the king to give infestment to any other of his vassals few without his consent, truly the text answers that such ane fact is not only prohibited by the Law and so invalide and by way of action may be annulled bot it is even by the law itselfe null as if it had not bein made, the same also is averred¹ in the 38^t title lib 4 by Conrad his law and by au[tori]ty of the emperour Frederick in the title beginning an other constitution qhere clearly it is affirmed that the overlord cannot alienate the few without the vassals consent, o most happy word of alienation paralell & within investiture or excambion for it is so perspicuous and generall that it comprehends always qherby the overlords may either dispone his direct or profitable dominion either from himselfe or his unwilling fewar or devolve the same in the persone of any other so

¹ The passages cited appear to be these :

Feudorum, liber ii. tit. 34, *De lege Corradi*, § 1 : Ex eadem lege descendit quod dominus sine voluntate vasalli feudum alienare non potest.

Feudorum, liber ii. tit. 55, *De prohibita feudi alienatione per Fridericum*, Imperialem decet solertiam, &c. § 1 : Praeterea ducatus marchia comitatus de caetero non dividatur ; aliud autem feudum si consortes voluerint dividatur : ita ut omnes qui partem feudi habent jam divisi vel dividendi fidelitatem faciant ; ita tamen ut vasallus pro uno feudo plures dominos habere non compellatur ; nec dominus feudum sine voluntate vasalli ad alium transferat.

that no starting hole is here left, but let us heare the emperour him selffe speaking imperiously in the 5 booke title 20. That no man or senior presume to dispone the benefice of there awin souldiers without there awin consent.

This is also to be found in the 2^d booke title 9 about the end the words of the text¹ are : *Insuper et omnibus modis prohibemus ne ullus senior de beneficio suorum militum cambium aut precarium aut libellum sine eorum assensu facere presumant.*²

Let vs adjoyne herevnto the testimonies of the learned men in thir places Curtius and Capit they rander the reasons thus Lest say they the vassals be compelled to agknowledge two lords instead of one of qhom came this interpretation to be understood if it be not the interposition of superiors for if the few be doubly exponed he would not be compelled to put two for one but one for another. Bardus also in his 16 counsell p. 436 teacheth that thē few cannot be taken away except it be admitted according to the nature of the few, the lyke also teacheth Fulgo in his 9 counsell. So our learned countryman m^r. Tho. Craig in his learned book of the fewes t. 16. out of the law and our customes in direct termes testifies³ that it is not lesome to the king to subject his vassals to another lord. I demaund then is it not more cleare then the light both from the sense of the law and doctors that it is not lesome to the king to give infestment of his immediat vassals few to another or to interpone an intermediate Lord or superior, this our sentence is both fully and plainly established by the strenght of the law so that in all thir books of the fewes (except qhere nothing is written affirmatively of fewes) it appears that not one poynt is written in the contrary nor any doubts left therintill qhilk may make ane scruple, now let vs proceede to the customes qhich is an other Law and acqyre qhat accustomed to be done in our predecessors tymes and the rather because Obertus saith that there is is no such respect to be had as of the consuetude in the manner of fewes lib. 2. tit. 2, affirming⁴ *legum Romanorum non est vilis autoritas sed vim suam extendunt ut usum evincant aut mores*; the Roman lawes are of no small

¹In *Feudorum*, liber v. as edited by Cujas, this passage appears under tit. i. *Constitutio Conradi de Beneficiis*. Francischinus Curtius *Tractatus Feudorum*.

²*Sic*: read *presumat* as in text of the *Feudorum*.

³*Ius Feudale*, lib. i. dieg. 16, § 7: Rex autem superior non potest in praejudicium sui vassalli superioritatem alienare aut alii eum invitum subdere nec civitatem aut cives invitos alienare aut alteri mancipare.

⁴*Feudorum*, liber ii. tit. i. *De feudi cognitione*.

use and authority but do not extend there strenght farre as to evince vse & manners, then qhither we Looke to our awin customes or that of other more civil nations truly we sall find them to be most rarely proponed and ever opposed that a prince sould or may interpone another persone against there will qho are vassals we have a fitt & notable example out of the French history by the death of Charl. 4 called the fayre¹ (qho died without airis maill) a bloodie controverse arose anent the succession to his kingdome betwixt Edw. 3^d K[ing] of England qha was grandchild to the defunct by his mother & Philip of Valois first prince of the blood air male qha objected the Law the other opponed his propinquity after a terrible batle it was transacted & agreed that the duchy of Britany with other territories sould be holden by the English king of the kings of France heretabilly they randring homage therfore qherby K[ing] Edw^d was to be interponed betwixt the French king and the dukes & his subjects of Britany as intermediat superior, Arthur d[uke] of Brittane² refused this article of the peace as condescended to without his consent and so refused to fulfill the same, the bussines being referred to the counsell of peeres, he there contended that by the Law of fewes it was not lesome to the king to interpone an vther superior betwixt him and his immediat leiges vassalls against there will, the royall authority made for the king, his liberty and the publick promise and the desyre of a long wished for peace with qhich the peeres being moved most earnestly desyred the dukes consent qhich being pertinaciously refused, the benefit of the law being boldly demaunded, at last against there will they were compelled to decerne for no expected commodity it was lesome to interpone the English king betwixt him and the duke & his subjects qherby the king³ behoved to returne to his captivity in England qhere he died a captive. The lyke also may be found in that history qhen Charl[es] the 7 gave vnto his [son]⁴ Charles the duchy of Normandy in legacie by his testament for his patrimony and burdened his eldest sone & air Lewis the ii. with the fulfilling of that legacie who that he might accomplish the same was often death with

¹ Really Philippe le Bel, died 1328.

² The episode very inaccurately handled here is the strife of Jean de Montfort and Charles of Blois, A.D. 1341-1345, for the duchy of Bretagne. There was no Arthur of Bretagne in the time of Edward III.

³ This was King John of France, who died captive in England in 1364.

⁴ 'Son' omitted in MS.

for the same effect both by request & armes yet he still refused because the people of Normandy would not admitt an other superior without whose consent the king could not obtrude¹ vpon them Charles his brother. I returne now home and we will looke vpon our awin customes qhere none I hope will be so effronted that will affirme that ever any any such thing was attempted to be done; heir the example of the temporal erections is noways valide qhich now are prohibited and then only permitted qhen the ecclesiastical vassalls themselffs were not immediat vassalls to the king if any thing more hapned it aucht to be imput to the pusillanimity of these qha either willingly offered there necks to that yoake or did not oppose themselffs with dew courage who will be found ever rejected who complened hervpon —Be the common law & custome of nations it is notour that it is not Lauffull for any superior to interpone any overlord betwixt him and the few dewties or nearest vassall and the samyn is established by the strenght of the obligation paction & solemne contract of the few says Baldus qhich contenes a certane contract from thence betwixt the lord and the vassall on both hands & obligation aryses lib 10 tit de verb. oblig. Phelinus also Alex^r and Amdopax affirms the same in there decisions & Iatlie Dodrius in the decision 221 confirms the same; this contract is most clearly demonstrat by the instrument of concession qhich they call the chartour by two principall & essentiall clauses thereof by the first qherof the king gives grants & confirmes to his vassalls the lands to be holden and to hold of vs and our successors immediat Lords and superiors thereof; the other clause paying yeirlie therefore to vs and our successors thir clauses with the rest [P. 25] of the chartour are oft confirmed by act of parlt will it not then be ane notable violation of both these & most injust of the king & countries faith given them if any other superior intervein; can it be sd that the vassall hath gotten his Land to be hald and to be halden of the king and his successors as his vassalls and that our Sov. lord is superior therof for paying to the king & his successors but trully to that interjected superior qho farre be it from vs to thinke that he sould style himselff the kings successor for in loyall things qho then will be so bold as to violate the paction being so publick & perspicuous.

But that there be no strenghening left this proposition is

¹ Louis XI. in 1465 ceded to his brother Charles the duchy of Normandy, which, however, was in 1468 declared by the Estates General to be inseparable from the Crown.

sustained chiefly by the highest religion of an oath that the king at his coronation faithfullie promitts & solemnly sweares that he shall governe his people according to the municipall Law and priviledges of the Land; is there any more noble then that which concernes the reall right of Land or any privilege comparable to that whereby the subjects are approximat and made neere to him without all mediatic impediments and are so fostered as it were under the kings bosome & protection, yea that oath of protection wherein as to the eldest Lord he is obliged to his vassals is therein included which being sworne by the nature of the feu it is already shewin that it is not Lauffull without the fewers consent to the king to dispoise the samyn feu or to obtrude to his vassals another superior: there be 4 pillars of justice or tyes of Law whereby we are bound to doe or to eschew any thing, Law, custome, paction and oath by all which we have clearly demonstrat that the king or any other superior are strictly halden not to vrge there vassals to agknowlege any other superior but themselfs, but to the effect that in the matter itselfe justice & equall equity may shine nether supported by any positive sanction but leaning only on its awin foundations Let us presuppose that this privilege of the subjects were nether cleared by imperiall constitution nor confirmed by the custome of nations hitherto but placed in its pure pr[in]cipals and wanted example, let this be the first & never before heard example I invoke yow to be judges noble senatours whither would your equity incline or decree Leade vs I doubt not bot by your approbation and voyces the samyn would be confirmed I meane this priviledge of the Law & nations for there be 2 things that lawyers Looke to in doubtfull matters to wit the facility & vtility thereof led therto by two the one the principall of nature the other of Law, *salus populi suprema Lex et deus et natura operantur facillima.* Let vs follow thir rivulets that we may attaine to the cleare fountaine of justice let vs follow these branches that we may apprehend the most firme root of verity, now if we Looke to the facility by the Law of contraries we will abhorre that intention whereby the king would interject betwixt him and his nearest vassals any other superior contrare to the vassals will or grant to any vther infeftment for in a few there most be ane distinction betwixt the direct dominion and the profitable or as our country men speaks betwixt the superiority & the property: this belongs to the vassals the other remanis with the king who aucht not dispoise the superiority or grant new investitures therof because all superiorities are incorporat among the

royall things for either that most be done be resignation to be holden of some other or be concession to be holden of himselffe; by resignation it cannot be seing he agknowledges no man in the wordle to be his superior, is it to be holden of himselffe then he remanis superior and so he both gives the superiority & retenis it and so gives no thing *dans et retinens nihil dat*, he cannot grant the property becaus he hath disponed it already to his vassals nether doth the posterior derogat from the former but the former prerogats to the posterior few that is not voyd nor open; so that as in the natural bodye there is no penetration so in the politick it is no lesse certaine that a full few cannot be made more full then the propriety belongs to the former fewer and the king in all necessity retaines the superiority: what then by law belongs to the interjected superior? they have a devyse for this that there may be more subordinate superiorities of one and the selfe few, the king retenes one and he gives another, then the superiority would be subdivided and of a Litle peece a lesser peece would be made, for if the king may interject one betwixt him and his first vassall, so may he betwixt him and the 2^d & so *in infinitum*.

The incommodities following interjection have either regard to the prince or to the people and that either privatly that tuicheth each man, or publickly that tuicheth all men, the princes prejudice is that he is instigat to dispone the most beautifull & rich flowre of the crowne viz. a 3^d of the superiorities of all the kingdome and the emoluments proceeding therfrae, the hurt of private persons is that in place of the king they are forced to agknowlege an other lord qho is more greivous the publick losses are weighty shaking & overturning the constitutions of the country by the acts of annexation.

Ye see then most noble senatours the diminution of a new worke by these dispensations, it is incumbent to your llo[rds] to impd the progresse therof & stop the beginnings of the same, Africk is no more fertil of new monsters nor humane body more capable of new deseases nor the politick is stored with monstrous & new conceptions, by your herculean courage to cutt in peeces this Gordian knot. And for an epilogue of my speach I sall not digresse vpon your prayses as some flattering sycophants doe but only to desyre yow to procede as ye doe in the care of the publick vtility and distribution of justice and so wishing yow all happines I subsist.

In a collection of 'Practicks' in MS. written in 1657 by John Thomson (the copyist of Scotstarvet's 'Trew Relation' as shewn in the *Scottish Historical Review*

xi. p. 165) there occurs the following 'Practick' which may well be set alongside Dalrymple's speech: 'Dominus directum dominium a se alienare aut transferre invito vasallo non potest quia interest vasalli non mutare ex quacunque causa dominos nisi ejus consensus accedat quod ita temperandum est ut id non posse credatur nisi totum feudum teneat cum curia et jurisdictione ut aut nos loquimur nisi totam baroniam vendat Nostro jure alienationem superioritatis permittunt dominis dummodo vasalli conditio non reddatur deterior, modo alium superiorem non interposuerit inter se et superiorem quo casu alienatio prohibetur ne multiplicatis dominis in quorum annua servitia vassalis tenetur, duriores vasalli fiant partes pluribusque incommodis custodiarum et non introitu sic obnoxius.'

This is almost verbatim from Craig's *Jus Feudale*, lib. ii. diegesis 11, § 35. The following summary is from a MS. 'Epitome or Abridgement' of Craig, of which a good many copies exist and which was made probably *post* 1650:

'The superior may not dispone the superioritie from himself to any other against the will of the vassell neither can the superioritie be convenientlie sold except only the haill few itself. But be owr Law, the selling of a Superioritie is permitted provyding the condition of the vassell be not maid worse. The overlord may not interpone any vther superior betwixt him & his vassell.'

These quotations shew that the general doctrine was a commonplace. It is still the law. 'The superior cannot without either a reserved power to that effect or his vassal's consent or acquiescence create a superiority intermediate between the vassal and himself—Douglas *v.* Torthorell 1670, Morison's *Decisions*, 15,012; Archbishop of St. Andrews *v.* Marquis of Huntly, 1682, Morison, 15,015.—Craigie's *Scottish Law of Conveyancing*, 1899, p. 133. Of course the particular proposition involved in the question as to ecclesiastical lordships is a more special problem than that here handled by the debutant advocate who was ultimately to leave behind one of the greatest names in Scottish Law.

It may be noteworthy that in his *Institutions* Lord President Stair set down the doctrine as decided in the courts thus: 'But a superior cannot interpose one betwixt himself and his vassals by infesting another in the lands to be holden of himself, for such an infestment was found null by exception, *Jan.* 30, 1671, *Douglas of Kelhead contra Vassals* (9306).' Stair's *Institutions* (ed. 1832), bk. ii. tit. 4, section 5. In manuscript versions of Stair's work, written considerably anterior to its first publication in 1681, this passage does not occur, the Kelhead case having arisen subsequently to the original composition of what appears to have been at first known as Stair's *Practicques*, in which the section on 'Superioritie' is title 14. This section was extensively revised before printing, and the quoted passage was one among many interjections added by Stair to the treatise before its final commitment to the press.

Orkneyinga Saga

VIGFUSSON has already pointed out that *Orkneyinga Saga* consists of two sections, viz. (1) 872-1064 and (2) 1064-1171, and that both were probably edited together, in their present form and prefaced with *Fundinn Noregr*, in the late thirteenth century. He was further of opinion that *Fundinn Noregr* could not have been composed until some time after 1098, on the assumption that the ship incident in the myth had been derived from the well-known episode in the life of King Magnús berfoetr.¹

Before consulting Vigfusson's criticism, an independent examination of the saga resulted in the same conclusion, viz. that the saga was divided into two sections with *Fundinn Noregr* inserted as a preface to the whole saga, but, in addition to that, the following new facts and characteristics were brought to light :

I. FIRST SECTION OF SAGA

The first section contains only one complete saga, which is placed at the end, viz. that of earls Þorfinnr hin ríki and Rögnvaldr Brúsason, his nephew, with incidental notices of earl Þorfinnr's brother-earls, viz. Sumarliði, Einarr rang-munnr, and Brúsi, 1014-1064. This complete saga, which may be described as **Þorfinns ok Rögnvalds sögur*, is cited as *Jarla sögur*,² in *Ólafs saga hins ríka*, and in *Magnúss saga hins góða*. It is prefaced with a summary of the sagas of the preceding thirteen earls, 872-1014. The former occupies 44 and the latter only 12 pages ; 12 pages for thirteen earls (142 years, five generations), and 44 pages for five joint-earls (50 years).

With regard to the abridged nature of the early sagas of this section, we know from Ari fróði (1118-1148) that there then existed a *Torf-Einars saga* (d. 910), from which he quoted a passage in *Landnámabók* containing information not given in *Orkneyinga*. *Flateyjarbók* (ii. 519) mentions *Sigurðar saga hins*

¹ *Orkn. Saga*, Rolls ed., preface, and *Prolegomena to Sturlunga Saga*, vol. i.

² A title hitherto supposed to have applied to the whole of the first section.

rika and *Þorfinns saga hins ríka*. *Ólafs saga hins helga*¹ mentions that there were many *frásagnir* (stories) about the sons of Þorfinnr hausakljúfr (circa 963-980), regarding whom *Heimskringla* gives no account, and *Orkneyinga* disposes of these five earls and the notorious Ragnhildr in three pages. As the editor of *Heimskringla* acknowledges his indebtedness to Ari for information about St. Ólafr, probably the knowledge of these *frásagnir* is also derived from Ari. *Vatsdæla saga* (900-1050), in a MS. of circa 1380, cites *Æfi Orkneyja jarla*, as to the descent of the Orkney earls from Torf-Einarr.

The first section is not quoted anywhere as a separate and composite work. References to the earls of 872-1014 are cited from their individual sagas, as already quoted, while quotations about Þorfinnr and his joint-earls are cited from *Jarla sögur* as follows :

Jarla sögur is cited in *Ólafs saga hins helga* (repeated in *Fornmanna sögur*, *Heimskringla* and *Flateyjarbók*) as the source of a verbatim quotation about Þorfinnr and Brúsi, which is taken from the saga of Þorfinnr and his brother-earls. It is also cited in *Magnúss saga hins góða* (repeated in *Fornmanna sögur* and *Flateyjarbók*, but omitted in *Heimskringla*) as the source of information about Rögnvaldr Brúsason, which is also taken from the saga of Þorfinnr and his joint-earls.

It will, therefore, be noted that while *Ólafs saga hins helga* quotes information about Þorfinnr and his joint-earls from *Jarla sögur*, it refers its readers, for information about the preceding earls, to their individual *frásagnir* and not to *Jarla sögur*.²

Jarla sögur was thus the name of the complete saga of Þorfinnr and his brother-earls, and was equivalent to the *Þáttur jarlanna Einars Þorfinns Sumarliða* of *Flateyjarbók*.

Jarla sögur is an exceedingly appropriate name for the sagas of earls Þorfinnr and Rögnvaldr Brúsason, and may have been composed by their *jarlaskáld*, earls' poet, Arnórr (the court poet of earl Þorfinnr), who was so nicknamed because he had composed poems, *jarla drápur* (and may we now add *jarla sögur*?) about these two earls. Arnór's poems are interlarded in *Jarla sögur*. The expression, 'sem seger Arnórr' (prefixed to his verses), is quite in keeping with his authorship, as Sturla Þórðarson used precisely the same expression in his *Hákonar saga Hákonarsonar*, which is strewn with Sturla's verses : 'sem seger Sturla.'

¹ In *Heimskringla*, see Saga Library, iv. 169, *Old-Lore Miscellany*, i. 65.

² Ólafs and Magnúss sagas were both edited, probably, in the beginning of the thirteenth century.

It is quite possible that Arnórr may have written, as well as composed, *Jarla sögur*. Writing began in Norway (after the introduction of Christianity with its missals and scriptures) with the taking down of the oral laws, in 1035-47, by the direction of King Magnus the good. Writing would probably have begun in Orkney at the same time, if not earlier, considering that it was Christianised before Norway, and was nearer to England, whose clergy were the first missionaries to the Norsemen; if it had not already learnt writing through its constant intercourse with England and Ireland.

The internal evidence of the date at which the first section was edited, in its present form, is as follows :

Göngu-Hrólfur is mentioned in the summary, under the ninth century, as the ancestor of the kings of England, a statement which could not have been made until a few kings had succeeded the Conqueror, say 1150. Under the date 1036 the journey of King Magnus hin góði and Rögnvaldr Brúsason through Sweden to Norway is quoted from *Magnúss saga hins góði* (fl. 1035-1047). Under the same date, for information about Kings Magnús and Sveinn, is cited *Æfi Noregs Konunga*, which may be Ari's lost *Æfi*, written 1118-1148, at which time writing began in Iceland with the taking down of the oral laws and sagas. *Magnúss saga* could have been quoted any time after it was composed, circa 1047, either in its oral or written form; as King Magnus began writing in Norway he may well have had his own saga put on record.

It is probable that *Jarla sögur* was edited, with its introductory summary of the sagas of the preceding earls, by one of the many Icelandic skálds in the *hirð*, or court, of Rögnvaldr Kali, 1136-1158. This saga would appeal to earl Rögnvaldr, because it contained a full account of Rögnvaldr Brúsason, after whom he had been re-named on account of his resemblance to the latter in personal appearance and character.

Another attractive feature would be the poems of Arnórr, seeing that earl Rögnvaldr, himself a poet, was at this very period busy with poetic work in collaboration with Icelandic skálds. It was at this time that he composed his *Háttalykill*. Earl Rögnvaldr must also have got master Rödbert to write the Latin Life of St. Magnús in 1136, the very year in which Rögnvaldr gained the earldom and in which earl Páll was kidnapped—the earl who had so strenuously discountenanced the veneration of St. Magnús.

It should be noted that, in the first section, the summary of the sagas of the earls, 872-1014, does not correspond closely with

Heimskringla, but there is some evidence that they have both been derived from a similar and, probably, literary source; whereas the account of Þorfinnr hin ríki and Brúsi, in St. Ólaf's saga, which is repeated in the *Heimskringla* version, is a verbatim extract from the saga of Þorfinnr and his joint-earls, which is cited as *Jarla sögur*. Possibly *Heimskringla* and *Orkneyinga*, under 872-1014, are both derived from Ari's lost *Æfi*, amplified from the original sagas themselves, which may account for the similarities and variations. If that is so, it explains a curious quotation in *Orkneyinga* and a marked omission in *Heimskringla*.

We will suppose that the early part of *Heimskringla* was founded on Ari's *Æfi*,¹ and that the editor of the first section of *Orkneyinga* used Ari as his authority for the lives of the earls preceding Þorfinnr, viz. 872-1014. When the editor came to Þorfinnr's saga, which he had before him in full, he inserted a note as to Rögnvaldr Brúason having accompanied King Magnús hin góði through Sweden to Norway, on the authority of *Magnúss saga hins góða*, because the *Æfi*, like *Heimskringla*, had no information on the subject. Then, instead of continuing his citation about King Magnús from *Magnúss saga*, he naturally went back to the *Æfi* as his groundwork authority, to which he referred his readers for information about King Magnús and King Sveinn, notwithstanding that this information is, of course, also given in the *Magnúss saga*, which he quoted. The only excuse for the citation of the *Æfi*, when *Magnúss saga* gave all that was wanted, would be the convenience of reverting to the standard authority which was being used by the editor, when that supplied what he wanted, after he had extracted the additional information contained in *Magnúss saga*.

Now, on this assumption, viz. that *Heimskringla* is founded on the *Æfi*, we thereby get the explanation of the above-mentioned reference to *Magnúss saga*; because the abridgment of *Magnúss saga*, in *Heimskringla* and in the *Æfi*, had no reference of any kind to Orkney or its earls.

Heimskringla gives no account of Orkney events during the reign of King Magnús hin góði, not even the succession and death of earl Rögnvaldr Brúason. The extract from *Jarla sögur*, in *Ólafs saga hins helga*, ends with the final agreement made between Brúsi and Þorfinnr in 1028, the year when King Ólafr fled out of Norway; and then it records the death of earl

¹ Vigfusson thought that Ari's work would be brought down to the time of Haraldr Harðráði, 1045-1066.

Þorfinnr (in 1064) and of earl Brúsi (in 1031), the year after the fall of king Ólafr, without any account of the intervening period, 1031-1064.

After this, in *Heimskringla*, there are very brief notices of the earls of Orkney, which in no way resemble *Orkneyinga*. Vigfusson was of opinion that Ari brought his *Æfi* down to the time of King Haraldr harðráði. Can it be that Ari had no information about the earls of Orkney after the agreement between Þorfinnr and Brúsi, in 1028, or did he purposely omit reference to earl Rögnvaldr Brúsason for some reason or other? Had it anything to do with the dispute between the joint kings of Norway, Magnús and Haraldr (1130-1134), regarding Kali's grant of the joint-earldom of Orkney, when he had been re-named Rögnvaldr after Rögnvaldr Brúsason; or, did Ari take sides in the dispute between earl Rögnvaldr and earl Páll—the earl who was kidnapped in 1136, and who was reported to have been blinded and ill-treated?

On the other hand, if it can be proved that the *Æfi*, quoted in *Orkneyinga*, is (1) *Ágrip*, circa 1190, which Vigfusson thought might have been partly copied from Ari,¹ or otherwise (2) *Heimskringla* itself, then we must date the editing of the first section of the saga after 1190, or otherwise after *Heimskringla*, 1220-30, unless the quotation of *Æfi* is the interpolation of a second or later editor. But one cannot imagine why *Jarla sögur* should have been thus selected for full treatment so long after Þorfinnr's death, and the early sagas merely abridged. Moreover, if these two sections had been compiled and edited at the same time, we should have expected the editor to have cited Snorri Sturlusson throughout as to king Magnús hin góði and king Sveinn, and not *Æfi Noregs konunga*, in the same way as Snorri is cited as to the death of Erlingr Erlendsson.

II. SECOND SECTION OF SAGA

The second section also contains only one complete saga, which is also placed at the end, viz. that of earl Rögnvaldr Kali, or hin helgi, 1116/36-1158, with incidental references to his joint-earls, Erlendr and Haraldr Maddaðarson, and brought down to the death of Sveinn Ásleifarson, 1171. This saga is likewise prefaced with a summary of the sagas of the preceding six earls, 1064-1136. The former occupies 129 and the latter only 33 pages.

¹ Proleg. *Sturlunga*, lxxxvii. ; see also *Old-Lore Miscellany*, i. 66.

That part of the summary which relates to St. Magnús is an abridgment of the complete *Magnúss saga hins helga*, which is preserved. The life of St. Magnús is fully treated in the summary on account of its direct bearing on the succession to his share of the earldom of his nephew, earl Rögnvaldr Kali—the subject of the complete saga. Earl Rögnvaldr had vowed that, in the event of his succeeding in obtaining his uncle's share of the earldom, he would erect a cathedral and dedicate it to St. Magnús. The summary also refers to **Hákonar ok Magnúss kviðr*, and **Hákonar drápa*, which are not preserved. Also, *Flateyjarbók* mentions **Haraldar saga Maddaðarsonar*,¹ which is lost, unless it is preserved in the account given of him in *Orkneyinga þáttir* in *Flateyjarbók*.

Rögnvalds saga hins helga, 1116/36–1158, may have been composed by his request after his pilgrimage, and before his death (1153–1158), as a literary work,² by one of the many Icelandic skálds in his court; in the same way as king Magnús Hákonarson commissioned Sturla Þórðarson to write his saga in his lifetime. And, we must remember that, in 1148, it was held out to Rögnvaldr as a special inducement for him to undertake his famous pilgrimage to Jerusalem, that he would thereby have the opportunity of providing incidents for a saga all to himself. After his death the saga is carried on to the tragic end of Sveinn Ásleifarson, one of the last of the great víkingar, in 1171.

We have the following internal evidence as to the date of the editing of this second section of *Orkneyinga*. Living oral *kviðr* and *drápa* are referred to, in the abridgment of *Magnúss saga hins helga*, as to what took place *circa* 1110, and Snorri Sturluson is quoted, in opposition to others, as to the place of the death of Erlingr Erlendsson, and Snorri's version agrees with *Heimskringla*; so that the date of editing must be fixed after 1220/30, and after the date of the last edition of *Magnúss saga hins helga*, from which the references to *kviðr* and Snorri are carried over. The reference to Snorri, in *Magnúss saga hins helga* and in *Orkneyinga*, may, of course, have been inserted by a second or later editor, so that, as contended by Dr. Jon Stefánsson,³ bishop Biarni may have been the first editor. In order to allow time in

¹ ii. 519.

² Vigfusson has called attention to the historical character of this saga, in his preface to the text.

³ *Old-Lore Miscellany*, i. 43, 65.

which to include the ship incident, of 1098, in *Fundinn Noregr*, it seems probable that the editor of the combined two sections prefaced the whole *Orkneyinga* with that myth towards the end of the thirteenth century, to which date the oldest MS. fragments of the complete saga are ascribed.

In *Heimskringla*, after 1028, there is not a trace of a quotation from, or a knowledge of, the Orkney saga, from which it actually differs as to the place where Erlingr Erlendsson fell, a difference which is quoted in *Orkneyinga* on the authority of Snorri.

There is no evidence that the second section of *Orkneyinga* was known to, or quoted by, the editors of the Norwegian sagas in the beginning of the thirteenth century, while the citation of Snorri points to the date of its editing as being after Snorri's time.

It has been assumed in this paper that the citations, from sagas and Snorri, are the literary work of editors and are not part of the original oral story.

III. COMPLETE SAGA

As regards the name of the whole composite saga: in the first half of the thirteenth century, *Ólafs saga hins helga* has a chapter on 'Upphaf Orkneyinga sagna.' About 1630, Magnus Olafsson, in his *Lexicon Runicum*, quoted from the whole saga as *Jarla saga*, 'Earls' saga,' and *Orkn[eyinga] saga*, 'Orcadians' saga,' and he also quoted, separately, *Rögnvalds Þáttr [hins helga]* in *Orkn[eyinga] saga*, although his other quotations from this *Þáttr* are cited as from *Jarla saga*. He may have had a separate copy of *Rögnvalds Þáttr* which gave him matter omitted in his copy of the complete saga. Biorn of Skardsá refers to *Orkneyia jarla saga*.¹

In conclusion, the summaries of the early sagas, in these two sections of *Orkneyinga*, must have been literary works from the first, and the two sections must have been each a separate literary production before they were both combined in one literary work, *Orkneyinga Saga*, in the end of the thirteenth century; having passed through the hands of three editors and further drastic re-editing in *Flatleyjarbók*, which latter, alone, preserves more than one-half of the whole saga.

The references in *Orkneyinga* to *Magnúss saga hins góða*, *Æfi Noregs Konunga*, *Kviðr* and Snorri Sturluson are found in MSS. other than *Flatleyjarbók*; and the latter only repeats the references

¹ *Orkn.* (text), p. xii.

to Snorri and the *kviður*, and omits the others. That part of the saga which cites *Hákonar drápa* is alone preserved in *Flateyjarbók*.

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